

## THE FIRST ESC RIGHT IN AUSTRALIA?

### THE INCLUSION OF THE RIGHT TO EDUCATION IN THE ACT HUMAN RIGHTS ACT 2004

ANDREW BYRNES\*

Paper prepared for the  
ACT Human Rights Commission  
Annual International Human Rights Day Community Forum  
10 December 2012

Whilst some may characterise it as modest, what we are doing tonight is a significant reform in the Australian human rights landscape. We will become the first jurisdiction to formally provide for the protection and recognition under law of a right to education in a human rights piece of legislation. It is a significant step, an important step in advancing potentially a range of other economic, cultural and social rights in time into a statutory form.

Mr Simon Corbell MLA, ACT Attorney-General, in the debate on the *Human Rights Amendment Act 2012*, 22 August 2012<sup>1</sup>

#### *The background*

The introduction into the ACT Legislative Assembly on 29 March 2012 of the *Human Rights Amendment Bill 2012* and its eventual passage by the Assembly on 29 August 2012, represent either a watershed moment in ACT and Australian legal history, or a major anticlimax – or perhaps both.

---

\* Australian Human Rights Centre, Faculty of Law, The University of New South Wales. This piece draws on the research results of an Australian Research Council-funded Linkage Project (LP0989167) (2009-2010), *Protecting Economic, Social and Cultural Rights in the ACT: Models, Methods and Impact*, involving the Centre for International Governance and Justice, Regulatory Institutions Network (ANU), the Australian Human Rights Centre (UNSW), and the ACT Department of Justice and Community Safety. I am grateful to Renuka Thilagaratnam for her comments on a draft of this piece. For a general discussion of the nature and extent of ESC rights, see Andrew Byrnes, 'Second-Class Rights Yet Again? Economic, Social and Cultural Rights in the Report of the National Human Rights Consultation' (2010) 33 *University of New South Wales Law Journal* 193, < <http://law.bepress.com/unsw/works/flrps10/art26/>>.

<sup>1</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 August 2012, 3313 (Simon Corbell, Attorney-General).

The amending Act introduced into the *Human Rights Act 2004* (ACT) a version of the right to education; the new provisions will commence operation on 1 January 2013. The Government claimed that this inclusion was a major conceptual advance in human rights protection -- the first occasion on which an economic, social and cultural right (ESC right) had been included in an Australian general human rights statute.<sup>2</sup> The Attorney-General also noted that this amendment was consistent with the gradualist approach that had been taken in the ACT and was the next step in the ACT's progress towards the possible incorporation of more ESC rights in the *Human Rights Act*. He also stated that the Government would revisit the issue -- yet again -- in two years, that is in 2015.<sup>34</sup>

For other observers the amendment seems less momentous, both in terms of its substance or as an example of salutary policy-making that follows on a detailed process of inquiry and deliberation and that responds to significant expressions of public support. A cynic might see

---

<sup>2</sup> 'In making this amendment, the ACT will again lead the way on human rights in Australia, being the first and only Australian jurisdiction to recognise an economic, social or cultural right. The government is committed to a step-by-step approach in realising this right, an approach that will ensure that the ACT continues to benefit from a coherent and principled human rights framework.' Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 29 March 2012, 1499-1500 (Simon Corbell, Attorney-General).

<sup>3</sup> 'The ACT has become the first jurisdiction in Australia to recognise an economic, social or cultural right in a bill of rights, with the successful passing of legislation to recognise the right to education, Attorney General, Simon Corbell, said today.

'This new legislation is the latest step in a proud record held by the ACT Labor Government which was the first State or Territory Government to introduce a Human Rights Act in 2004, and is now the first to formally recognise in legislation a social, economic or cultural right,' Mr Corbell said.'

'Right to education enshrined in human rights law', Press release by the Attorney-General, Mr Simon Corbell MLA, 23 August 2012, <<http://regnet.anu.edu.au/sites/default/files/Media%20Release%20-%20Right%20to%20Education.pdf>>.

<sup>4</sup> The duty to conduct a review is included in the new section 43 of the *Human Rights Act 2004*:

**43 Review of economic, social and cultural rights**

- (1) The Attorney-General must review the operation of the human rights in part 3A and present a report of the review to the Legislative Assembly not later than 1 January 2015.
- (2) The review must include a consideration of whether—
  - (a) other economic, social or cultural rights should be included in this Act; and
  - (b) part 5A should apply to the economic, social and cultural rights in part 3A; and
  - (c) the economic, social and cultural rights in part 3A should be subject to progressive realisation.
- (3) This section expires on 1 January 2016.

the amendment as government doing the absolute minimum it has to do to be seen to be doing something, but not really advancing the Australian human rights agenda in quite the way the Attorney-General has portrayed.

The 2012 amendments were in fact the latest government response in a long-running community dialogue over the inclusion of ESC rights in the *Human Rights Act 2004* -- a process that started in 2002, when the Report of the ACT Consultative Committee recommended the inclusion of ESC rights in any human rights statute that was adopted. This recommendation was rejected by the Government because it saw it as too bold, but the Government did agree to undertake a review of the issue after the Act had been in operation for some time. Those reviews took place as part of the one-year review of the Act, and its five-year review, each of which concluded somewhat later than the prescribed timetable. As part of the five-year review, the issue was explored in depth in an ARC-funded Linkage research project by a team comprising Hilary Charlesworth, Renuka Thilagaratnam, Katherine Young and myself.<sup>5</sup> That project, conducted with the cooperation and support of JACS and other government agencies, produced a detailed report in late 2010 which recommended the inclusion of a number of ESC rights in the HRA.<sup>6</sup>

During the research for the ESC rights report, our project team went to considerable lengths to consult with the various sectors which had an interest in and might be affected by the inclusion of ESC rights in the *Human Rights Act*, in order to identify any difficulties or benefits of legislating particular rights. A number of workshops were organised, including one for representatives from the education sector, for which we prepared a background paper

---

<sup>5</sup> This was one of two reports funded by the ARC Linkage Scheme. An earlier one was also taken into account by the ACT Government as part of its five-year review of the *Human Rights Act 2004*. See Hilary Charlesworth, Andrew Byrnes and Gabrielle McKinnon, *A Report to the ACT Department of Justice and Community Safety prepared by the ACT Human Rights Act Research Project*, May 2009, <[www.justice.act.gov.au/publication/view/97](http://www.justice.act.gov.au/publication/view/97)>.

<sup>6</sup> ACT ESCR Project, *Final Report of the Australian Capital Territory Economic, Social and Cultural Rights Project*, September 2010, <<http://ssrn.com/abstract=172439> or <[law.bepress.com/unswwps/flrps10/art71/](http://law.bepress.com/unswwps/flrps10/art71/)>. See Henrietta Zeffert, 'Time to expand the ACT Human Rights Act 2004? Report of the Australian Capital Territory Economic, Social and Cultural Rights Research Project' (2011) 17(2) *Australian Journal of Human Rights* 215

on the right to education.<sup>7</sup> The workshop provided an opportunity to share ideas about the possible implications of inclusion of the right to education, and was a constructive discussion. Overall, the discussion was positive towards such an inclusion – the general view was that the requirements of the right to education were essentially consistent with current policy and good practice in the field of education, and might provide a useful framework to guide and review these. While there were concerns about the justiciability of ESC rights and possible resources issues, it was felt that these could be dealt with by formulating the right in an appropriate way. In short, we heard no major concerns from educators or educational policymakers and administrators about including the right in the Act and, indeed, we had similar experiences when meeting with representatives of the housing, health and utilities sectors.

### ***The right to education as finally included in the Human Rights Amendment Act 2012***

The right to education finally adopted by the Legislative Assembly was significantly different from the formulation of the right proposed by the ACT ESCR Project Report and from the proposed amendment introduced into the Legislative Assembly in March 2012. There is not much to be gained in this context by a detailed comparison of the different versions. However, it can be said that the Government's original draft and the legislated version are both significantly narrower than that proposed by the ACT ESCR Research Project. Nonetheless, the enacted version is slightly wider than the one originally introduced by the Government and an improvement in that respect, but it still suffers from significant limitations. But the best should not be the enemy of the good – so how good is what we have?

---

<sup>7</sup> ACT ESCR Project, *Protecting the Right to Education in the Human Rights Act*, Discussion Paper, March 2010.

The new section 27A<sup>8</sup> of the *Human Rights Act 2004* starts by laying out two important dimensions of the right to education:

- Every child has the right to have access to free, school education appropriate to his or her needs, and
- Everyone has the right to have access to further education and vocational and continuing training

So far, so good – a broad statement of the right of children of school age to have access to free and appropriate education, coupled with the right to further education for all. This draws on the international standards contained in article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>9</sup> and is broadly consistent with them. In the Covenant the obligations in article 13 are subject to the obligation of progressive realisation; in other words the Covenant recognises that not all aspects of the right can necessarily be enjoyed at once – some will be, but others will need to be the object of a deliberate and targeted plan for all aspects of the right to be fully achieved over time.

The ACT ESCR Project had taken this dimension into account by stipulating that the ACT was obliged to realise these rights progressively, but that nevertheless certain aspects of the right were to be immediately realised – these included free primary education, non-discrimination in education, and the right of parents to have their children educated in accordance with their religious and moral convictions (and possibly other aspects). This

---

<sup>8</sup> Section 27A provides:

**27A Right to education**

- (1) Every child has the right to have access to free, school education appropriate to his or her needs.
- (2) Everyone has the right to have access to further education and vocational and continuing training.
- (3) These rights are limited to the following immediately realisable aspects:
  - (a) everyone is entitled to enjoy these rights without discrimination;
  - (b) to ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law.

<sup>9</sup> See the text of article 13 at page 11 below.

approach ensured that these core elements were immediately protected, but would also have put the onus on government to take steps to achieve other dimensions of the right to education as soon as was practicable.

However, the Government's initial approach, and the one finally enacted, were quite different. It stated simply that the rights to school education and further education 'are limited to the following immediately realisable aspects:

- (a) everyone is entitled to enjoy these rights without discrimination;
- (b) to ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law.'

This appears to be a significantly narrower than required by the international obligation<sup>10</sup> and indeed arguably narrower than the existing protections under ACT law.<sup>11</sup>

The critical question this raises is what is the scope of the relevant human right on which other sections of the *Human Rights Act* operate? Is it the full scope of the right to free primary and secondary school education and the right to further education (understood in the light of the progressive realisation obligation)? Or is it simply the right to non-discrimination in access to primary and secondary schools and further education, and the right of parents to choose schooling to ensure the religious and moral education of their child? The drafting suggests the latter narrower interpretation is the intended one, a view reinforced by the comments of the Attorney-General when he introduced the bill into the Legislature. He stated that '[t]his amendment is the inclusion of the right to education, limited to the two

---

<sup>10</sup> For a very helpful review of the international law and section 27A, see Human Rights & Discrimination Commissioner ACT Human Rights Commission, *The Right to Education*, Human Rights Legal Factsheet, <[www.hrc.act.gov.au/content.php/content.view/id/141](http://www.hrc.act.gov.au/content.php/content.view/id/141)>.

<sup>11</sup> The primary statute is the *Education Act 2004*, section 7 of which sets out the basic principles for school education in the ACT. Section 7 is reproduced at page 11 below.

immediately realisable aspects we have identified in the bill'<sup>12</sup> and that 'the international law doctrine of progressive realisation will not apply to the right to education at this time',<sup>13</sup> though the robust discussion at a later stage about whether the right should extend to free secondary education seemed to proceed on the basis that the right to free education might have some legal impact beyond the non-discrimination guarantees

Whatever the breadth of the substantive rights enacted in the new section 27A, the question then arises how this newly legislated right interacts with the other provisions of the *Human Rights Act 2004*? There are a number of dimensions of the *Human Rights Act 2004* that contribute to the effective implementation of rights:<sup>14</sup>

1. The requirement that a statement of compatibility with human rights accompany any bill presented to the Assembly --- this requirement will apply to the new right to education (and the right to education will explicitly fall within the mandate of the Scrutiny Committee).<sup>15</sup> However, it seems that these would apply formally only to the 'rump' sub-rights of non-discrimination in education and respect for parental views as regards religious and moral education.
2. The requirement under section 30 of the *Human Rights Act* to interpret legislation in accordance with human rights<sup>16</sup> will apply to the right to education<sup>17</sup> --- once again, probably only the truncated version of the right. It also appears that as a consequence

---

<sup>12</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 29 March 2012, 1499 (Simon Corbell, Attorney-General).

<sup>13</sup> Ibid 1502 (Simon Corbell, Attorney-General).

<sup>14</sup> See generally Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia – History, Politics and Law* (Sydney: UNSW Press, 2009) 79-104.

<sup>15</sup> Ibid 1501 (Simon Corbell, Attorney-General). In fact the Scrutiny Committee has already referred to the right to education, in its full plenitude.

<sup>16</sup> Section 30 provides:

**'30 Interpretation of laws and human rights**

So far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.

<sup>17</sup> <sup>17</sup> Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 29 March 2012, 1501 (Simon Corbell, Attorney-General).

if a statute cannot be construed in conformity with the s 27A right, then the Supreme Court could exercise its power to issue a declaration of incompatibility under section 32 of the *Human Rights Act 2004*.

3. The requirement under section 40B of the *Human Rights Act 2004* that public authorities must act consistently with human rights and in making decisions must give proper consideration to human rights – this duty will *not* apply to the right to education, at least so far as the *Human Rights Act* creates such a duty. This seems a strange omission, justified by a claim that this obligation was added sometime down the track in relation to civil and political rights in order to see how the Act was functioning and to give public officials the change to adapt to the new environment.<sup>18</sup> It is hard to see that eight years after the enactment of the HRA and four years after the duty of public authorities was enacted, that a similar delay is reasonable in relation to the right to education (in addition to the five-month delay between enactment and commencement). Our five-year review of the operation of the Act showed that the introduction of the duty on public authorities was an important step in promoting an

---

<sup>18</sup> ‘The rationale for this distinction and the absence of obligations on public authorities has been arrived at after much deliberation and broad consultation across the community. The government’s view is that to impose obligations on public authorities at this stage would not allow adequate opportunity for public authorities to fully understand the scope of the right and its implications, or plan for any policy or budgetary changes which may be required.’ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 29 March 2012, 1502 (Simon Corbell, Attorney-General).

‘The government took the view, in implementing a progressive and staged approach to economic, cultural and social rights in the Human Rights Act, that we should be cautious in implementation. It is the same approach that has proven successful in the introduction of civil and political rights. We did not, at first instance, impose duties on public authorities or impose rights of action and remedy when we introduced civil and political rights. We built a consensus and comfort amongst both public authorities and the broader community that the operations of a human rights act were not detrimental to the ongoing activities of those organisations but, in fact, were of positive benefit to them.

We are taking the same approach when it comes to the implementation of economic, cultural and social rights. For that reason the government cannot support the amendments proposed by Mr Rattenbury. They seek to immediately implement rights—the right of action, remedy before the courts and duties on public authorities. It is in our view a step which is taken too early in the implementation of economic, cultural and social rights within the Human Rights Act.’

Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 22 August 2012, 3313 (Simon Corbell, Attorney-General).

improved focus on the relevance of rights to the ordinary operations of government, and presumably it would be the same here.

4. A right of action before the courts where it is claimed that a public authority has failed to comply with human rights: as the right to education has been excluded from the scope of this duty, there is also no possibility that a person may directly invoke the right to bring an action under section 40D of the *Human Rights Act* in relation to such a failure – though it may be that judicial review proceedings would still be open for a failure to take into account a human right where relevant or to commit an error of law by failing to interpret a statute in accordance with the relevant right.

### ***Looking forward***

In sum, from a human rights and legal policy perspective -- to which might be added the grievance of a frustrated researcher --- the extent of integration of the right to education in the *Human Rights Act* scheme is a disappointment. But the challenge is to draw from the circumstances the opportunities to keep the process moving, and to take the Government at its word about seeing this amendment as another step in the process of expanding human rights protections, not the final move.

The next two years – leading up to the (third) review of this question – provide an opportunity for all of us to document and reflect on how the inclusion of the right to education, even in its truncated form, affects the policy and practice relating to the provision of education in the ACT. There is an important role for educators and educational administrators here, as they are the ones who are implementing the right to education on a daily basis. The challenge for them is to see whether a rights framework can add to, or at least reinforce, the way in which policy priorities are set and implemented, and how the process of education takes place in the Territory.

At first sight it is a little difficult to see how a meaningful assessment of the potential future impact of inclusion of a *range* of ESC rights can be made through a case study of the limited right to education we have been granted – given that the right does not include the duty of public authorities to comply with the right, the limited nature of the right, the lack of inclusion of the obligation in relation to progressive realisation – all critical elements of the right, and elements which give rise to concern about its full inclusion and which underlie the

Government's caution. It is rather like being asked to test drive a prototype car but with only two of its four wheels. The task is made even more difficult by the fact that the guarantee goes no further than enforceable rights and duties under existing law – indeed, may not even extend as far as they do.

But there are ways in which rights framework and educational aspirations and policy might be brought together more closely – and I am sure that others working in the field of education will have many ideas on how this might be done and whether it is likely to be useful. But for a start it may be worthwhile revisiting the *Melbourne Declaration on Educational Goals for Young Australians*. This document, adopted by all Australian Education Ministers in 2008, proclaimed as its purpose to ‘set[] the direction for Australian schooling for the next 10 years’.<sup>19</sup> Yet there is no mention of the *right* to education in that document – vivid testimony of the disjuncture between the human rights frameworks and at least some prevailing education frameworks.

Perhaps more significant might be the opportunities that will be presented in negotiations around the implementation of the Gonski report. Incredibly, the report of this important and wide-ranging inquiry into school education in Australia does not appear to contain the words ‘right to education’ and there is but one reference to the term ‘human rights’.<sup>20</sup> And this despite the fact that the whole report is essentially about realising the right to education for Australian children generally and ensuring the non-discriminatory enjoyment of the right in particular. We must ask ourselves whether a rights framework might help us in identifying needs and in our advocacy to address them.

In late November 2012 the Commonwealth Government introduced into the Parliament the *Australian Education Bill 2012*, which is intended to provide the framework for implementation of the Gonski reforms. The Bill sets out three principal goals: ‘for Australian schooling to provide an excellent education for all students; for Australian schooling to be

---

<sup>19</sup> <[http://www.mceecdya.edu.au/mceecdya/melbourne\\_declaration,25979.html](http://www.mceecdya.edu.au/mceecdya/melbourne_declaration,25979.html)>.

<sup>20</sup> Expert Panel, *Review of Funding for Schooling – Final Report*, Department of Education, Employment and Workplace Relations, December 2011, < <https://foi.deewr.gov.au/system/files/doc/other/review-of-funding-for-schooling-final-report-dec-2011.pdf>>.

highly equitable; and for Australia to be placed in the top five countries in reading, science and mathematics, quality and equity in recognised international testing by 2025.<sup>21</sup> The funding and other arrangements are to be agreed by negotiation between the Commonwealth and the States and Territories, with the Explanatory Memorandum stating that ‘Commonwealth funding will be made dependent on the parties’ agreement to implement the national plan for school improvement.’<sup>22</sup> No doubt the right to education as guaranteed by the ICESCR and other treaties will be respected and the interests of children will be a primary consideration (as required by the Convention on the Rights of the Child) in any negotiations that take place and subsequent actions. But it does suggest that there may be a role for the invocation of the right to education and related rights as we move towards implementation of the Gonski-inspired changes.

Finally, perhaps there will be lessons to be learnt from the Commonwealth experience with the new system of Parliamentary scrutiny of human rights introduced by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).<sup>23</sup> Under that legislation all Commonwealth Bills are subject to scrutiny against the seven core UN human rights treaties to which Australia is party;<sup>24</sup> Acts may also be reviewed, as well as any matter referred to the Parliamentary Joint Committee on Human Rights by the Attorney-General.<sup>25</sup> Each Bill must be accompanied by a

---

<sup>21</sup> *Australian Education Bill 2012*, Explanatory Memorandum , p 1 .

<sup>22</sup> *Ibid*, p 3.

<sup>23</sup> See Andrew Byrnes, “The protection and enjoyment of economic, social and cultural rights” in Paula Gerber and Melissa Castan (eds), *Contemporary Human Rights Issues in Australia* (Federation Press, 2012) 125

<sup>24</sup> These are the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

<sup>25</sup> Parliamentary Joint Committee on Human Rights, ‘About the Committee’, <[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=humanrights\\_ctte/ctte\\_info/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/ctte_info/index.htm)>.

statement of compatibility<sup>26</sup> and Commonwealth departments are thus obliged to engage with issues of economic, social and cultural rights as they develop new laws and policies. This includes issues such as the progressive and immediately realisable aspects of these rights, the issue of retrogressive steps, permissible limitations on such rights, and other matters. This regime applies to the right to education in the ICECSR, but also to other ESC rights found in that Covenant and in other treaties. There may well be much to be gained by observing this process, and it may embolden the ACT Government when the matter is next reviewed.

In conclusion, the ACT Government may be overselling the inclusion of the right to education in the *Human Rights Act* as ‘momentous’, but it does open the door a fraction, and we need to push through the crack in the door to see what might lie on the other side.

\*\*\*

## INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### ARTICLE 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

---

<sup>26</sup> See Parliamentary Joint Committee on Human Rights, *Practice Note No 1* (2012), <[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=humanrights\\_ctte/practice\\_not es/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=humanrights_ctte/practice_notes/index.htm)> (requirements for statements of compatibility).

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

## HUMAN RIGHTS AMENDMENT ACT 2012 (extract)

### Part 3A Economic, social and cultural rights

*Note* The primary source of these rights is the International Covenant on Economic, Social and Cultural Rights.

#### 27A Right to education

- (1) Every child has the right to have access to free, school education appropriate to his or her needs.
- (2) Everyone has the right to have access to further education and vocational and continuing training.
- (3) These rights are limited to the following immediately realisable aspects:
  - (a) everyone is entitled to enjoy these rights without discrimination;
  - (b) to ensure the religious and moral education of a child in conformity with the convictions of the child's parent or guardian, the parent or guardian may choose schooling for the child (other than schooling provided by the government) that conforms to the minimum educational standards required under law.

#### 1 8 Public authorities must act consistently with human rights Section 40B (3), new definition of *human rights*

*insert*

*human rights* do not include the economic, social and cultural rights in part 3A.

#### 2 9 New section 43

*insert*

#### 43 Review of economic, social and cultural rights

- (1) The Attorney-General must review the operation of the human rights in part 3A and present a report of the review to the Legislative Assembly not later than 1 January 2015.
- (2) The review must include a consideration of whether—
  - (a) other economic, social or cultural rights should be included in this Act; and
  - (b) part 5A should apply to the economic, social and cultural rights in part 3A; and
  - (c) the economic, social and cultural rights in part 3A should be subject to progressive realisation.
- (3) This section expires on 1 January 2016.

**EDUCATION ACT 2004 (ACT)**  
**SECTION 7**

- (1) Everyone involved in the administration of this Act, or in the school or home education of children in the ACT, is to apply the principle that every child has a right to receive a high-quality education.
- (2) Without limiting subsection (1), a high-quality education is based on the following principles:
  - (a) school education and home education provide a foundation for a democratic society;
  - (b) school education and home education should—
    - (i) aim to develop every child’s potential and maximise educational achievements; and
    - (ii) promote children’s enthusiasm for lifelong learning and optimism for the future; and
    - (iii) encourage parents to take part in the education of their children, and recognise their right to choose a suitable educational environment; and
    - (iv) promote respect for and tolerance of others; and
    - (v) recognise the social, religious, physical, intellectual and emotional needs of all students; and
    - (vi) aim over time to improve the learning outcomes of students so that the outcomes are free from disadvantage because of economic, social, cultural or other causes; and
    - (vii) encourage all students to complete their senior secondary education; and
    - (viii) provide access to a broad education; and
    - (ix) recognise the needs of Indigenous students;
  - (c) innovation, diversity and opportunity within and among schools should be encouraged;
  - (d) effective quality assurance mechanisms should be applied to school education;
  - (e) government funding should be directed to students through their schools or school system;
  - (f) the partnership between the home, community and educational providers should be recognised;
  - (g) school communities should be given information about the operation of their schools.
- (3) Everyone involved in the administration of this Act, or in the school education of children in the ACT, is to apply the principle that school education—
  - (a) recognises the individual needs of children with disabilities; and

- (b) should make appropriate provision for those needs, unless it would impose unjustifiable hardship on the provider of the school education.
- (4) Corporal punishment is not allowed in ACT schools.