

Human Rights Law Resource Centre

Human Rights Education Strategy Report

A summary of human rights education programs
for legal professionals and peak community bodies
in South Africa, the United Kingdom
the Australian Capital Territory and New Zealand

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Introduction

The Charter of Human Rights and Responsibilities (**Victorian Charter**) will become law in Victoria upon commencement of the Charter of Human Rights and Responsibilities Act 2006 (Vic) (**the Act**) which was recently passed by the Victorian Parliament.

The Act follows recommendations made by the Human Rights Consultation Committee (**HRCC**) in its report *Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee* (**HRCC Report**), which proposed that

the Victorian Charter should be an ordinary Act of Parliament like the human rights laws operating in the Australian Capital Territory, New Zealand and the United Kingdom [thereby ensuring] the continuing sovereignty of the Victorian Parliament.¹

Consistently with its terms of reference, the HRCC recommended that only 'civil and political' rights such as those found in the International Covenant on Civil and Political Rights (**ICCPR**) be included in the Victorian Charter at this stage. These rights include:

- The right to life, from time of birth;
- Protection from torture and slavery;
- Protection from the unlawful deprivation of property;
- The right to privacy;
- Freedom of thought, religion and belief;
- Freedoms of expression, association and assembly; and
- Right to political participation, including voting.

For the Victorian Charter to be effectively implemented, when it becomes law, the legal professionals and community groups whose clientele are most likely to encounter breaches of human rights must be fully informed as to the implications and application of the Victorian Charter in their field of work.

This Report seeks to provide assistance to the Human Rights Law Resource Centre (**HRLRC**) in planning its strategy for implementing human rights education programs directed at legal professionals and peak community bodies. The Report seeks to do this by considering the programs that exist in four jurisdictions with similar human rights legislation:

- South Africa (section 1);
- the United Kingdom (section 2);
- the Australian Capital Territory (section 3); and
- New Zealand (section 4).

¹ *Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee: Summary and Recommendations: 'A Charter of Human Rights and Responsibilities'*.

It must be said at the outset that, although there is a vast quantity of material, both substantive and evaluative, in relation to human rights education programs directed at individuals, very little evaluative material has been located which applies directly to the types of programs being considered by the HRLRC. For reasons of brevity, the Report does not give significant consideration to the programs directed at the general public, except where those programs may be readily adapted to the HRLRC's target audiences.

The Report describes only those items that are most likely to be of some assistance to the HRLRC (and in many cases that assistance is meagre). There is considerably more material provided in the Appendices than is referred to in the Report, and the last section of each Appendix for the four jurisdictions includes a selection of miscellaneous material that is not referred to directly in the body of the Report. **Appendix E** includes a range of general materials not specific to any of the four jurisdiction considered, including examples from the most extensive and helpful websites located, being those of the University of Minnesota Human Rights Library² and the Database on Human Rights Education and Training of the United Nations High Commissioner for Human Rights.³

Much of the material provided in the Appendices is subject to copyright and the HRLRC should gain the consent of the copyright holders prior to reproducing any of the material.

Those programs that exist in the UK, ACT, South Africa and New Zealand are at best ad hoc. The HRLRC proposal to implement a co-ordinated strategy for educating the groups at the vanguard of the implementation of human rights legislation appears to be uniquely proactive. The relative paucity of material from outside Victoria relating to the HRLRC's two target groups may not assist the HRLRC in planning its strategy, and is indicative of a broader need for co-ordinated and targeted education programs in the jurisdictions considered by this report. However, in the absence of any existing co-ordinated programs, and consequently of any evaluative material thereof, there may exist opportunities for co-operation between the HRLRC and corresponding bodies in those jurisdictions.

² www1.umn.edu/humanrts

³ www.unhchr.ch/hredu.nsf



A. Outline of programs

1. South Africa

1.1 Human rights legislation in South Africa

The Bill of Rights is the common term for Chapter 2 of the *Constitution of the Republic of South Africa 1996 (Constitution)*. According to the Constitutional Court of South Africa, the Bill of Rights has extensive coverage because it addresses first (civil and political), second (social and economic) and third generation (environment and development) human rights.⁴ The Constitution was introduced following the collapse of Apartheid and the establishment of democracy in South Africa in 1994.

1.2 Summary of education strategies

South African human rights education strategies include:

- conducting workshops and training programmes for trainers and the broader community;
- preparing training manuals containing time-specific presentations, general-purpose overheads, general Bill of Rights information in question-answer format, group activities and examples of the application of rights to everyday situations;
- producing handbooks explaining the Bill of Rights in accessible language;
- producing pamphlets with cartoon drawings and everyday examples that deal with certain rights;
- distributing pocket-sized copies of the Bill of Rights;
- producing posters and videos about the Bill of Rights;
- publishing human rights-related newsletters;
- offering or participating in academic courses related to the Bill of Rights; and
- organising activities around significant events, such as National Constitution Week.

1.3 Availability of sources

South Africa has many government and non-government organisations involved in human rights implementation. However, the large majority of these educate about broad national and international conceptions of human rights rather than about the Bill of Rights specifically. While some relevant training materials are available online, the large majority of resources listed herein are not. Some of the material may be requested or purchased, but establishing contact with a number of the provider organisations has proven difficult. Finally, material that evaluates the projects that have been implemented appears to be extremely sparse.

⁴ <http://www.constitutionalcourt.org.za/site/yourrights/thebillofrights.htm>

The content has been arranged below according to target group. However, most organisations do not highlight the distinction between educating the legal profession and community groups as opposed to educating the broader community. Most organisations appear to train all three levels using similar strategies.

1.4 Education of the legal profession

At the start of the new democracy, the judiciary was generally unfamiliar with human rights concepts.⁵ It was recommended that judges, magistrates and prosecutors should be trained in national and international human rights jurisprudence. Many of the following initiatives were developed in that context.

(a) Constitution and Bill of Rights Education Project (**Project**)

- **Workshop manual, resource manual and video** (not available online)

Lawyers for Human Rights (**LHR**), in conjunction with the National Community Based Paralegal Association, conducts the Project.⁶ The Project involves teaching trainers at the national level, paralegals at the provincial level and focus groups of community members at the community level. Provincial training is designed to enable paralegals to understand and use the Bill of Rights in their daily practice and also give them the capacity to conduct their own community programs. To this end, in 2000 the Project developed a workshop manual (discussing how the Bill of Rights applies in people's daily lives), a resource manual and an associated video. An impact assessment of the program was also planned. Attempts to contact LHR have been unsuccessful.

(b) Justice College

The Justice College trains magistrates, state attorneys, prosecutors, clerks, interpreters and paralegals in South Africa. It is understood that this mandatory training now includes a component on human rights.⁷ The Justice College is a potentially very useful contact, but its website is constantly unavailable.⁸

⁵ Paul van Zyl and Graeme Simpson, Centre for the Study of Violence and Reconciliation, c1995, 'Reconciliation: From rhetoric to reality: The contribution of civil society to the Truth and Reconciliation Commission', Submission to the Minister of Justice: <http://www.csvr.org.za/papers/pappvgs.htm>.

⁶ Constitution and Bill of Rights Educational Project, *Core Activities*: <http://users.iafrica.com/k/ko/kogrady/html/activiti.htm>.

⁷ See Department of Justice and Constitutional Development, c2004, 'Measures Taken by South Africa to Promote and Ensure the Respect of Human Rights through Teaching, Education and Publication in Accordance with Article 25 of the Charter', Chapter 4: <http://www.doj.gov.za/2004dojsite/policy/african%20charter/afr-charter04.html>. See also information about the Justice Vision 2000 programme. This referred to the Department of Justice's plan to transform the judicial system following the end of Apartheid. Part of the project involved incorporating mandatory human rights training programmes in the training of judges: see suggestions in Prakashnee Govender, 'Judges in training', *RightsNow*, September 1997: http://sunsite.wits.ac.za/nadelproject/rcentre/nl_sep97.html#judges.

⁸ www.justcol.org.za.



(c) The Black Sash

- **Updated paralegal manual** (not available online)

The Black Sash is a South African paralegal service that aims to 'Make Human Rights Real'. It offers accredited paralegal training courses for knowledge of human rights and has published a Paralegal Manual (1998) and an updated manual (2002) for this purpose.⁹ These are not available online.

(d) National Association of Democratic Lawyers - Human Rights and Advocacy Project

Work of the National Association of Democratic Lawyers (**NADEL**) includes 'developing a participatory human rights culture', 'conducting human rights education through workshops, training and publications' and 'facilitating the transformation of the legal/judicial system through research and advocacy work.' It has developed a number of human rights publications, though most of these are directed to a broader audience and are not available online. NADEL's newsletter, *RightsNow*, contains some reports relevant to legal practitioners,¹⁰ and NADEL's evaluations of human rights education courses conducted for lawyers may be useful, however this information is not available online.

(e) Lawyers for Human Rights

- **Bill of Rights Handbook** (available for purchase only)

LHR has also produced a *Bill of Rights Handbook*.¹¹ The book is designed as a first reference for legal practitioners, academics and students. Its fifth edition was published in August 2005 and each edition has sold in excess of 30,000 copies. Although apparently targeted at the legal profession, it is unclear if it is an academic law textbook, specific to South Africa, or a more general handbook that could be applicable in the Victorian context. It may be purchased for R345 (\$AU65).

(f) Department of Justice

The Department of Justice has organised a public education campaign in which judges, magistrates and prosecutors participate in information sessions for the broader public.¹² Further information about these sessions does not appear to be available online.

⁹ The Black Sash, 2005, *The Golden Jubilee Report 1955-2005*, 90-91, 107:

http://www.blacksash.org.za/docs/Black_Sash_Golden_Jubilee_Annual_Report_2005.pdf.

¹⁰ See, eg, Govender, above n 7; Prakashnee Govender, 1997, 'Judicial Training', Resource Centre Submissions and Policies: http://sunsite.wits.ac.za/nadelproject/rcentre/rc_judtraining.html.

¹¹ Lawyers for Human Rights, LHR Announcements 17 August 2005, <http://www.lhr.org.za/home/page0.php>

¹² ACHPR, 'Measures Taken by South Africa to Promote and Ensure the Respect of Human Rights through Teaching, Education and Publication in Accordance with Article 25 of the Charter', Chapter 4, <http://www.doj.gov.za/2004dojsite/policy/african%20charter/afr-charter04.html>.

(g) Southern Africa Litigation Centre

- ***International Treaty Obligations in Human Rights Cases: A Practical Guide*** (available online)

The Southern Africa Litigation Centre (**SALC**) was launched in June 2005. It is based in South Africa, although it deals more with other southern African jurisdictions.¹³ It has published a user-friendly manual for lawyers involved in human rights litigation to assist them in pursuing human rights cases,¹⁴ and deals with international human rights law – namely, how to use and cite it, how to apply it before domestic courts and how to appeal to international courts. The manual is available online, in CD Rom format and in hardcopy. The manual does not deal with the Bill of Rights specifically. However, it is a potentially useful example of how to inform lawyers about the practical relevance of human rights law to their work. A copy is attached at **Appendix A1**.

1.5 Education of community groups

These projects deal at least in part with 'training trainers'.

(a) Various groups

- ***Building a Culture of Human Rights, Workshop Manual*** (attached at **Appendix A2**)
- ***How to Run a Workshop*** (available for purchase)
- ***Constitution and Bill of Rights, Workshop Manual*** (attached at **Appendix A3**)

The South African Human Rights Commission¹⁵ (**SAHRC**) is a national statutory body that was established in 1995 and mandated 'to entrench constitutional democracy through the promotion and protection of human rights.' One of the ways it does this is through education and training about human rights.¹⁶ The SAHRC's website is comprehensive and the online Publications section is divided into eight parts, nearly all of which contain potentially useful information.

¹³ Southern Africa Litigation Centre, 'Centre released an innovative litigation manual intended to assist human rights lawyers' (Media Release, 27 October 2005):

<http://www.southernafricalawcenter.org/salc/newsroom/newsdetail.aspx?id=341442205>; see also International Bar Association, 2005, *IBA/OSISA Southern Africa Litigation Centre*:

http://www.ibanet.org/humanrights/South_African_Litigation_Centre.cfm; Legalbrief Today, 'Southern African Litigation Centre Opens', 21 June 2005: <http://www.legalbrief.co.za/article.php?story=20050620114336665>.

¹⁴ Southern African Litigation Centre, c2005, *International Treaty Obligations in Human Rights Cases: a Practical Guide*: http://www.southernafricalawcenter.org/files/tbl_s5107SAPublications/FileUpload5913/345/SALC%20Manual.pdf.

¹⁵ For a brief description of the education and training activities of the SAHRC, see South African Human Rights Commission, *Annual Report 2004/05*, 36-9: www.sahrc.org.za/sahrc_cms/downloads/SectionTwo2004_2005.pdf.

¹⁶ South African Human Rights Commission, *Mission Statement*: http://www.sahrc.org.za/sahrc_cms/publish/cat_index_1.shtml.



The Constitutional Court of South Africa provides some human rights information for individuals on its website.¹⁷ This includes an overview of the Bill of Rights (attached at **Appendix A4**) and links to other bodies that support constitutional democracy.

The National Centre for Human Rights Education and Training (**NACHRET**) of the SAHRC is the principal body responsible for human rights education and training.¹⁸ Its chief activity is developing and delivering courses, workshops, dialogues and seminars for various target groups (including immigration officers and NGOs). NACHRET develops courses on specific themes such as 'Culture and the Constitution'.¹⁹ Attempts to contact NACHRET have been unsuccessful.

The SAHRC produces a workshop manual entitled *Building a Culture of Human Rights*, which an outline of the Bill of Rights and includes sections with everyday examples and in question-answer format.²⁰ The manual answers questions such as 'What human rights are protected in the Bill of Rights?' and 'Can the Bill of Rights be limited?' The manual provides workshop checklists that could be adapted to suit the Victorian context. It goes into some detail about the timing of workshop programs and is set out for practical use, with space for note-taking. Section Four, 'Conducting the Workshop' is particularly useful for its discussion of approaches to and techniques for conducting workshops. The manual also recommends a publication, *How to Run a Workshop*, by the Legal Education Action Project.

Another, more brief, workshop summary is contained in the paralegal manual of The Black Sash and the Education and Training Unit.²¹ It includes a timetable for a day-long Bill of Rights workshop and five suggested workshop sessions.

(b) Police

- **Human Rights and Policing training package** (not available online)
- **ABC of Human Rights and Policing** (available for purchase only)

The South African Police Service (**SAPS**) has developed a package of training resources entitled *Human Rights and Policing*.²² The package is aimed at trainers, facilitators and educators, as well as members of the police service, reservists and community members who attend Community Police Forums. Its aim is to make

¹⁷ <http://www.constitutionalcourt.org.za/site/yourrights/knowyourrights.htm>

¹⁸ See South African Human Rights Commission, *NACHRET*:
http://www.sahrc.org.za/sahrc_cms/publish/cat_index_31.shtml.

¹⁹ National Centre for Human Rights Education and Training, *Courses*: http://www.sahrc.org.za/courses_nachret.htm.

²⁰ South African Human Rights Commission, *Workshop Manual: Building a Culture of Human Rights*:
http://www.sahrc.org.za/workshop_manual.PDF.

²¹ The Black Sash and the Education and Training Unit, *Constitution and Bill of Rights*, Chapter 11:
<http://www.paralegaladvice.org.za/>.

²² South African Police Service, *Human Rights and Policing*:
<http://www.saps.gov.za/docs%5Fpubs/legislation/policies/%5Fpolicing.htm>.

policing conform to human rights laws, by equipping police with the skills and knowledge to incorporate human rights standards into everyday police tasks. The package consists of a resources manual and presenters' guide for trainers, training videos, posters, and pocket sized copies of the Constitution and a booklet about the minimum standards in human rights for law enforcement officials. Seminars conducted for police have apparently enjoyed some success.²³

Following from the *Human Rights and Policing* programme, Street Law, in conjunction with others, has published the *ABC of Human Rights and Policing*.²⁴ This publication is available for purchase,²⁵ and examines the impact of the Bill of Rights on police practice.

(c) Law Students

- **Extracts from the Street Law Series** (available online; see **Appendix A5**)

The Street Law project trains law students to teach people 'on the street' about the effects of law in their daily lives and has been incorporated into 17 of the 21 South African law schools.²⁶ Various text books and training manuals have been developed for these courses and some evaluations also exist. A small number of chapters from the Street Law Series are available online,²⁷ and some other information can be ordered online.²⁸

(d) Children

- **Children and the Law** (available for purchase, Introduction attached at **Appendix A6**)

LHR has recently published *Children and the Law*, a manual aimed at trainers of paralegals, teachers and others who do not have a legal background but require knowledge of the legal framework for children's rights.²⁹ The manual was developed in response to requests from grassroots service providers for a comprehensive topic list and suggested frequently asked questions dealing with laws relating to children. The resource is much broader than the Bill of Rights, dealing with current laws (including the Bill of Rights) that affect children in South Africa generally. Its greatest potential usefulness to the HRLRC would be as a comparative resource for NGOs specifically involved in protecting children's rights.

²³ See South African Human Rights Commission, 'Workshops with the South African Police': http://www.sahrc.org.za/workshops_and_seminars.htm.

²⁴ Street Law, c2004, *Publications: ABC of Human Rights and Policing in South Africa*: <http://www.streetlaw.org.za/humanrights.html>.

²⁵ See online order form at Street Law, 2004, *Publications Orders*: <http://www.streetlaw.org.za/orders.html>.

²⁶ Association of Law Teachers, 2001, 'Teaching street law as part of the curriculum in South Africa', *Bulletin*, Issue 107: <http://www.lawteacher.ac.uk/bulletin/107e.html>.

²⁷ Constitutional Court of South Africa, *Your Rights*: <http://www.constitutionalcourt.org.za/site/yourrights/knowyourrights.htm>.

²⁸ Street Law, *Publications: Orders*: <http://www.streetlaw.org.za/orders.html>.

²⁹ Lawyers for Human Rights, 2005, *LHR Announcements*: <http://www.lhr.org.za/home/page0.php>; Lawyers for Human Rights, c2005, *Child Rights Project, Resources*: <http://www.lhr.org.za/child/more.php>.



The manual recommends that widely-accessible human rights education manuals adopt a question-answer format.

(e) Media

'Gender Links' conducts courses for the media in human rights generally.³⁰ Its website offers a range of manuals on training trainers, though these are mainly appropriate to NGOs conducting media-specific training. Workshops with journalists have also been conducted as part of the Roll Back Xenophobia: National Action Plan.³¹

1.6 Education of the broader community

(a) Community Law Centre, University of the Western Cape

- ***Knowing and Claiming Your Right to Food*** (attached at **Appendix A7**)
- ***Socio-Economic Rights Resource Book*** (available online)

The Community Law Centre's publication entitled *Knowing and Claiming Your Right to Food* is a useful example of a publication for a broad audience that examines in depth a single human right.³² The book draws together a range of resources related to practically implementing the right to food, and considers:

- the content or meaning of the right to food;
- government programmes for implementing the right; and
- methods people can use to defend this right.

The *Socio-Economic Rights Resource Book* considers rights individually and in depth and is designed to be accessible to a wide audience. Rather than merely informing people about their rights, the book aims to encourage action about each right. It is not attached to this Report as it appears to be only available as a Word document with minimal formatting and large sections of text, but can be viewed on the Community Law Centre website.³³

(b) SAHRC

- ***My Rights My Responsibilities*** (attached at **Appendix A8**)

The SAHRC's publication, *My Rights My Responsibilities* is an example of an in-depth but accessible pamphlet explaining the Bill of Rights.³⁴ The booklet contains cartoon drawings and photos and everyday examples of the application of individual rights under the Bill of Rights.

³⁰ http://www.genderlinks.org.za/page.php?p_id=98.

³¹ See SAHRC, 'Workshops and Seminars': http://www.sahrc.org.za/workshops_and_seminars.htm

³² www.communitylawcentre.org.za/ser/docs_2004/RIGHTOFFOODFINAL.pdf.

³³ <http://www.communitylawcentre.org.za/ser/publications.php>

³⁴ South African Human Rights Commission, *My Rights My Responsibilities: Rights, Responsibilities and the SAHRC*: http://www.sahrc.org.za/sahrc/cms/publish/cat_index_42.shtml.

(c) Lawyers for Human Rights (**LHR**)

- **Refugee Information Guide** (not available online)

LHR has published the *Refugee Information Guide*.³⁵ The guide is designed for practical, everyday use and is divided into legal and social parts and includes information about the rights of refugees. Unfortunately, this potentially useful guide is not available online, and attempts to contact the LHR have been unsuccessful.

(d) Child Rights and Responsibilities Education and Prevention Project of Childline

Childline is one of the larger NGOs dealing with children's rights in South Africa. Its strategy for '[c]reating a culture of child rights in communities' is targeted towards parents, educators and children.³⁶

(e) National Constitution Week

National Constitution Week in 1997 coincided with a public human rights education campaign.³⁷ The initiative was supported by Cabinet and the week had the theme 'Violence against Women and Children'. Copies of the Constitution and associated constitutional issues were distributed variously in hard-copy and on CD-ROM.

(f) Other

Various other organisations deal with human rights issues in the broader community, but their projects are not specific to the Bill of Rights and minimal tangible information is available online. These organisations include the Centre for Human Rights at the University of Pretoria,³⁸ the Human Rights Institute of South Africa,³⁹ the Secretariat of African National Human Rights Institutions,⁴⁰ the Institute for Democracy in South Africa (**IDASA**)⁴¹ and the Women's Legal Centre.⁴² Amnesty International South Africa has also conducted training sessions, but few details appear to be available about the workshops.⁴³

The Centre for the Study of Violence and Reconciliation made a submission for a future human rights education campaign in about 1995. Paul van Zyl and Graeme Simpson recommended that a campaign should encompass accessible pamphlets and radio and television presentations about the work of the Truth and Reconciliation Commission, human rights in general and the Bill of Rights, as well

³⁵ Lawyers for Human Rights, *Refugee Rights Project: Publications*: <http://www.lhr.org.za/refugee/publics.php>.

³⁶ Childline Gauteng, 2006, *Child Rights and Responsibilities Education and Prevention Project*: http://www.childline.org.za/Services/service_childrensrighs.htm.

³⁷ Department of Justice and Constitutional Development, above n 7.

³⁸ <http://www.chr.up.ac.za/about/introduction.html>.

³⁹ <http://www.hurisa.org.za>.

⁴⁰ <http://www.sahrc.org.za/index5.htm>.

⁴¹ <http://www.idasa.org.za/>.

⁴² <http://www.wlce.co.za/index.html>.

⁴³ Amnesty International South Africa, 2005, 'Amnesty conducts HRE with Grannies: 16 days of activism, 2005', *Human Rights Education Newsletter*, Issue 1: <http://www.amnesty.org.za/news1.htm#>.

as teacher training and symbolic acts of reconciliation.⁴⁴ It is unclear to what extent and in what specific projects the recommendations have been implemented, but these may be useful to the HRLRC for comparative purposes.

⁴⁴ Van Zyl and Simpson, above n 5.



2. United Kingdom

2.1 Human rights legislation in the United Kingdom

The 1950 European Convention on Human Rights (**ECHR**) is a binding international agreement that enshrines fundamental civil and political rights. For half a century, the ECHR did not form part of the law of the United Kingdom and use of the ECHR usually involved taking a case to the European Court of Human Rights in Strasbourg. Under the *Human Rights Act 1998 (UK Act)*, which came into force on 2 October 2000, the rights under the ECHR (**Convention Rights**) have been enforceable in UK courts. The UK Act not only makes it much quicker and simpler to bring an action to uphold the Convention Rights, but is also a clear legal statement of the basic rights and fundamental freedoms of the people of the United Kingdom. The UK Act does three things in relation to the Convention Rights:

- It makes it unlawful for a public authority to violate Convention Rights, unless an Act of Parliament rendered the violation unavoidable;
- It says that all UK legislation should, to the extent possible, be given a meaning that is compatible with the Convention Rights. Where a Court finds that such a meaning cannot be given, the legislation is referred back to Parliament; and
- It provides for cases relating to Convention Rights to be dealt with in UK Courts or tribunals, rather than the European Court of Human Rights in Strasbourg.

The Convention Rights and the manner of their adoption under the UK Act are broadly similar to the rights and processes of the Victorian Charter. Education material relating to the UK Act are therefore likely to be of some assistance to the HRLRC in formulating its human rights education strategy.

2.2 Education of the legal profession

- (a) The Human Rights Lawyers Association (**HRLA**)⁴⁵

The HRLA provides regular seminars, lectures and workshops for lawyers on human rights law and procedure in the UK. Topics covered include:

- *Remedies Under the Human Rights Act 1998*
- *I'm a Family Lawyer – how is the Human Rights Act helping my practice?*
- *I'm an Immigration Lawyer – how is the Human Rights Act helping my practice?*
- *I'm an Employment Lawyer – how is the Human Rights Act helping my practice?*
- *I'm a Commercial Lawyer – how is the Human Rights Act helping my practice?*
- *Translating the Rhetoric of Human Rights into Reality*

⁴⁵ www.hrla.org.uk

Lists of past and upcoming events, and a selection of the papers available on the HRLA website, are provided at **Appendix B1**.

(b) The Bar Council

The Bar Council's education and training department⁴⁶ runs conferences and CPD events, and provides on-line training for barristers. Event topics relevant to human rights include:

- *Essential Discrimination Law*
- *Council Tax: protecting vulnerable taxpayers*
- *The Human Rights Act: now we are six*
- *Human Rights Law Conference*
- *Gypsies and human rights*

While a number of these events are one-off sessions, others can be provided by arrangement with the Bar Council.

On-line training courses include:

- *Care Orders under the Human Rights Act 1998*
- *Fundamentals of Civil Litigation*
- *Human Rights Overview*
- *Human Rights – An Introduction*

Summaries of a selection of the programs offered by the Bar Council are attached at **Appendix B2**.

(c) The Department of Constitutional Affairs (**DCA**)

The DCA (which incorporates the Lord Chancellor's Department) provides academic, governmental and procedural information about human rights litigation, publishes a *Study Guide to the Human Rights Act 1998 (Study Guide)* explaining the provisions of the UK Act and runs free seminars for public bodies on the implications of the UK Act. The web version of the Study Guide is not fully printable, so it has not been attached to this Report. It can be accessed on the DCA website.⁴⁷ Other documents available on the DCA human rights website⁴⁸ include a poster setting out the Convention Rights and a list of training material (both of which are attached at **Appendix B3**).

The DCA offers seminars, and a standard seminar agenda would typically include presentations on human rights culture and cases, and a 'syndicate exercise' (presumably a role play exercise). Further detail was requested from the DCA but has not been provided.

⁴⁶ www.legaeducation.org.uk

⁴⁷ www.dca.gov.uk/hract/pdf/act/act-studyguide.pdf

⁴⁸ www.humanrights.gov.uk



(d) Legal Secretariat to the Law Officers (**LSLO**)

The LSLO⁴⁹ provides legal services to the Attorney General and Solicitor General, and has published a guide entitled *Points for Prosecutors* which outlines legal changes introduced by the UK Act. *Points for Prosecutors* begins by describing the framework of the UK Act, outlining the consequences of incompatibility, the general approach to challenging statutory provisions, practical issues, reverse onus provisions and retrospectivity. *Points for Prosecutors* includes an ECHR issues flow chart, however this is not available in the website version. The bulk of *Points for Prosecutors* is dedicated to consideration of specific offences in the UK Act context. A copy of *Points for Prosecutors* is attached at **Appendix B4**.

(e) Judicial Studies Board (**JSB**)⁵⁰

The JSB runs seminars for judicial officers, and produces particularly useful material for magistrates which is available on their website.⁵¹ A selection of the material is attached at **Appendix B5**.

Topics covered in the training materials include:

- Impact of the UK Act on the Magistrates Court;
- Raising Convention Rights in Court, including the role of the defence solicitor; and
- appendices including a further reading list and a step by step guide to determining a Convention issue.

For the JSB's One-Day Training Event for Magistrates, materials are provided including a Trainer's Pack for course facilitators and a copy of the overheads. Other material includes a transcript of an audio cassette entitled *The Human Rights Act 1998: a New Way of Thinking*.

(f) FreeBEAGLES

The FreeBEAGLES website⁵² is a resource aimed at UK political campaigners, providing some useful human rights information to UK human rights lawyers. Two examples are attached at **Appendix B6: Legal Guide for Activists and Human Rights Act and Suing**.

2.3 Education of community groups

(a) British Institute of Human Rights (**BIHR**)

The BIHR is, according to its website,⁵³ 'the UK's leading provider of human rights training to the voluntary and public sectors.' The BIHR delivers tailored training

⁴⁹ www.lslo.gov.uk

⁵⁰ www.jsboard.co.uk

⁵¹ www.jsboard.co.uk/magistrates/hrtraining/index.htm

⁵² www.freebeagles.org

⁵³ www.bih.org/training.html



sessions to 'groups including social services departments, refugee organisations, disability rights groups, police forces, local councillors, and organisations working with disadvantaged older people and people living with mental health problems.'

The BIHR says that its training sessions focus on the UK Act and the impact of human rights on particular sectors, using case studies based on human rights case law and practice examples from users and suppliers of public services. BIHR's services include in-house training, 'awareness-raising workshops', conference sessions, discussion groups and presentations. Further information was requested from BIHR, but has not been provided.

(b) Audit Commission

While not specifically applicable to peak community groups, the DCA sent a copy of the Audit Commission report on human rights (**AC Report**)⁵⁴ for use by all leaders and chief executives of local authorities in England and Wales as a resource in the promotion of human rights and to assist in educating the civil service on the UK Act.⁵⁵ The AC Report is intended to prompt public bodies to examine their response to the UK Act and how that response can be improved. It notes a number of recent cases and their potential effect on the work of public bodies,⁵⁶ makes a number of findings in relation to human rights training for public bodies, noting that most do not have a clear corporate approach to human rights, and includes examples of suggestions from courts for public bodies and UK Act-related policy and practice changes that have been implemented by public bodies. The AC Report also includes a number of case studies and a compliance checklist. A copy of the AC Report is attached at **Appendix B7**.

(c) Institute for Public Policy Research (**IPPR**)⁵⁷

In July 2005, the IPPR produced a report for the DCA entitled *Improving Public Services: Using a Human Rights Approach (IPPR Report)*. As with the AC Report, it is targeted at public bodies, but may be of some assistance in planning for the education of peak community groups. According to the executive summary the IPPR Report

analyses opportunities for implementing human rights principles more effectively among public authorities with a view to improving the provision of public services and the ways in which such developments could be measured and encouraged.

A copy of the IPPR Report is attached at **Appendix B8**.

⁵⁴ www.audit-commission.gov.uk

⁵⁵ DCA, *Departmental Report 2003/2004*, (www.dca.gov.uk/dept/report2004/03.htm)

⁵⁶ AC Report, page 6.

⁵⁷ www.ippr.org.uk



2.4 Education of the broader community

(a) Telephone helpdesk

The DCA has created a telephone advice line for individuals to obtain information about their rights and responsibilities. In 2004, it received an average of 15 calls per day.⁵⁸

(b) Publications

The DCA produces human rights pamphlets and publications for the public, and in 2004, it received approximately 100 written enquiries and requests per week and had distributed 250,000 copies of its Study Guide. Prior to 2004, the DCA distributed a leaflet entitled *An Introduction to the Human Rights Act*, available in nine languages. It also distributed an audio tape and a copy of the Study Guide in Braille, and was planning to produce a CD-Rom version of the Study Guide.

The British Council governance team has produced a set of booklets to educate legal professionals (and certain other professional bodies) about citizenship and human rights. The booklets summarise relevant developments, provide case studies and focus on promoting international participation.

(c) Websites

The DCA human rights website⁵⁹ provides information about the UK Act and the rights and freedoms it protects. It includes a FAQs page, contact details, events postings, publications and links to the legislation, relevant court rules and practice directions. In 2004, the site attracted an average of 1,500 visits per week.

(d) Roadshows

The DCA organizes roadshows which tour around the UK. They are directed primarily towards educating local authority staff on human rights law and values.⁶⁰

(e) Youth Education and Consultation initiatives

- Since 2002, UK High Schools have a statutory obligation to teach Citizenship studies. Among other things, the course deals with human rights.
- In 2006, the DCA ran a series of workshops within schools aimed at educating students about constitutional, political and human rights issues.⁶¹
- The *Speakers for Schools* initiative was jointly run by the Bar Council, the Bar Human Rights Committee and the Citizenship Foundation. The project, launched in 2002, aimed to raise awareness within the community about

⁵⁸ DCA, *Departmental Report 2003/2004*, above n 55.

⁵⁹ www.humanrights.gov.uk

⁶⁰ DCA, *Strengthening Democracy, Rights and Responsibilities Departmental Report 2005/06* p 41: www.dca.gov.uk/dept/report2004/03.htm

⁶¹ DCA, *Action Plan: Involving Children and Young People*, 2006, p 7: www.dca.gov.uk/family/cap/cypactplan0206.pdf

human rights by encouraging barristers to address school students on human rights law.⁶²

The *Impetus Project*, supported by the DCA and the Institute for Global Ethics UK Trust, is a scheme which encourages learning about human rights. The project includes an awards program which recognises creative and innovative work by young people who use ethical values and human rights to respond to contemporary, challenging and contested societal issues.⁶³

⁶² DCA, *Departmental Report 2003/2004*, above n 55.

⁶³ www.impetusawards.org.uk/cms/

3. Australian Capital Territory

3.1 Human rights legislation in the ACT

The *Human Rights Act 2004 (ACT Act)* came into force on 1 July 2004. The ACT Act is the first "bill of rights" legislation in any Australian jurisdiction. It seeks to protect the civil and political rights set out in the ICCPR, including the rights to equality, life, protection from torture, privacy and reputation, freedom of movement, freedom of religion and freedom of expression.

The ACT Act does not create a cause of action for persons whose human rights have been breached. Rather, the purpose of the ACT Act is to 'introduce new duties on the executive and the legislature ... and place limits on government action.'⁶⁴ Under the ACT Act, as far as possible, all ACT legislation must be interpreted consistently with human rights. International law and the judgements of foreign courts may be considered. If an ACT act is found to be incompatible with a human right, the court may make a declaration of inconsistency to the Attorney-General, who must respond to parliament. Parliament can then decide whether the law should be amended.

3.2 Education of the legal profession

(a) ACT Human Rights Office (*ACTHRO*)

The ACT Act created the position of Human Rights Commissioner. Section 41 of the ACT Act gives the Human Rights Commissioner, the head of the ACTHRO, the role of providing human rights-related education, along with many other functions.

One major aspect of the education program of the ACTHRO is the free in-house training program. These training programs were given to over 4,000 people in 2005/2006, despite the small staff of six workers, two of whom are part-time. Some of these training programs are tailored for the legal profession. Different topics can be requested on an electronic request form including 'Introduction to the Human Rights Act for people with Legal Backgrounds'. The ACTHRO also delivers community seminars and forums, which are considered below at 3.3(a).

The ACTHRO publishes a quarterly electronic newsletter, *Humanity*, which describes the office's initiatives, informs on upcoming seminars and forums and summarises recent case law and relevant legislation. The ACTHRO also publishes case summaries and has human rights resource lists on its website.⁶⁵ The ACTHRO responded to enquiries and may be a valuable contact for the HRLRC.

Material from ACTHRO, including an email from the Commissioner to the authors of this Report, is attached at **Appendix C1**.

⁶⁴ Jon Stanhope, Chief Minister of the Australian Capital Territory, 'Opening speech', A Forum on the National Implications of the ACT *Human Rights Act*, 1 July 2004, p8, available at <http://law.anu.edu.au/CIPL/index.htm>

⁶⁵ <http://www.hro.act.gov.au/casesdecisions.html>.

(b) ACT Human Rights Act Research Project and ACT Human Rights Act Legal Network

The ACT Human Rights Act Research Project is a joint project of the Australian National University (**ANU**) and the ACT Government, supported by a grant from the Australian Research Council. Its purpose is to document the impact of the ACT Act over the first few years of its operation. Its website has a comprehensive database of relevant cases, media reports, publications and submissions regarding the ACT Act.⁶⁶

The ACT Human Rights Act Legal Network (the **Network**) has been recently established (February 2006); a body supported by the ANU's ACT Human Rights Act Research Project and the ACTHRO. The aims of the Network include:

- encouraging the use of the ACT Act by practitioners;
- developing and sharing expertise, including through publicising human rights cases;
- creating links between community sector lawyers, academics, the ACTHRO and private practitioners;
- facilitating referrals of human rights cases to interested practitioners;
- encouraging the identification and running of appropriate human rights cases; and
- providing an email forum to provide support for practitioners conducting casework under the ACT Act.

The intention of the Network is to meet four times per year, after business hours to maximise attendances. Each meeting is to focus on a particular topic, with a guest speaker to facilitate discussion about how the Human Rights Act could be applied in a particular area of law and to provide practical examples and case studies. The Network is still very much in its formative stages. The first meeting took place on 22 March 2006 and the topic was the possible applications of the ACT Act in discrimination matters, with a presentation from Helen Dally of the Welfare Rights Centre and Belinda Barnard of the Women's Legal Centre. Apparently about 30 people attended, but most of the attendees were academics or from the public service. The aim is to attract more participation from private practice. The next meeting is planned to canvas criminal law and its intersection with the ACT Act. The email forum has also been established.

ANU material, including the Dally and Barnard presentation, is attached at **Appendix C2**. The Network's intended functions may be of interest to the HRLRC. The Network was helpful in responds to our enquiries, and also expressed interest in the Victorian situation and the hope that this would help stimulate programs in the ACT. The Network feels that such programs have been somewhat stymied,

⁶⁶ <http://acthra.anu.edu.au/>

particularly by what they perceive as a lack of participation by the private practitioners.

(c) University Forums and Websites

Various universities have been involved in hosting forums regarding the ACT Act. The Gilbert + Tobin Centre of Public Law at the University of New South Wales (the **Gilbert + Tobin Centre**) and the Sydney Centre for International and Global Law at the University of Sydney co-presented a seminar on *The ACT Human Rights Act 2004: Australia's First Bill of Rights*. The forum provided an overview of the ACT Act and its operation; the role of the Human Rights Commissioner; the ACT Act's impact on the legal profession; discussion of its national implications and information regarding public education and awareness about bills of rights.

In June 2005, the Gilbert + Tobin Centre and the Regulatory Institutions Network at the ANU held a full-day conference entitled *Assessing the first year of the ACT Human Rights Act*. The conference focused on the impact of the ACT Act in the courts and developing a culture of human rights compliance, among other topics. On 21 June 2006, the two organisations held a conference on recent human rights developments in the ACT and other jurisdictions, including Victoria.

The Gilbert + Tobin Centre provides information suitable for practitioners on its website,⁶⁷ providing links to articles and conference papers, as well as summaries of the ACT Act.

Another useful website for legal practitioners to acquire information on the operation of the ACT Act is the ACT Department of Justice and Community Safety website, considered below at 3.4(b).

Material from the Gilbert + Tobin Centre is attached at **Appendix C3**.

3.3 Education of community groups

(a) Public Events and Training

Community groups have benefited from the training programs for organisations run by ACTHRO as well as its forums, published materials and other activities. The ACTHRO offers a free workshop, available on request by organisations, entitled 'Introduction to the Human Rights Act for Members of the Community'.

The ACTHRO's Community Forums are held on a biannual basis and are designed to involve key community organisations (for instance ACTCOSS, Amnesty International, Womens' Legal Centre etc) in sharing information and expertise and fostering networks. The Community Forums are also used to order to provide submissions to the Attorney-General's required review of the ACT Act. A Community Forum was held from 5 to 7pm on 1 May 2006 concerning economic, social and cultural rights. Guest speaker was Paul Hunt, former member of the UN

⁶⁷ www.gtcentre.unsw.edu.au/resources/cohr/firstCharterofHumanRights.asp



Committee on Economic, Social and Cultural Rights. Paul Hunt's speech is available on the ACTHRO website.⁶⁸

(b) The ACT Council of Social Service Inc (**ACTCOSS**)

ACTCOSS,⁶⁹ the peak representative body for not-for-profit community organisations and disadvantaged and low-income citizens of the ACT, has been involved in conducting seminars and consultancies for community groups with the aim of incorporating human rights into practices of community organisations. This includes ensuring that key governance documents such as strategic plans, policy and procedures and risk management frameworks take account of human rights principles.⁷⁰

ACTCOSS has also established a Community Sector Human Rights Network so that workers, volunteers and consumers are able to discuss organisational and individual practice on an ongoing basis. There is an emphasis on incorporating a human rights network into day-to-day organisational processes.⁷¹

(b) Websites

Information relating to the ACT Act suitable for community groups is available on the ACTHRO website and the Gilbert + Tobin Centre websites, both mentioned above. Also, the DJCS website is relevant, mentioned below at 3.4(b).

3.4 Education of the broader community

(a) The ACTHRO

As mentioned above, the ACTHRO conducts human rights related workshops, seminars, conferences and discussion forums for the community. Its workshops are free and open to the public. An example is the workshop 'Introduction to the Discrimination Act and the Human Rights Act' which was scheduled for 23 February and 10 March 2006 (9.30 am to 1.30pm) which was designed to provide participants with a general understanding of the purpose and operations of the two acts and the differences between them.

The ACTHRO has also published a number of brochures aimed at educating the general public as to the effect of the ACT Act and plans to develop a fact-sheet. One such brochure, entitled 'The ACT Human Rights Act 2004' is available on the internet (see also **Appendix C1**). This brochure provides a brief and user-friendly introduction to the rights enshrined in the ACT Act, how the ACT Act works and the functions of the Human Rights Commissioner.

⁶⁸ <http://www.hro.act.gov.au/gems/Prof%20Hunt%27s%20Speech.pdf>

⁶⁹ www.actcoss.org.au

⁷⁰ See ACTCOSS, 'Review of the Human Rights Act 2004: Submission to the Department of Justice and Community Safety's Discussion Paper', May 2006.

⁷¹ See ACTCOSS, 'Review of the Human Rights Act 2004: Submission to the Department of Justice and Community Safety's Discussion Paper', May 2006.



(b) ACT Department of Justice and Community Safety (**JACS**)

JACS⁷² is responsible for justice and the integrity and independence of the courts in the ACT. The Bill of Rights Unit is a small team of lawyers in JACS that is responsible for providing advice to the Attorney General on the consistency of proposed legislation with the ACT Act. The Bill of Rights Unit also publishes materials on its website that are aimed at assisting the general public in understanding how the ACT Act works.⁷³ This includes 'Human Rights Act 2004: A Plain English Guide'. This document includes the main features of the ACT Act, a brief outline of the human rights principles given legal effect in the ACT by the ACT Act and a flowchart detailing how the ACT Act will work. There are links to other flowcharts on the website. These documents are quite technical and it is not clear how they are distributed to the broader community. They are probably more relevant to government agencies (considered below at 3.5(a)).

3.5 Other education initiatives

(a) Government agencies

JACS has developed a formal implementation strategy to outline the roles and responsibilities of agencies when implementing existing legislation, including the ACT Act. It has run Inter-Departmental Committees on the implementation strategy and has also funded training for judicial officers, policy officers and service delivery staff.

The Bill of Rights Unit in JACS provides advice to government agencies and the Attorney General on human rights law issues. It also publishes on its website⁷⁴ a series of guides and resources relating to the ACT Act that are aimed at government agencies, particularly on the drafting of legislation that complies with the ACT Act. The website contains links to the ACT Act itself, copies of relevant speeches by the Chief Minister in the Legislative Assembly and to related international human rights materials. There is also a very long and detailed document entitled 'Guidelines for ACT Departments: Developing Legislation and Policy', which examines each right protected by the ACT Act and has a policy alert designed for anyone developing legislation or policy, signalling that this right should be considered if the legislation or policy relates to the listed prescribed issues. There are also documents entitled 'Overview of the ACT Human Rights Act 2004', 'Guide to ACT Departments on Pre Introduction Scrutiny: The Attorney General's Compatibility Statement Under the Human Rights Act 2004' and 'Points on Statutory Interpretation and the Duty to Act Consistently with Human Rights'.

Material from JACS is attached at **Appendix C4**.

⁷² <http://www.jcs.act.gov.au/main.html>

⁷³ <http://www.jcs.act.gov.au/HumanRightsAct/indexbor.html>

⁷⁴ <http://www.jcs.act.gov.au/HumanRightsAct/indexbor.html>

(b) Education in schools

ACTHRO has also been involved in providing education relating to human rights for children through schools. For example, it holds an annual Human Rights Senior Primary Students Art Award, where students are encouraged to submit artistic representations of human rights, in order to raise awareness amongst young people. The winning entries have been depicted on the ACTHRO's annual reports, as well as posters, pamphlets and other publications, and all entries have been publicly displayed. The ACT Law Society is also in the midst of arranging talks to Year 11 and 12 students regarding the ACT Act.



4. New Zealand

4.1 Human rights legislation in New Zealand

Human Rights Act

The *Human Rights Act 1993* (NZ) (**NZ Act**) sets out, in section 5(1), the primary functions of the Human Rights Commission (**NZHRC**), which are to:

- advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
- encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

In order to carry out these functions, section 5(2) of the NZ Act gives the NZHRC a number of specific functions which include advocacy, education and publicity, making public statements, preparing and publishing guidelines and codes of practice, and education about the human rights dimensions of the Treaty of Waitangi.

A key purpose of the reform of human rights institutions in 2001 was to enable the new NZHRC to focus appropriately on strategic community leadership and education work. The Commission is currently carrying out a comprehensive review of its human rights education activities and approaches. More information on this review is expected to be posted on the NZHRC website in coming months.

Bill of Rights Act

The *New Zealand Bill of Rights Act 1990* (NZ) (**NZ Bill of Rights**) protects citizens and non-natural persons from the actions of government that interfere with their rights. The NZ Bill of Rights does this in two ways.

1. By allowing the courts to recognise the rights of citizens and non-natural persons. However, the courts may need to balance citizens' rights against the rights of others and the interests of the whole community.
2. By requiring the Attorney-General to report to Parliament if any proposed law appears inconsistent with the NZ Bill of Rights. The government will have to justify the need for such a law. The New Zealand Ministry of Justice maintains a comprehensive database of advice provided by the Ministry of Justice and the Crown Law Office to the Attorney-General on the consistency of Bills with the NZ Bill of Rights.⁷⁵

The focus of the NZ Bill of Rights is similar to that recommended in the HRCC Report (see Introduction to this Report above), in that it protects the following main categories of rights and duties.⁷⁶

1. life and security of the person;

⁷⁵ <http://www.justice.govt.nz/bill-of-rights/>

⁷⁶ The NZ Bill of Rights does not cover a right to privacy.

2. democratic and civil rights;
3. non-discrimination and minority rights;
4. search, arrest and detention;
5. criminal procedure; and
6. right to justice.

Although there is a substantial degree of similarity between the terms of the Victorian Charter and the NZ Bill of Rights, there is very little educational material available on the NZ Bill of Rights (relevant to this Report). This is because the NZHRC has, pursuant to its functions under the NZ Act, focused its education efforts on promoting respect for the broad notion of human rights in New Zealand society. However, one book which may be useful for training legal practitioners given the similarities between the New Zealand Bill of Rights and the Victorian Charter is *The Bill of Rights – Getting the basics right* (see section 4.2 below).

4.2 Education of the legal profession

There appears to be no ongoing human rights training for the New Zealand legal profession. The NZ Law Society (**NZLS**) does not currently offer any human rights oriented Continuing Legal Education units for practitioners, but has done so in the past.

The Bill of Rights – Getting the basics right by Grant Huscroft, Scott Optican and Paul Rishworth, is available for sale on the NZLS website.⁷⁷ The book includes the following chapters (the table of contents is attached at **Appendix D1**).

1. How to interpret and apply the Bill of Rights
2. Who does the Bill of Rights apply to?
3. Interpreting enactments: the role of ss 4, 5 and 6
4. Reasonable limitations on rights and freedoms
5. Impact of the Bill of Rights on policy development
6. Freedom of expression – Selected issues
7. Criminal procedure under the New Zealand Bill of Rights Act 1990: an overview
8. Remedies

The Department of Justice website includes the publication *The Guidelines on the New Zealand Bill of Rights Act 1990: A Guide to the Rights and Freedoms in the Bill of Rights Act for the Public Sector (BoR Guidelines)*.⁷⁸ While the BoR Guidelines are not specifically directed at the legal profession, they appear to be a useful resource for lawyers.⁷⁹

⁷⁷ www.lawyerseducation.org.nz

⁷⁸ www.justice.govt.nz/pubs/reports/2004/bill-of-rights-guidelines/index.html

⁷⁹ A hard copy has not been provided with this Report as there is no option to download the guidelines in their entirety. Please refer to the website.

The NZHRC publishes a set of *Litigation Guidelines*, although these are neither specifically targeted at practitioners, nor, apparently, utilised for practitioners' human rights education. The *Litigation Guidelines* include outlines of:

- the powers under the NZ Act for the NZHRC to appear as, or apply to be, an intervener, counsel assisting or participant in proceedings;
- the use of equivalent powers by the Australian Human Rights and Equal Opportunity Commission;
- the primary statutory test for the NZHRC's participation in litigation (ie, that any participation by the NZHRC in litigation must facilitate its primary functions under section 5 of the NZ Act (see 4.1 above));
- the role of interveners or amici curiae and guidelines on applications to intervene or be made amicus curiae in proceedings; and
- matters to be considered in deciding whether to exercise powers under the NZ Act.

A copy of the *Litigation Guidelines* is attached at **Appendix D2**.

4.3 Education of community groups

There appear to be no human rights education programs directed specifically at peak community bodies or NGOs. The NZHRC's report *Human Rights in New Zealand Today* the (Executive Summary and Chapter 20 of which are attached at **Appendix D3**) states that priority groups for human rights education are those who have statutory power to deprive people of their liberty.⁸⁰ The report adds that a corollary of this is that 'such education was also needed for non-governmental agencies working in the same areas to ensure that they were able to assist individuals contacting them for assistance.'⁸¹ This suggests that there are no such education programs in place, although the Equal Employment Opportunities Trust provides Workplace Toolkits and Checklists to help employers implement Equal Employment Opportunities practices and flexible working options in their organisations. Trust publications available on the website include:

- *Employment Legislation Overview*: an overview of legislation relevant to employers;
- *Harassment and bullying*: a basic overview of the laws that cover harassment and bullying in the workplace and a short checklist of actions employers can take to ensure this behaviour is not condoned in the workplace; and
- *Breastfeeding guidelines*: these suggestions and guidelines outline how employers can create breastfeeding-friendly workplaces and/or childcare centres.

Participants in consultations conducted as part of the New Zealand Action Plan for Human Rights (**NZAPHR**) (attached at **Appendix D4**), which the NZHRC produced following *Human Rights in New Zealand Today*, affirmed that partnerships in human rights education are important, particularly to the groups most affected by human rights issues. A

⁸⁰ NZHR, *Human Rights in New Zealand Today*, chapter 20, page 9.

⁸¹ Ibid.

prominent example of the collaboration and joint activities common to human rights education programs in New Zealand is the partnership between the Citizens' Advice Bureau (**CAB**) and the NZHRC. This partnership has resulted in the nationwide distribution of human rights information produced by the NZHRC through CAB offices. Examples of material distributed include the various Fact Sheets listed below in section 4.4 and summarised in section 4.5.

The NZHRC has worked with human rights agencies, schools, local government, non-governmental organisations (such as ethnic councils) and communities throughout the country to promote celebrations such as Race Relations Day and Children's Day in order to raise awareness of human rights.

While not specifically aimed at this group, *The Bill of Rights – Getting the basics right* and the BoR Guidelines (see section 4.2 above) are likely to be useful resources for peak community bodies and NGOs whose work may be impacted by human rights legislation.

4.4 Education of the broader community

(a) NZHRC publications

The NZHRC publishes a range of material related to the NZ Act. The NZHRC maintains a project to provide training, information and resources to all CAB offices throughout the country. The material distributed at the CAB centres consists mainly of the NZHRC fact sheets. The following table sets out a selection of the material available on the NZHRC website, and which is attached to this Report in **Appendix D5**.⁸² The content of the items in bold is also briefly explained below.

Guidelines for Commission practice	Know your rights: the Human Rights Act and best business practice
Fact sheet 2	What is the process for dealing with disputes?
Fact sheet 3	Prohibited grounds of discrimination
Fact sheet 4	Discrimination by the public sector
Fact sheet 5	Discrimination by the private sector
Fact sheet 6	Discriminatory Laws
Fact sheet 7	Discrimination in Employment
Fact sheet 14	Choice of Procedures
Fact sheet 15	Changes to Human Rights in New Zealand

Know your rights: the Human Rights Act and best business practice

This guide provides employers with an introduction to the NZ Act, explaining its practical and commercial impacts on business in plain language accompanied by illustrations and brief case notes. *Know Your Rights* covers the following matters.

- Why employers need to know about and comply with the NZ Act;

⁸² **Appendix D5** also includes the NZHRC's *An Introduction to the Human Rights Commission and its work*.



- What constitutes unlawful discrimination (ie, it is only unlawful if it involves a ground and an area);
- Grounds under the NZ Act (ie: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, or sexual orientation);
- Areas under the NZ Act (ie: employment and pre-employment, supply of goods and services, education, access to public places, vehicles and facilities, or housing and accommodation);
- Common sense exceptions to the NZ Act (eg, jobs genuinely requiring a certain personal characteristic, such as a male model for menswear);
- Harassment covered by the NZ Act (ie, sexual or racial harassment and encouraging racial disharmony);
- An employers' checklist of compliance with the NZ Act and traps to avoid when hiring staff⁸³
- Employers' liability and the good practice defence (ie, where the employer has implemented a suitable discrimination and harassment prevention program).

Fact Sheet #14: Choice of Procedures

Issues relating to conduct unlawful under the NZ Act can be taken to the NZHRC's dispute resolution service. Conduct prohibited by the NZ Act is often also prohibited under other laws. This means that issues that can be dealt with by the Commission's dispute resolution service may also be dealt with by taking a case to court or by making a complaint to another organisation. Overlap areas include:

- Discrimination and sexual or racial harassment in employment
- Discrimination in access to rental accommodation
- NZHRC and the courts
- NZHRC and other statutory rights bodies
- Police and the NZHRC

Fact Sheet #15: Changes to Human Rights in New Zealand

Outlines the main changes made by the *Human Rights Amendment Act 2001* (NZ):

- The NZHRC and the Race Relations Office were joined to form a new organisation.

⁸³ An example is advertising that indicates an intention to discriminate, such as:

- 'Waiting staff required for Chinese restaurant' - lawful
- 'Chinese Waiter for restaurant' – unlawful

- Two primary functions were set out for the NZHRC (see section 4.1 above).
- The Government is no longer exempt from fully complying with human rights standards.
- Complaints-handling procedures were streamlined to allow for more flexibility and accessibility in dispute resolution.
- The role of the Proceedings Commissioner was abolished and a separate Office for Human Rights Proceedings was created. This Office can pursue litigation when mediation has not succeeded.
- The Complaints Review Tribunal was replaced with a Human Rights Review Tribunal.

(b) NZHRC courses

The NZHRC offers three main human rights education courses – one each for primary, intermediate, and secondary schools. All three courses follow the inquiry process and incorporate values exploration and social decision making. Courses are divided into six modules, with activities ranging from warm-up games, class discussions, brainstorming, group and individual work, debates, and information interpretation.

The NZHRC is currently carrying out a comprehensive review of its human rights education activities and approaches. More information on this review will be posted on its website in coming months.⁸⁴

(c) Courses run by NGOs

A number of organisations offer courses or develop materials for use by teachers, including the following.

- The Peace Foundation
The Peace Foundation provides courses on learning peaceful relations (for primary schools); and extending peaceful relations (for secondary schools); and the 'Cool Schools' program, which is a school-based mediation program run by students, and available only to people who have completed the Peace Foundation training program.
- The Youth Law Office
The YLO offers legal education programs to young people to make them aware of the range of legal provisions that affect them and how to access legal help when required.
- Amnesty International New Zealand
In addition to running a human rights education website,⁸⁵ Amnesty works extensively with schools through:

⁸⁴ <http://www.hrc.co.nz/home/hrc/introduction/humanrightseducation/humanrightseducation.php>

- its provision of teaching resources such as:
 - 'Creating a Torture Free World' for use by school teachers and educators in the informal sector;
 - 'Torture and Trauma' – a human rights education kit designed for use by secondary school students; and
- facilitating the start-up of Schools Groups which allow student activists to participate in:
 - letter-writing actions on behalf of prisoners of conscience;
 - awareness raising in a variety of ways like organising debates on human rights issues, Freedom of Expression rock concerts, assembly dramas or speeches; and
 - contributing to Amnesty's high-profile annual public fundraising and action awareness raising Freedom Week in August, by accepting the Freedom Challenge.

⁸⁵ http://web.amnesty.org/web/web.nsf/pages/hre_library.



B. Assessment of human rights education

1. General comments

There does not appear to be any dispute that training and education is necessary to allow advocates, whether legal or community-based, to make full use of legislative human rights protections. However, while there is a plethora of material available on the need for human rights education for the general public, whether in the four jurisdictions or in the world in general, there is a distinct lack of material providing practical evaluation of the performance of education programs, whether directed at legal professionals, peak community groups or individuals. To a large extent, this is likely to be due to the uncoordinated nature of the programs that are provided.

The following is a brief summary of the evaluative material from the four jurisdictions that, while not directly on point, may be of some assistance to the HRLRC.

2. South Africa

South African material may be most useful in terms of the available training manuals. The most important organisations to contact appear to be NACHRET/SAHRC, the Justice College and Lawyers for Human Rights. Furthermore, locally-adapted projects may form an interesting comparison to those in other jurisdictions and the historical circumstances in South Africa mean that the official focus on human rights education is relatively new and has received much attention.

The most helpful documents relating to South Africa come from the report of the workshop on *The identification of indicators and impact measuring tools for human rights* of the Arab Institute for Human Rights. This is one of the few sources offering evaluation of human rights education strategies used in South Africa and elsewhere. A copy of the report is attached at **Appendix A9**. The report is lengthy and is divided into:

- a) introduction;
- b) papers about 'Definition Problems, Tools and Indicators for the Impact Measuring of Human Rights Training Activities';
- c) papers about the Identification of good practices in the impact measuring of training activities in relation to practical experiences in various jurisdictions; and
- d) the final report.

The most relevant and informative sections appear to be:

- Ahmed C Motala, 'Measuring the Impact of Human Rights Training: South Africa', pages 24-29: This paper describes the education and training programs of the Human Rights Institute of South Africa. Challenges and difficulties noted for the programs include;
 - English as a language of instruction where this was the second or third language of participants;



- ability to provide sufficient information within the time constraints of a two-day program;
 - ensuring that all participants engage with the facilitators; and
 - establishing a way of testing the knowledge of participants at the end of the workshop.
- Reports of the Working Groups in the Final Report, pages 79-104. The tables in this section may be helpful in planning education strategies. The working groups are specific to target groups that include professionals and members of NGOs.

Professor David McQuoid-Mason of the University of Kwazulu – Natal Faculty of Law has published a number of papers which may be of assistance to the HRLRC. A copy of his list of publications is attached at **Appendix A10**.

South African education strategies are specific to issues of a developing country and a new democracy. They address high crime rates, poor prison conditions, high AIDS infection rates, heavy media restrictions and irregular elections. There is some suggestion that it may be especially important in South Africa for education strategies to include 'conflict resolution and tolerance promotion' and that are related to local environments and cultures.⁸⁶

The education programs appear to have concentrated on human rights in general rather than specifics of the Constitution or its predecessor (the 1993 Interim Constitution). For example, some programs emphasise 'creating a human rights culture in South Africa'.

Information on the South African programs tends to focus on features of the education programs themselves rather than addressing their strengths, weaknesses and effectiveness. Most evaluations located have been brief or have contained statistics such as the 'number of people trained' rather than descriptions of the training programs. Permission to access certain reports may minimise this issue. For example, while some journal articles exist, they are generally only accessible through humanities databases that would require subscriptions or sourcing from elsewhere.

3. United Kingdom

- **JSB**

Stephen Sedley, in 'Learning Human Rights'⁸⁷ (copy attached at **Appendix B9**) describes the implementation and outcomes of the JSB education program (see above at section A2.2(e)). The sessions included lectures, cases-studies and plenary question and answer sessions, and Sedley suggests that 'there was a marked preference for fewer lectures and more hands-on work' among participants. He says that the courts have gradually come to grips with the uses and abuses of the UK Act

⁸⁶ See David Pitts, US Department of State, 2002, 'Human Rights Education in Diverse, Developing Nations: A Case in Point – South Africa': <http://usinfo.state.gov/journals/itdhr/0302/ijde/pitts1.htm>.

⁸⁷ In F Butler (ed), Kluwer Law International and British Institute for Human Rights (2002), *Human Rights Protection: Methods and Effectiveness*, 67-71.

and the ECHR, noting that the courts 'are heavily dependent on the advocates who come before them, and on those who instruct them, for educated argument and for real assistance in getting the answers right.' According to Sedley, the seminars were planned 'in the confidence that the universities and professional training providers would now be turning out young lawyers who had absorbed human rights as part of their education'. This suggests that in the UK, rather than there being a co-ordinated regime for providing existing practitioners with the knowledge and skills to make full use of the UK Act, reliance is placed upon formal legal education. However, Sedley then proceeds to conclude that while the judges have taken action to improve their understanding of the UK Act, the law schools have not.

- **IPPR Report**

According to the IPPR Report:

- the UK Act has not yet been of sufficiently demonstrable value in improving standards in public services as the Government had intended when the Act was passed; and
- there is insufficient awareness of the legal principle of 'positive obligations to protect human rights which requires public authorities to adopt a proactive approach to human rights.'

- **UK Home Office**

The UK Home Office has produced a report entitled, *What Works in community involvement in area-based initiatives? A Systematic Review of the Literature (UKHO Review)*.⁸⁸ The UKHO Review refers to studies which describe effective and ineffective means to achieve social objectives through consulting and engaging with local communities. However, the recommendations made are of such a vague and aspirational nature that it is unlikely to offer any practical guidance to the HRLRC. A copy of the UKHO Review is attached at **Appendix B10**.

4. ACT

The ACT Act and the associated human rights education programmes are too new to allow meaningful analysis of their success. According to Dr Helen Watchirs, ACT Human Rights and Discrimination Commissioner, the initiatives of the ACTHRO and other organisations have had some success in that there has been increased scrutiny and public debate about human rights issues, particularly the ACT draft anti-terror legislation. Dr Watchirs has also noted though that the ACT Act has initially only been cited in a small number of cases, and that it takes time and effort to build a human rights culture.⁸⁹

ACTCOSS, in their 'Review of the Human Rights Act 2004: Submission to the Department of Justice and Community Safety's Discussion Paper', May 2006 (attached at

⁸⁸ www.homeoffice.gov.uk/rds/pdfs04/rdsolr5304.pdf

⁸⁹ Dr Helen Watchirs, "Protecting Rights in the ACT", 9 January 2006
<http://acthra.anu.edu.au/articles/Watchirs%20Protecting%20Rights%20in%20the%20ACT.pdf>

Appendix C5), has been more critical. According to ACTCOSS, 'no emphatic changes' have resulted from the presence of the ACT Act, '[its] impact upon Canberrans is slight, and human rights remain a largely nebulous concept that lies beyond the realm of everyday life'. ACTCOSS attribute this to the chosen model, being a minimalist model without effective remedies for infringement of the protected rights and no inclusion of economic, social and cultural rights.

ACTCOSS has also expressed concern that the ACT Government's approach to building a human rights culture remains a purely legalistic one. ACTCOSS argues that awareness of the ACT Act needs to permeate beyond the legal community and institutions and into the broader community – they feel that there is a long way to go in this regard. They have called for the ACT Government to invest more generously in education, promotion and regulatory understanding of human rights principles. They argue that whilst organisations like the ACTHRO and the ACTCOSS have sought to foster awareness relating to human rights amongst the community, they are severely restricted by limited resources.

ACTCOSS argues that more seminars are needed that are specifically directed at furthering community organisations in their general understanding of human rights and how human rights fit into the broader scheme of things. For the general public, ACTCOSS suggests education and awareness campaigns need to be tied directly to a person's individual experience and ordinary life, rather than more ethereal conceptual and legalistic interpretations. They emphasise though that this will be difficult in the ACT, because with the lack of an effective individual remedy under the ACT Act, there is a limited ability for an individual to actually "use" their human rights.

5. New Zealand

Several weaknesses in the current New Zealand model for human rights education have been identified,⁹⁰ including the following.

- **No national plan of action for human rights education** - Although the NZHRC is entrusted with the function of developing a national plan of action, in consultation with interested parties, for the promotion and protection of human rights; New Zealand has neither a national committee nor a national plan of action for human rights education. Thus, the NZAPHR recommended that national committees for human rights education should be established, made up of a broad range of governmental and non-governmental agencies, with responsibility for developing and implementing a national plan of action for human rights education.
- **Lack of human rights education training for teachers** - Because teachers do not receive human rights education training, schools are dependent on human rights commissions and NGOs for the development of material for optional use because they are unable to provide classroom training themselves. This creates

⁹⁰ See NZHRC's report *Human Rights in New Zealand Today*, Chapter 20, attached at **Appendix D3**; Rajen Prasad, 'Human Rights Education in New Zealand Schools', in HURIGHTS Osaka (undated), *Human Rights Education in Asian Schools*: www.hurights.or.jp/hreas/3/09prasad.htm, copy attached at **Appendix D6**.

the risk of inconsistency as well as absolving the educational *fraternity* of any broader responsibility for human rights education.

- **Human rights education efforts are not evaluated** - This is necessary to ensure that efforts are successful. Appropriate longitudinal and cross-sectional studies need to be commissioned to determine whether programs are affecting thinking and action and in what direction, and the effect parents have on their children's learning experience.

Citing *Human Rights in New Zealand Today*, the NZAPHR noted that '[c]urrent human rights education in New Zealand tends to be on an ad-hoc basis in response to problems, rather than being based on a nationally coordinated and strategic approach.' The NZAPHR priorities for action in relation to human rights education are to:

- develop a nationwide strategic approach to human rights education in collaboration with government and non-government agencies and organisations; and
- develop a framework to assess human rights education best practice and outcomes.