All Australian States and Territories have enacted anti-discrimination legislation. Under the Australian Constitution they can do so, as long as the State laws are not inconsistent with Federal laws. Often the State laws go further in the protection they offer because states are not limited in their powers, as the Federal Government is, by the terms of international treaties. Some State laws, for example, protect against discrimination on the ground of religion or sexuality, grounds not covered by Federal laws.

State and Territory human rights protections

The Australian Capital Territory (ACT) was the first Australian jurisdiction to pass a version of a Bill of Rights, the Human Rights Act 2004 (ACT). In 2006, Victoria followed suit and passed the Charter of Human Rights & Responsibilities Act 2006 (Vic). These laws are not ‘supreme’ laws like a constitution would be – they are simple Acts of Parliament that can be easily changed or overridden by a clear Parliamentary intention in a later Act. Neither the ACT Human Rights Act nor the Victorian Charter cover the field of human rights standards to which Australia has subscribed. Both Acts cover a selective range of rights, predominantly taken from the ICCPR. Both Acts recognise their selectivity and do not claim to be an exhaustive statement of individuals’ human rights.

These Acts are modelled on the United Kingdom's Human Rights Act 1998 (UK). They are described as creating a ‘dialogue’ on human rights standards between the Executive, Parliament, the Judiciary and the community. They are also described as ‘preventative’ models as they aim to put human rights at the forefront of governmental decision-making. The main features of the Victorian and the ACT Acts are that they:

- create a process by which all new legislation must be scrutinised for its human rights implications, and be accompanied by a statement of compatibility with human rights before it is passed by the Parliament. Parliament has the power to legislate in a way that is contrary to the protected human rights, but this will be explicit at the time it passes such law and any limitation or override of human rights will be justified;
- create a new rule of statutory interpretation to require courts and administrative decision makers to interpret existing and future legislation consistent with human rights, ‘so far as it is possible to do so consistently with [the law’s] purpose’. International law, and the judgments of foreign and international courts and tribunals may be used in interpreting the recognised human rights. If it is not possible to interpret the law in question consistently with human rights, courts can issue a declaration of incompatibility (ACT) or declaration of inconsistent interpretation (Victoria) that places the law back before the Executive and Parliament to decide whether or not to amend the law in question. The government of the day must respond within six months, in writing, and table the response in Parliament. The court’s declaration does not make the law invalid;
- create a duty incumbent on ‘public authorities’ to act consistently with human rights, unless the law clearly authorises decisions or conduct that is inconsistent with human rights. A ‘public authority’ is any organisation (including its staff) that provides services of a public nature – for example, a private company that runs a prison on behalf of government. Both the ACT (from January 2009) and the Victorian Acts allow individuals to approach a court for a remedy (other than financial compensation) in relation to a violation of a protected human rights by a ‘public authority’;
- establish periodic reviews to consider expanding the scope of protected human rights to include economic, social and cultural rights. Notably, in 2012 the ACT amended its Human Rights Act to include the right to education; and
- attempt to engender a human rights culture by measures such as appointing human rights commissioners responsible for reporting on the use of the relevant Act, monitoring compliance, educating the public service and the public at large, and promoting awareness of human rights. In the ACT, there is a Human Rights Commission [2] and in Victoria, the Equal Opportunity Commission has become the Equal Opportunity and Human Rights Commission [3].

Current developments

Proposals that States and Territories have their own Bills of Rights have become more frequent in the last few
years, particularly since the passage of the *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). In both Western Australia and Tasmania, State Governments have conducted community consultations in relation to how to protect human rights.

In 2006, the Tasmanian Government commissioned the Tasmanian Law Reform Institute to report how human rights are currently protected in Tasmania and whether human rights can be enhanced or extended. In October 2007, the Tasmanian Law Reform Institute reported back, recommending the adoption of a Human Rights Act in Tasmania. No such Act has been passed.

In Western Australia, the State Government appointed a committee in May 2007, called the Committee for a Proposed WA Human Rights Act, to determine if there is support in the community for such an Act in Western Australia, and more broadly, what the Western Australian Government and the community can do to encourage a ‘human rights culture’ in the State. At the same time, the State Government released a proposed Human Rights Act for discussion. In November 2007, the Committee reported back recommending that in light of clear support for a Human Rights Act in the community, that such an Act be passed. The state government waited on the outcome of the federal consultation on how to protect human rights before acting on these recommendations. It has not moved to pass a Human Rights Act.


In 2001, a NSW Parliamentary committee inquired into a Bill of Rights for NSW. Consistent with the widely publicised views of the then NSW Premier, the Honourable Bob Carr MP, the committee recommended against a Bill of Rights, but proposed the establishment of standing committee to scrutinise legislation for compliance with human rights standards (which was established). The former Attorney General of NSW, the Honourable Bob Debus MP, was in favour of a community consultation about formal human rights protection in NSW. However, in April 2007, his successor, the Honourable John Hatzistergos MP, rejected the idea of a Bill of Rights in NSW. Community debate continues in NSW.

In South Australia, a private member’s bill entitled Human Rights Bill 2004 was introduced to the South Australian Parliament by the leader of the South Australian Democrats, the Honourable Sandra Kanck MLC. It did not progress beyond the first reading. Ms Kanck introduced a further private member’s bill in 2005 entitled, Human Rights Monitors Bill 2005, which also did not proceed. A community-based campaign advocating for a Bill of Rights in South Australia continues.

In the Northern Territory, there have been two examinations of the question of a Bill of Rights. Neither has resulted in legislative reform, and the question of a Bill of Rights has become related to the broader political question of whether the Northern Territory should become a State. In 1995, a Legislative Assembly Committee published a discussion paper, ‘A Northern Territory Bill of Rights’. In 2005, in consideration of the question of whether the Territory should ‘graduate’ to Statehood, the Statehood Steering Committee was established by the Legislative Assembly to consult and educate the Territory’s community. In May 2007, the Steering Committee’s discussion paper, ‘Constitutional Paths to Statehood’, was released. It contained a section about a Northern Territory Bill of Rights and has been complemented by a fact sheet entitled ‘What is a Bill of Rights?’

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