



Australian Capital Territory

# Human Rights Act 2004

A2004-5

## Contents

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	Page
Preamble	2
<b>Part 1</b>	
<b>    Preliminary</b>	
1 Name of Act	3
2 Commencement	3
3 Dictionary	3
4 Notes	3
<b>Part 2</b>	
<b>    Human rights</b>	
5 What are <i>human rights</i> ?	4
6 Who has human rights?	4
7 Rights apart from Act	4
<b>Part 3</b>	
<b>    Civil and political rights</b>	
8 Recognition and equality before the law	5

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## Contents

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	Page	
9	Right to life	5
10	Protection from torture and cruel, inhuman or degrading treatment etc	6
11	Protection of the family and children	6
12	Privacy and reputation	6
13	Freedom of movement	7
14	Freedom of thought, conscience, religion and belief	7
15	Peaceful assembly and freedom of association	7
16	Freedom of expression	7
17	Taking part in public life	8
18	Right to liberty and security of person	8
19	Humane treatment when deprived of liberty	9
20	Children in the criminal process	9
21	Fair trial	10
22	Rights in criminal proceedings	10
23	Compensation for wrongful conviction	11
24	Right not to be tried or punished more than once	12
25	Retrospective criminal laws	12
26	Freedom from forced work	12
27	Rights of minorities	13
28	Human rights may be limited	13
<b>Part 4</b>	<b>Application of human rights to Territory laws</b>	
29	Application of pt 4	14
30	Interpretation of laws and human rights	14
31	Interpretation of human rights	14
32	Declaration of incompatibility	15
33	Attorney-General's action on receiving declaration of incompatibility	16
34	Notice to Attorney-General and commissioner	16
35	Attorney-General's right to intervene on human rights	17
36	Human rights commissioner may intervene	17

	Page
<b>Part 5</b>	
<b>Scrutiny of proposed Territory laws</b>	
37	18
38	18
39	19
<b>Part 6</b>	
<b>Human rights commissioner</b>	
40	20
41	20
<b>Part 7</b>	
<b>Miscellaneous</b>	
42	22
43	22
44	22
45	23
<b>Schedule 1</b>	
<b>ICCPR source of human rights</b>	24
<b>Schedule 2</b>	
<b>Consequential amendments</b>	26
<b>Part 2.1</b>	26
<b>Part 2.2</b>	27
<b>Part 2.3</b>	27
<b>Dictionary</b>	28





Australian Capital Territory

# Human Rights Act 2004

**A2004-5**

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An Act to respect, protect and promote human rights

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## **Preamble**

- 1 Human rights are necessary for individuals to live lives of dignity and value.
- 2 Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
- 3 Human rights are set out in this Act so that individuals know what their rights are.
- 4 Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.
- 5 This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.
- 6 Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.
- 7 Although human rights belong to all individuals, they have special significance for Indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Human Rights Act 2004*.

### 2 Commencement

This Act commences on 1 July 2004.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*human rights*—see section 5.' means that the term 'human rights' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## Part 2 Human rights

### 5 What are *human rights*?

In this Act:

*human rights* means the civil and political rights in part 3.

### 6 Who has human rights?

Only individuals have human rights.

### 7 Rights apart from Act

This Act is not exhaustive of the rights an individual may have under domestic or international law.

#### Examples of other rights

- 1 rights under the *Discrimination Act 1991* or another Territory law
- 2 rights under the ICCPR not listed in this Act
- 3 rights under other international conventions

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Part 3 Civil and political rights

*Note* The primary source of these rights is the International Covenant on Civil and Political Rights.

### 8 Recognition and equality before the law

- (1) Everyone has the right to recognition as a person before the law.
- (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
- (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

#### **Examples of discrimination**

Discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 9 Right to life

- (1) Everyone has the right to life. In particular, no-one may be arbitrarily deprived of life.
- (2) This section applies to a person from the time of birth.

**10 Protection from torture and cruel, inhuman or degrading treatment etc**

- (1) No-one may be—
  - (a) tortured; or
  - (b) treated or punished in a cruel, inhuman or degrading way.
- (2) No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.

**11 Protection of the family and children**

*Note* Family has a broad meaning (see ICCPR General Comment 19 (39th session, 1990)).

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society.
- (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

**Examples of distinction or discrimination**

Distinction or discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**12 Privacy and reputation**

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

**13 Freedom of movement**

Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

**14 Freedom of thought, conscience, religion and belief**

- (1) Everyone has the right to freedom of thought, conscience and religion. This right includes—
  - (a) the freedom to have or to adopt a religion or belief of his or her choice; and
  - (b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.
- (2) No-one may be coerced in a way that would limit his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

**15 Peaceful assembly and freedom of association**

- (1) Everyone has the right of peaceful assembly.
- (2) Everyone has the right to freedom of association.

**16 Freedom of expression**

- (1) Everyone has the right to hold opinions without interference.
- (2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

**17 Taking part in public life**

Every citizen has the right, and is to have the opportunity, to—

- (a) take part in the conduct of public affairs, directly or through freely chosen representatives; and
- (b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and
- (c) have access, on general terms of equality, for appointment to the public service and public office.

**18 Right to liberty and security of person**

- (1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.
- (2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.
- (3) Anyone who is arrested must be told, at the time of arrest, of the reasons for the arrest and must be promptly told about any charges against him or her.
- (4) Anyone who is arrested or detained on a criminal charge—
  - (a) must be promptly brought before a judge or magistrate; and
  - (b) has the right to be tried within a reasonable time or released.
- (5) Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.
- (6) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person's release if the detention is not lawful.

- (7) Anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.
- (8) No-one may be imprisoned only because of the inability to carry out a contractual obligation.

### **19 Humane treatment when deprived of liberty**

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.

*Note* An accused child must also be segregated from accused adults (see s 20 (1))

- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

### **20 Children in the criminal process**

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.
- (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

**21 Fair trial**

- (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) However, the press and public may be excluded from all or part of a trial—
  - (a) to protect morals, public order or national security in a democratic society; or
  - (b) if the interest of the private lives of the parties require the exclusion; or
  - (c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.
- (3) But each judgment in a criminal or civil proceeding must be made public unless the interest of a child requires that the judgment not be made public.

**22 Rights in criminal proceedings**

- (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
- (2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:
  - (a) to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;
  - (b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;
  - (c) to be tried without unreasonable delay;

- (d) to be tried in person, and to defend himself or herself personally, or through legal assistance chosen by him or her;
  - (e) to be told, if he or she does not have legal assistance, about the right to legal assistance chosen by him or her;
  - (f) to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;
  - (g) to examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witnesses;
  - (h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
  - (i) not to be compelled to testify against himself or herself or to confess guilt.
- (3) A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.
- (4) Anyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

## **23 Compensation for wrongful conviction**

- (1) This section applies if—
- (a) anyone is convicted by a final decision of a criminal offence; and
  - (b) the person suffers punishment because of the conviction; and
  - (c) the conviction is reversed, or he or she is pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice.

- (2) If this section applies, the person has the right to be compensated according to law.
- (3) However, subsection (2) does not apply if it is proved that the nondisclosure of the unknown fact in time is completely or partly the person's own doing.

#### **24 Right not to be tried or punished more than once**

No-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

#### **25 Retrospective criminal laws**

- (1) No-one may be held guilty of a criminal offence because of conduct that was not a criminal offence under Territory law when it was engaged in.
- (2) A penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed. If the penalty for an offence is reduced after anyone commits the offence, he or she benefits from the reduced penalty.

#### **26 Freedom from forced work**

- (1) No-one may be held in slavery or servitude.
- (2) No-one may be made to perform forced or compulsory labour.
- (3) In subsection (2):

*forced or compulsory labour* does not include—

- (a) work or service normally required of an individual who is under detention because of a lawful court order, or who has been conditionally released from detention under a court order; or
- (b) work or service required because of an emergency or calamity threatening the life or wellbeing of the community; or

(c) work or service that forms part of normal civil obligations.

## **27 Rights of minorities**

Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

## **28 Human rights may be limited**

Human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

## Part 4                      Application of human rights to Territory laws

### 29      Application of pt 4

This part applies to all Territory laws.

### 30      Interpretation of laws and human rights

- (1) In working out the meaning of a Territory law, an interpretation that is consistent with human rights is as far as possible to be preferred.
- (2) Subsection (1) is subject to the Legislation Act, section 139.

*Note*      Legislation Act, s 139 requires the interpretation that would best achieve the purpose of a law to be preferred to any other interpretation (the purposive test).

- (3) In this section:

*working out the meaning of a Territory law* means—

- (a) resolving an ambiguous or obscure provision of the law; or
- (b) confirming or displacing the apparent meaning of the law; or
- (c) finding the meaning of the law when its apparent meaning leads to a result that is manifestly absurd or is unreasonable; or
- (d) finding the meaning of the law in any other case.

### 31      Interpretation of human rights

- (1) International law, and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.
- (2) In deciding whether material mentioned in subsection (1) or any other material should be considered, and the weight to be given to the material, the following matters must be taken into account:

- (a) the desirability of being able to rely on the ordinary meaning of this Act, having regard to its purpose and its provisions read in the context of the Act as a whole;
- (b) the undesirability of prolonging proceedings without compensating advantage;
- (c) the accessibility of the material to the public.

*Note* The matters to be taken into account under this subsection are consistent with those required to be taken into account under the Legislation Act, s 141 (2).

- (3) For subsection (2) (c), material in the ACT legislation register is taken to be accessible to the public.

### **32 Declaration of incompatibility**

- (1) This section applies if—
  - (a) a proceeding is being heard by the Supreme Court; and
  - (b) an issue arises in the proceeding about whether a Territory law is consistent with a human right.
- (2) If the Supreme Court is satisfied that the Territory law is not consistent with the human right, the court may declare that the law is not consistent with the human right (the *declaration of incompatibility*).
- (3) The declaration of incompatibility does not affect—
  - (a) the validity, operation or enforcement of the law; or
  - (b) the rights or obligations of anyone.
- (4) The registrar of the Supreme Court must promptly give a copy of the declaration of incompatibility to the Attorney-General.

**33 Attorney-General's action on receiving declaration of incompatibility**

- (1) This section applies if the Attorney-General receives a copy of a declaration of incompatibility.
- (2) The Attorney-General must present a copy of the declaration of incompatibility to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the copy.
- (3) The Attorney-General must prepare a written response to the declaration of incompatibility and present it to the Legislative Assembly not later than 6 months after the day the copy of the declaration is presented to the Legislative Assembly.

**34 Notice to Attorney-General and commissioner**

- (1) This section applies if—
  - (a) the Supreme Court is considering making a declaration of incompatibility in a proceeding; and
  - (b) the Territory is not a party to the proceeding.
- (2) The Supreme Court must not make the declaration unless the court is satisfied that—
  - (a) notice of the issue has been given to the Attorney-General and the human rights commissioner; and
  - (b) a reasonable time has passed since the giving of the notice for the Attorney-General and commissioner to decide whether to intervene in the proceeding.
- (3) For subsection (2), the Supreme Court may direct a party to give notice of the issue to the Attorney-General and human rights commissioner.

**35 Attorney-General's right to intervene on human rights**

The Attorney-General may intervene in a proceeding before a court that involves the application of this Act.

**36 Human rights commissioner may intervene**

- (1) The human rights commissioner may intervene in a proceeding before a court that involves the application of this Act with the leave of the court.
- (2) The court may give leave subject to conditions.



**39 Noncompliance with s 37 and s 38**

A failure to comply with section 37 or section 38 in relation to a bill does not affect the validity, operation or enforcement of any Territory law.

## Part 6 Human rights commissioner

### 40 Human rights commissioner

- (1) There is to be an Australian Capital Territory Human Rights Commissioner (the *human rights commissioner*).
- (2) The discrimination commissioner is the human rights commissioner.

### 41 Human rights commissioner's functions

- (1) The human rights commissioner has the following functions:
  - (a) to review the effect of Territory laws, including the common law, on human rights, and report in writing to the Attorney-General on the results of the review;
  - (b) to provide education about human rights and this Act;
  - (c) to advise the Attorney-General on anything relevant to the operation of this Act.
- (2) The Attorney-General must present a copy of a report mentioned in subsection (1) (a) to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the report.
- (3) However, the Attorney-General may amend the report (including by omitting part of the report) before presenting it to the Legislative Assembly to prevent the report—
  - (a) disclosing the identity of—
    - (i) a person whose human rights have, or may have been, contravened; or
    - (ii) someone who may have contravened someone else's rights; or
  - (b) allowing the identity of someone mentioned in paragraph (a) to be worked out; or

- (c) disclosing information if the disclosure of the information could, in the Attorney-General's opinion, harm the public interest.
- (4) If the Attorney-General amends the report, the Attorney-General must present a statement to the Legislative Assembly with the report that tells the Assembly that the report has been amended.
- (5) The human rights commissioner has any other function given to the commissioner under any other Territory law.



**45 Legislation amended—sch 2**

This Act amends the following legislation:

- *Annual Reports (Government Agencies) Act 1995*
- *Discrimination Act 1991*
- *Legislation Act 2001*.

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## Schedule 1 ICCPR source of human rights

(see pt 3)

column 1 item	column 2 section	column 3 description	column 4 ICCPR article
1	8 (1)	right to recognition as person	16
2	8 (2)	right to enjoy rights without distinction etc	2 (1)
3	8 (3)	equality before law and equal protection	26
4	9 (1)	right to life	6 (1)
5	10	protection from torture and cruel, inhuman or degrading treatment etc	7
6	11 (1)	protection of family	23 (1)
7	11 (2)	protection of children	24 (1)
8	12	privacy and reputation	17 (1)
9	13	freedom of movement	12 (1)
10	14 (1)	freedom of thought, conscience and religion	18 (1), (3)
11	14 (2)	no coercion to limit religious freedom	18 (2), (3)
12	15 (1)	peaceful assembly	21
13	15 (2)	freedom of association	22

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 description</b>	<b>column 4 ICCPR article</b>
14	16 (1)	right to hold opinions	19 (1)
15	16 (2)	freedom of expression	19 (2), (3)
16	17	taking part in public life	25
17	18 (1)- (7)	right to liberty and security of person	9
18	18 (8)	no imprisonment for contractual obligations	11
19	19	humane treatment when deprived of liberty	10 (1),(2) (a)
20	20	children in the criminal process	10 (2) (b),(3)
21	21	fair trial	14 (1)
22	22 (1)	rights in criminal proceedings	14 (2)
23	22 (2)	minimum guarantees for those charged	14 (3)
24	22 (3)	rights of child charged	14 (4)
25	22 (4)	right of review	14 (5)
26	23	compensation for wrongful conviction	14 (6)
27	24	right not to be tried or punished more than once	14 (7)
28	25	retrospective criminal laws	15 (1)
29	26	freedom from forced work	8 (1), (2), (3) (a), (3) (c)
30	27	rights of minorities	27

## **Schedule 2**      **Consequential amendments**

(see s 44)

### **Part 2.1**                      **Annual Reports (Government Agencies) Act 1995**

#### **[2.1] New section 7 (2A)**

*insert*

- (2A) A report must include a statement describing the measures taken by the administrative unit during the period to respect, protect and promote human rights.

#### **[2.2] Section 7**

*renumber subsections when Act next republished under Legislation Act*

#### **[2.3] New section 8 (2A)**

*insert*

- (2A) For a report of a public authority other than a statutory office-holder declared to be a public authority under the section 4A, the report must include a statement describing the measures taken by the public authority during the period to respect, protect and promote human rights.

#### **[2.4] Section 8**

*renumber subsections when Act next republished under Legislation Act*

## **Part 2.2                      Discrimination Act 1991**

### **[2.5] Section 112 (f)**

*substitute*

- (f) to exercise any other function given to the commissioner under this Act, the *Human Rights Act 2003* or another Territory law;

## **Part 2.3                      Legislation Act 2001**

### **[2.6] Section 19 (4) (f)**

*substitute*

- (f) Commonwealth laws that apply in or in relation to the ACT;
- (g) material relevant to interpreting the rights set out in the *Human Rights Act 2003*, including documents mentioned in that Act, dictionary, definition of *international law*.

### **[2.7] Section 139 (2)**

*insert*

*Note*     The *Human Rights Act 2003*, s 30 (1) (which is about interpreting legislation to be consistent with human rights) is also relevant to interpreting Territory laws.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act (see s 7)
- entity
- foreign country
- individual
- may (see s 146)
- proceeding
- statutory instrument (see s 13).

***court*** includes the following:

- (a) the administrative appeals tribunal;
- (b) the discrimination tribunal;
- (c) the guardianship tribunal;
- (d) the mental health tribunal;
- (e) an entity prescribed under the regulations.

***conduct*** includes omission.

***declaration of incompatibility***—see section 32.

***engage*** in conduct means—

- (a) do an act; or
- (b) omit to do an act.

*human rights*—see section 5.

*human rights commissioner*—see section 40 (1).

*ICCPR* means the International Covenant on Civil and Political Rights.

*international law* includes—

- (a) the International Covenant on Civil and Political Rights and other human rights treaties to which Australia is a party; and
- (b) general comments and views of the United Nations human rights treaty monitoring bodies; and
- (c) declarations and standards adopted by the United Nations General Assembly that are relevant to human rights.

*Territory law* means an Act or statutory instrument.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 18 November 2003.

**2 Notification**

Notified under the Legislation Act on 10 March 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Human Rights Bill 2004 which originated in the Assembly as the Human Rights Bill 2003 and was passed by the Legislative Assembly on 2 March 2004.

Clerk of the Legislative Assembly

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