Purpose
The Human Rights Policy (the Policy) describes the approach of the Community Services Directorate (the Directorate) to human rights with respect to Directorate staff, community partners, business partners, clients and members of the public. The Policy provides guidelines for Directorate practice, training and policy review. The aim of the Policy is to promote human rights compliance in the Directorate.

Scope
The Policy applies to all Directorate staff, from the Director-General to directors, managers, and front line workers. It also informs the Directorate’s Community Partners of its policy position. A human rights approach should inform all activity conducted by or on behalf of the Directorate, such as policy writing, building design or service delivery. The Policy is intended for use as a reference point for policy and program design, and as an educational tool for staff development and training.

Background
The Policy functions within the legal and policy context of the ACT, which is informed by Commonwealth and ACT legislation, frameworks and international conventions. A significant national framework is the Australian Government’s Human Rights Framework 2010, which highlights the shift towards greater scrutiny of legislation for compliance with human rights obligations.

The centrepiece of the ACT legal framework is the Human Rights Act 2004 (see Appendices A and B). The Human Rights Act is a statutory bill of rights that affects the way Territory laws are interpreted and applied. It is intended to create a dialogue between the Courts, the Legislative Assembly and the ACT Government about the protection of human rights, by building consideration of human rights into the development of policy and legislation. The Human Rights Act is Australia’s first Bill of Rights, and is part of the ACT Government’s vision under The Canberra Plan – Towards our Second Century (2008) of Canberra as an inclusive community supporting its vulnerable citizens and enabling all people to reach their potential.

The Human Rights Amendment Act 2008 requires Public Authorities in the ACT to comply with human rights principles in their decision making, programs and services. According to Section 40 of the amended Act, a Public Authority includes an administrative unit, a territory authority or instrumentality, a Minister, a police officer, a public employee and an entity performing functions of a public nature.
Public Authorities include not only government agencies (‘core’ Public Authorities), but also private businesses that provide public services (‘functional’ Public Authorities). Some community sector organisations funded by the Directorate would be public authorities under S40 and S40A of the Act. Private organisations can ‘opt-in’ to being public authorities and some ACT organisations have already done so.

‘Core’ Public Authorities include Ministers, ACT Government Directorates, public officials and servants, ACT Police, ACT Corrective Services and Statutory bodies. The ACT Legislative Assembly and courts are not public authorities under this Act.

Directorate staff members, when acting in their capacity as employees, are public authorities. Directorate staff are also bound by the general obligations of ACT public sector employees as described in the Public Sector Management Act 1994 (Section 9) (see Appendix C).

‘Functional’ Public Authorities are those entities whose functions include those of a public nature, such as gas, electricity and water supply; community housing; and out of home care.

The Act as amended:
- requires that laws must be interpreted in ways that are compatible with human rights;
- clarifies the limits that can be placed on human rights; and
- requires public authorities to comply with the Human Rights Act.

The Act allows individuals to bring an action against a public authority for breach of human rights. The Supreme Court can grant remedies for a breach of human rights as it sees fit, such as ordering a decision to be changed or an apology to be made, but it cannot order monetary compensation.

The ACT Discrimination Act 1991 will continue to provide anti-discrimination protection in the ACT.
Policy Statements

1. Directorate Commitment to Human Rights
Human rights are central to the Directorate. The Directorate is committed to upholding the human rights of all people, through its own policies, programs and practices, and through those of the community organisations and businesses with whom it partners.

2. Principles
The Policy is based on the universal principle that human rights belong to everyone and derive from the inherent dignity of the person.

The Policy is informed by a commitment to:
- The best interests and wellbeing of children, young people and clients;
- Equity in service delivery;
- The diversity of individuals and groups in the community;
- Transparent decision making and processes;
- The duty of care that the Directorate has for its clients; and
- An acknowledgment that human rights are not limitless, but that any limitations must be reasonable, proportionate to their intended outcome and not excessive.

3. The Human Rights Framework of the Directorate
The Directorate has a number of its own rights-based documents which comply with the Human Rights Act and which inform Directorate policy and practice.

The Service Delivery Platform (2007) describes the Directorate’s commitment to ‘a person-centred approach within a human rights framework’ (p 1). This means that the Directorate provides services equally to all members of the community, without discrimination on the basis of ‘race, colour, sex, sexual orientation, language, religion, political affiliation, disability or other status’ (p 1).

The Directorate provides critical services for the most vulnerable members of the community. Services must be distributed fairly to ensure finite community resources are allocated where they are most needed, to as many people as possible. The Directorate’s service demands are managed on the basis of client need. For example, target groups are identified in the Public Rental Housing Assistance Program for priority responses. These include people with disability, serious physical or mental
health issues, women and children escaping domestic violence, Aboriginal and Torres Strait Islander families and families where children are at risk. In order that people in the ACT are treated equitably, the Directorate offers interpreters and culturally appropriate or translated materials for people from multicultural backgrounds, members of the Aboriginal and Torres Strait Islander communities and people who live with disability. The Directorate has an inclusive approach to the resolution of complaints.

4. Community Partners
In accordance with the ACT Government’s The Social Compact (2004), the Directorate acknowledges the significant contribution of the community sector in service delivery. The Social Compact describes the ACT Government and the community sector as partners who work together to support vulnerable people, consult and work with culturally diverse groups in appropriate ways and who focus on consumer needs.

The Human Rights ACT 2004 as amended requires public authorities to act consistently with human rights and to consider human rights in decision making. According to Section 40.1 of the Act, the definition of a public authority is not restricted to government agencies, but can include services that provide functions of a public nature, ‘when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).’ In other words, the Act identifies both ‘core’ public authorities such as ACT Government agencies and employees, and ‘functional’ public authorities such as community organisations that provide services on behalf of the ACT Government.

Some community partners will be public authorities under the Act. The Directorate encourages all its community partners to act and make decisions consistent with human rights, although it does not currently make formal compliance with the Act a condition of funding.

5. Compliance Tools
It is not always obvious how human rights should be applied to particular situations. The Directorate has adapted compliance tools from the ACT Human Rights Commission to help staff comply with the Human Rights Act (Attachments D and E). A range of scenarios has been developed to illustrate the policy.
For example, Housing ACT’s Complaints Handling Policy provides a checklist to ensure that officers respect clients’ rights to privacy and freedom of expression. Housing ACT’s Maintenance Policy explains how repairs to Directorate properties both uphold human rights, such as the protection of family (Section 11 of the Human Rights Act) but may also limit rights, such as freedom of movement (Section 13) or access to a building, in the interests of occupant safety.

6. Limitations on Human Rights

In accordance with Section 28 of the Human Rights Act, the Directorate recognises that there may be circumstances which cause it or its community partners to limit particular human rights. Such limitations must be reasonable, consistent with a democratic society and proportionate to their intended outcomes, limiting rights only to the extent that is necessary and using the least restrictive means reasonably available to achieve the purpose the limitation seeks to address.

The fact that a decision restricts one or more rights in the Act does not necessarily mean that it is incompatible with the Act. If a restriction has a legitimate aim, such as public safety and goes no further than necessary, then it will likely be compatible.

The Directorate has a duty of care to protect the welfare of clients, staff and the public. Some situations are particularly complex and the Directorate will need to balance competing rights and to consider this in decision making. The Directorate’s Restrictive Practices Framework (2008) identifies guidelines to be used as a last resort to curtail particular behaviour and keep people safe.

7. Training and Supervision

The Policy is supported by training conducted by Learning and Community Education. Business Units nominate key staff who should attend such training, as well as conducting their own specific training in human rights compliance, building this into workers’ performance development plans. Community Partners will be invited to participate in training, or to support training in their own workplaces.

The Policy aims to support the development of a human rights culture in the Directorate through the enhancement of individual expertise, supported by training and supervision. Human rights issues are the subject of team meetings, supervision sessions and informal conversations. Workers need to have the expertise to make decisions themselves and the confidence to talk to their supervisors. Staff should alert their supervisor when they are uncertain whether or not a decision affects human rights. The attached checklists and scenarios are tools for training and supervision.
8. Human Rights Advisory Committee

The Directorate’s Human Rights Advisory Committee (the Committee) supports the implementation of the Policy. The Committee advises on complex service delivery matters that engage human rights, reviews decisions referred to it and provides whole of Directorate strategic advice. The Committee is chaired by the Senior Director, Governance, Advocacy and Community Policy. Its other members include a Director or above from Disability ACT, Housing and Community Services ACT and the Office of Children, Youth and Family Support. Secretariat support is provided by Strategic Policy. The Committee meets every two months and reports to the Deputy Director-General.

9. Policy Review

Continuous quality improvement of the Directorate’s services helps to ensure the best outcome for clients. Directorate policies and processes need to be regularly reviewed and updated in the light of changes to legislation, Directorate practice and community attitudes.

10. References and Legislation

a. Directorate
Service Delivery Platform (2007)
Caring for Carers Policy
ACT Homelessness Charter (2008)
ACT Charter of Rights for Children and Young People in Out of Home Care (2009)

b. ACT Government
Community Sector Funding Policy (2004)
Building our Community – the Canberra Social Plan (2004)
ACT Children’s Plan
ACT Multicultural Strategy 2010-2013
ACT Strategic Plan for Positive Ageing 2010-2014
ACT Women’s Plan
ACT Young People’s Plan
Aboriginal and Torres Strait Islander Service Delivery Framework
Future Directions: Towards Challenge 2014 (2009)
c. **ACT Legislation**

*Human Rights ACT 2004*  

*Human Rights Amendment Act 2008*  

Disability Services Act 1991  
The Discrimination Act 1991  
Adoption Act 1993  
Native Title Act 1994  
The Residential Tenancies Act 1997  
Human Rights Commission Act 2005  
Housing Assistance Act 2007  
Children and Young People Act 2008  
Aboriginal and Torres Strait Islander Elected Body Act (2008)

d. **Commonwealth Legislation**

The Racial Discrimination Act 1975  
The Australian Human Rights Commission Act 1986  
The Sex Discrimination Act 1986  
The Privacy Act 1988  
The Disability Discrimination Act 1992  
The Age Discrimination Act 2004

e. **Commonwealth Frameworks**

Human Rights Framework 2010  
National Disability Strategy (2009)

f. **International Conventions**

Australia is a signatory to both the Universal Declaration of Human Rights (1948) and key human rights treaties:

8. Convention Relating to the Status of Refugees (1951)


g. Websites


ACT Human Rights Act Research Project (joint ANU/ACT Government project):

## 11. Definition of Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Partners</td>
<td>Community sector service organisations that receive funding from, or work in association with, the Directorate.</td>
</tr>
<tr>
<td>Compatibility Statement</td>
<td>The Attorney General’s advice to the government and the Legislative Assembly on the compatibility of government bills with the Human Rights Act 2004.</td>
</tr>
<tr>
<td>Dialogue model</td>
<td>The term used to describe human rights legislation that gives specific responsibility to each arm of government – the executive, the legislature and the judiciary – to consider and report on human rights.</td>
</tr>
<tr>
<td>Discrimination</td>
<td>The unfair treatment of an individual or a group of people because they belong to a particular group, or because they are associated with a particular characteristic or attribute.</td>
</tr>
<tr>
<td>HRA</td>
<td>Human Rights Act 2004 (ACT)</td>
</tr>
<tr>
<td>Human Rights</td>
<td>The civil and political rights belonging to individuals, as set out in Part 3 of the Human Rights Act 2004 and in various international conventions.</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights 1966</td>
</tr>
<tr>
<td>Interpretive approach</td>
<td>All Territory statutes and statutory instruments must be interpreted by reference to human rights as set out in Part 3 of the Human Rights Act.</td>
</tr>
<tr>
<td>Public Authorities</td>
<td>Government agencies; and also community organisations that provide public services on behalf of the ACT Government.</td>
</tr>
<tr>
<td>Treaty</td>
<td>An agreement between countries that once entered into creates binding obligations under international law.</td>
</tr>
</tbody>
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Appendix A: Extracts from the ACT Human Rights Act Research Project website

What is the ACT Human Rights Act?
The ACT Human Rights Act is an ordinary Act of the ACT Legislative Assembly, and applies to the ACT government and laws. It has no direct effect on Federal legislation. The Human Rights Act is intended to create a dialogue about the protection of human rights between the Courts, the Legislative Assembly and the ACT government by building consideration of human rights into the development of policy and legislation. The Act cannot be used to invalidate legislation but it can be used to shape the interpretation of ACT laws.

When did it come into force?
The ACT Human Rights Act was enacted on 10 March 2004. The substantive provisions of the Act came into force on 1 July 2004.

How are human rights protected in ACT law? Can the government be sued if it breaches human rights?
The Act focuses on the interpretation of ACT laws, requiring courts, tribunals, decision makers and others authorised to act under ACT legislation to interpret legislation to be consistent with human rights as far as possible.

As originally passed, the Act did not provide a new basis to bring a case to court or to seek compensation from the government. Rather, it was useful in cases brought under existing legal mechanisms, such as administrative law review or tort, as relevant legislation should be interpreted to be consistent with human rights, which might lead to a different result.

http://acthra.anu.edu.au/faq/index.html#Amendment
Appendix B: Which human rights are protected in the Human Rights Act 2004?


The Act protects the following rights drawn from the International Covenant on Civil and Political Rights:

- Recognition and equality before the law
- Right to life
- Protection from torture and cruel, inhuman or degrading treatment
- Protection of the family and children
- Privacy and reputation
- Freedom of movement
- Freedom of thought, conscience, religion and belief
- Peaceful assembly and freedom of association
- Freedom of expression
- Taking part in public life
- Right to liberty and security of person
- Humane treatment when deprived of liberty
- Children in the criminal process
- Fair trial
- Rights in criminal proceedings
- Compensation for wrongful conviction
- Right not to be tried or punished more than once
- Retrospective criminal laws
- Freedom from forced work
- Rights of minorities

Appendix C: General obligations of ACT public sector employees

Appendix D: Human Rights Act Compliance Checklist

<table>
<thead>
<tr>
<th>Name of Policy/Procedure:</th>
<th>Check</th>
<th>Comment</th>
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</thead>
<tbody>
<tr>
<td><strong>Step 1: What is your decision or action?</strong></td>
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<tr>
<td>• What is the objective of the decision or action?</td>
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<tr>
<td>• Who will be affected by the decision or action?</td>
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<tr>
<td>• Has there been consultation with groups or individuals likely to be affected?</td>
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<tr>
<td><strong>Step 2: Does the decision or action engage human rights?</strong></td>
<td></td>
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<tr>
<td>• Does your decision or action fall into any of the areas covered by the rights in the HRA?</td>
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<tr>
<td>• Will the decision or action limit any of the human rights it engages?</td>
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<tr>
<td><strong>Step 3: Is the limitation on rights reasonable?</strong></td>
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<tr>
<td>• Is there a legal basis for the restriction?</td>
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<td>• Does the restriction have a legitimate aim?</td>
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<td>• Is the restriction necessary in a democratic society?</td>
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<tr>
<td>• Is your response proportionate, or have you tipped the scales too far?</td>
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(Acknowledgment: ACT Human Rights Commission)
Attachment E: Checklist for Human Rights Compliance

This checklist may assist in ensuring decisions and actions are human rights compliant. If appropriate, you should document these considerations on the relevant file.

**Step 1: What is your decision or action?**

1.1 What is the objective of the decision or action?

*Think about what the decision or action seeks to achieve. Why is the decision or action being taken? What is its purpose?*

1.2 Who will be affected by the decision or action?

*Look at the objective you are trying to achieve and think about the individuals or groups of people that are most likely to be affected by the decision or action.*

1.3 Has there been consultation with groups or individuals likely to be affected?

*It may be appropriate to consult with those that are likely to be affected by the decision or action. Any consultation should be documented on the file.*

**Step 2: Does the decision or action engage human rights?**

2.1 Look at the list of human rights in this factsheet (or in Part 3 of the HRA). Does your decision or action fall into any of the areas covered by the rights in the HRA?

*If you decide that there are no rights in the HRA engaged, there is no need to continue on this checklist. However, if you have doubts, you may need to obtain legal advice.*

2.2 Will the decision or action limit any of the human rights it engages?

*If it does limit rights, you should keep a record on file of the details of how the human right is interfered with or limited.*

*Remember that failure to take action may be a breach of a right if there is a positive obligation on the public authority to take action to preserve a right.*
Step 3: Is the limitation on rights reasonable?

For most of the rights in the HRA, the fact that a decision or action restricts the right does not necessarily mean that it will be incompatible with the HRA. If a restriction has a legitimate aim (such as public safety) and does not go further than absolutely necessary to protect this aim, then it is likely that it will be compatible the HRA.

3.1 Is there a legal basis for the restriction?
Any restriction on human rights must have a legal basis. It must be set out in legislation or subordinate legislation.

3.2 Does the restriction have a legitimate aim?
If you are restricting rights, you need to identify a legitimate aim for doing this. This might include public safety, protecting public order, or protecting the rights or freedoms of others.

It is good practice to keep a record on file of the reasoning process behind your decision about limitation on rights.

3.3 Is the restriction necessary in a democratic society?
For a restriction to be necessary in a democratic society there must be a rational connection between the legitimate aim to be achieved and the decision or action that restricts a person’s rights. That is, the aim might be legitimate but unless the decision or action will actually achieve that aim, the restriction on rights is unlikely to be a reasonable one.

3.4 Is your response proportionate, or have you tipped the scales too far?
A decision or action must be the least restrictive possible to achieve its objective.

Look at the objective that you identified at 1.1 of this flowchart and see if there are any less restrictive ways to achieve that goal. For example, a least restrictive way might be one that is tailored to individual circumstances rather than a blanket policy that applies to everyone.

(Acknowledgment: ACT Human Rights Commission)