

**Legislative Council—No 88**

As introduced and read a first time, 2 December 2020

South Australia

**Charter of Human Rights and Responsibilities  
Bill 2020**

A BILL FOR

An Act to protect and promote human rights, to establish the Charter of Human Rights and Responsibilities, and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Charter of Human Rights and Responsibilities Act 2020*.

#### 5 2—Interpretation

- (1) In this Act, unless the contrary intention appears—
  - act* includes a failure to act and a proposal to act;
  - Charter of Human Rights and Responsibilities* or *Charter* means this Act;
  - child* means a person under 18 years of age;

**Commissioner** means the Commissioner for Equal Opportunity and Human Rights under the *Equal Opportunity Act 1984*;

**compatible with human rights**—see section 3;

**declaration of inconsistent interpretation** means a declaration made by the Supreme Court under section 43(2);

**First Nations person** means a person belonging to the indigenous peoples of Australia, including the indigenous inhabitants of the Torres Strait Islands, and any descendants of those peoples;

**human rights** means the civil and political rights set out in Part 3;

**interpreter** means—

- (a) an interpreter accredited by a prescribed body; or
- (b) if an accredited interpreter is not readily available, a competent interpreter;

and relates only to the oral rendering of the meaning of the spoken word or other form of communication from one language or form of communication into another language or form of communication;

**override declaration** means a declaration made by Parliament under section 38;

**Parliamentary committee** means—

- (a) a committee established under the *Parliamentary Committees Act 1991*; or
- (b) the Aboriginal Lands Parliamentary Standing Committee established under the *Aboriginal Lands Parliamentary Standing Committee Act 2003*;

**person** means a natural person;

**public authority** has the meaning given in section 4;

**statutory provision** means an Act (including this Charter) or statutory instrument, or a provision of an Act (including this Charter) or statutory instrument;

**trial** means hearing of a charge.

(2) In this Charter—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

### 3—Meaning of *compatible with human rights*

For the purposes of this Charter, an act, decision or statutory provision is **compatible with human rights** if the act, decision or provision—

- (a) does not limit a human right; or
- (b) limits a human right but does so in accordance with section 9(2).

### 4—Meaning of *public authority*

(1) For the purposes of this Charter, a **public authority** is—

- (a) an administrative unit of the Public Service; or

- 
- (b) an agency or instrumentality of the Crown; or
- (c) a public official within the meaning of the *Public Sector Act 2009*; or
- (d) an entity established by a statutory provision that has functions of a public nature; or
- 5 (e) an entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under contract or otherwise); or
- (f) South Australia Police; or
- (g) a council within the meaning of the *Local Government Act 1999* and  
10 councillors and members of council staff within the meaning of that Act; or
- (h) a Minister; or
- (i) members of a Parliamentary committee when the committee is acting in an administrative capacity; or
- (j) any other person or body declared by the regulations to be a public authority,  
15 but does not include—
- (k) Parliament or a person exercising functions in connection with proceedings in Parliament; or
- (l) a court or tribunal except when it is acting in an administrative capacity; or
- 20 (m) an entity declared by the regulations not to be a public authority for the purposes of this Charter.
- (2) In determining if a function is of a public nature the factors that may be taken into account include—
- (a) that the function is conferred on the entity by or under a statutory provision;
- 25 (b) that the function is connected to or generally identified with functions of government;
- (c) that the function is of a regulatory nature;
- (d) that the entity is publicly funded to perform the function;
- 30 (e) that the entity that performs the function is a company (within the meaning of the *Corporations Act 2001* of the Commonwealth) all of the shares in which are held by or on behalf of the State.
- (3) To avoid doubt—
- (a) the factors listed in subsection (2) are not exhaustive of the factors that may be taken into account in determining if a function is of a public nature; and
- 35 (b) the fact that 1 or more of the factors set out in subsection (2) are present in relation to a function does not necessarily result in the function being of a public nature.
- (4) For the purposes of subsection (1)(e), an entity may be acting on behalf of the State or a public authority even if there is no agency relationship between the entity and the State or public authority.

- (5) For the purposes of subsection (1)(e), the fact that an entity is publicly funded to perform a function does not necessarily mean that it is exercising that function on behalf of the State or a public authority.

## **5—Human rights in this Charter in addition to other rights and freedoms**

5 A right or freedom not included in this Charter that arises or is recognised under any other law (including international law, the common law, the Constitution of the Commonwealth and a law of the Commonwealth) must not be taken to be abrogated or limited only because the right or freedom is not included in this Charter or is only partly included.

## **10 6—Application**

- (1) Only persons have human rights, and all persons have the human rights set out in Part 3.
- (2) This Charter binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- 15 (3) This Charter applies to—
- (a) the Parliament, to the extent that the Parliament has functions under Part 4 Division 1 and Division 2; and
  - (b) courts and tribunals, to the extent that they have functions under Part 3 and Part 4 Division 3; and
  - 20 (c) public authorities, to the extent that they have functions under Part 4 Division 4.
- (4) This Charter does not apply to—
- (a) an Act, or a provision of an Act, enacted before the commencement of this section (however, to avoid doubt, this Charter does apply in relation to an amendment or substitution of such an Act or provision introduced into the Parliament or enacted after that commencement); or
  - 25 (b) a Bill that has been introduced into Parliament but has not yet been passed or assented to by the Governor; or
  - (c) any legal proceedings commenced before the commencement of this section.
- 30 (5) Part 4 Division 4 does not apply to any act or decision made by a public authority before the commencement of that Division.

## **Part 2—Objects and principles**

### **7—Objects**

The objects of this Act include the protection and promotion of human rights by—

- 35 (a) setting out the human rights that Parliament specifically seeks to protect and promote; and
- (b) ensuring that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights; and

- (c) imposing an obligation on all public authorities to act in a way that is compatible with human rights; and
- (d) requiring statements of compatibility with human rights to be prepared in respect of all Bills introduced into Parliament and enabling the Legislative Review Committee to report on such compatibility; and
- (e) conferring jurisdiction on the Supreme Court to declare that a statutory provision cannot be interpreted consistently with a human right and requiring the relevant Minister to respond to that declaration.

## 8—Principles

The following principles are to be observed in the operation, administration and enforcement of this Act:

- (a) human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom;
- (b) human rights belong to all people without discrimination, and the diversity of the people of South Australia enhances our community;
- (c) human rights come with responsibilities and must be exercised in a way that respects the human rights of others;
- (d) human rights have a special importance for the Indigenous people of South Australia, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.

## Part 3—Human rights

### 9—Human rights—what they are and when they may be limited

- (1) This Part sets out the human rights that Parliament specifically seeks to protect and promote.
- (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
  - (a) the nature of the right; and
  - (b) the importance of the purpose of the limitation; and
  - (c) the nature and extent of the limitation; and
  - (d) the relationship between the limitation and its purpose; and
  - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.
- (3) Nothing in this Charter gives a person, entity or public authority a right to limit (to a greater extent than is provided for in this Charter) or destroy the human rights of any person.

### 10—Recognition and equality before the law

- (1) Every person has the right to recognition as a person before the law.

- (2) Every person has the right to enjoy human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.
- 5 (4) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

### 11—Right to life

Every person has the right to life and has the right not to be arbitrarily deprived of life.

### 12—Protection from torture and cruel, inhuman or degrading treatment

10 A person must not be—

- (a) subjected to torture; or
- (b) treated or punished in a cruel, inhuman or degrading way; or
- (c) subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent.

### 13—Freedom from forced work

- 15 (1) A person must not be held in slavery or servitude.
- (2) A person must not be made to perform forced or compulsory labour.
- (3) For the purposes of subsection (2) forced or compulsory labour does not include—
- 20 (a) work or service normally required of a person who is under detention because of a lawful court order or who, under a lawful court order, has been conditionally released from detention or ordered to perform work in the community; or
- (b) work or service required because of an emergency threatening the South Australian community or a part of the South Australian community; or
- 25 (c) work or service that forms part of normal civil obligations.
- (4) In this section—
- court order* includes an order made by a court of another jurisdiction.

### 14—Freedom of movement

30 Every person lawfully within South Australia has the right to move freely within South Australia and to enter and leave it and has the freedom to choose where to live.

### 15—Privacy and reputation

A person has the right—

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

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**16—Freedom of thought, conscience, religion and belief**

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
- (a) the freedom to have or to adopt a religion or belief of their choice; and
  - (b) the freedom to demonstrate their religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits their freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

**17—Freedom of expression**

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside South Australia and whether—
- (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by the person.
- (3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—
- (a) to respect the rights and reputation of other persons; or
  - (b) for the protection of national security, public order, public health or public morality.

**18—Peaceful assembly and freedom of association**

- (1) Every person has the right of peaceful assembly.
- (2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

**19—Adequate housing**

Every person has the right to adequate housing.

**20—Health**

Every person has the right to the enjoyment of the highest attainable standard of physical and mental health.

**21—Healthy and sustainable environment**

Every person has the right to a healthy and sustainable environment.

## 22—Protection of families and children

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.
- (2) Every child has the right, without discrimination, to such protection as is in the child's best interests and is needed by the child by reason of being a child.

## 23—Education

Every person has the right to education.

## 24—Taking part in public life

- (1) Every person in South Australia has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives.
- (2) Every eligible person has the right, and is to have the opportunity, without discrimination—
  - (a) to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors; and
  - (b) to have access, on general terms of equality, to the South Australian public service and public office.

## 25—Economic, social, cultural, civil and political rights

Every person has the right to enjoy economic, social, cultural, civil and political rights.

## 26—Cultural rights

- (1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.
- (2) First Nations persons hold distinct cultural rights and must not be denied the right, with other members of their community—
  - (a) to enjoy their identity and culture; and
  - (b) to maintain and use their language; and
  - (c) to maintain their kinship ties; and
  - (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

## 27—Property rights

A person must not be deprived of their property other than in accordance with law.

## 28—Right to liberty and security of person

- (1) Every person has the right to liberty and security.
- (2) A person must not be subjected to arbitrary arrest or detention.

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- (3) A person must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law.
- (4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
- (5) A person who is arrested or detained on a criminal charge—
- (a) must be promptly brought before a court; and
  - (b) has the right to be brought to trial without unreasonable delay; and
  - (c) must be released if paragraph (a) or (b) is not complied with.
- (6) A person awaiting trial must not be automatically detained in custody, but their release may be subject to guarantees to attend—
- (a) for trial; and
  - (b) at any other stage of the judicial proceeding; and
  - (c) if appropriate, for execution of judgment.
- (7) Any person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of their detention, and the court must—
- (a) make a decision without delay; and
  - (b) order the release of the person if it finds that the detention is unlawful.
- (8) A person must not be imprisoned only because of the person's inability to perform a contractual obligation.

### **29—Humane treatment when deprived of liberty**

- (1) All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary.
- (3) An accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.

### **30—Children in the criminal process**

- (1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.
- (2) An accused child must be brought to trial as quickly as possible.
- (3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

### **31—Fair hearing**

- (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

(2) Despite subsection (1), a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than this Charter.

(3) All judgments or decisions made by a court or tribunal in a criminal or civil proceeding must be made public unless the best interests of a child otherwise requires or a law other than this Charter otherwise permits.

### 32—Rights in criminal proceedings

(1) A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

(2) A person charged with a criminal offence is entitled without discrimination to the following minimum guarantees—

(a) to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that the person speaks or understands; and

(b) to have adequate time and facilities to prepare a defence and to communicate with a lawyer or advisor chosen by the person; and

(c) to be tried without unreasonable delay; and

(d) to be tried in person, and to defend themselves personally or through legal assistance chosen by themselves or, if eligible, through legal assistance provided by the Legal Services Commission under the *Legal Services Commission Act 1977*; and

(e) to be told, if the person does not have legal assistance, about the right, if eligible, to legal assistance under the *Legal Services Commission Act 1977*; and

(f) to have legal assistance provided if the interests of justice require it, without any costs payable by the person if they meet the eligibility criteria set out in the *Legal Services Commission Act 1977*; and

(g) to examine, or have examined, witnesses against the person, unless otherwise provided for by law; and

(h) to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses for the prosecution; and

(i) to have the free assistance of an interpreter if the person cannot understand or speak English; and

(j) to have the free assistance of assistants and specialised communication tools and technology if the person has communication or speech difficulties that require such assistance; and

(k) not to be compelled to testify against themselves or to confess guilt.

(3) A child charged with a criminal offence has the right to a procedure that takes account of the age of the child and the desirability of promoting the child's rehabilitation.

(4) Any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.

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

A person must not be tried or punished more than once for an offence in respect of which the person has already been finally convicted or acquitted in accordance with law.

### **34—Retrospective criminal laws**

- (1) A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.
- (2) A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.
- 10 (3) If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, that person is eligible for the reduced penalty.
- (4) Nothing in this section affects the trial or punishment of any person for any act or omission which was a criminal offence under international law at the time it was done or omitted to be done.

## **15 Part 4—Application of human rights in South Australia**

### **Division 1—Scrutiny of new legislation**

#### **35—Statements of compatibility**

- (1) A member of Parliament who proposes to introduce a Bill into a House of Parliament must cause a statement of compatibility to be prepared in respect of that Bill.
- 20 (2) A member of Parliament who introduces a Bill into a House of Parliament, or another member acting on their behalf, must cause the statement of compatibility prepared under subsection (1) to be laid before the House of Parliament into which the Bill is introduced before giving the second reading speech on the Bill.
- (3) A statement of compatibility must state—
  - 25 (a) whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible; and
  - (b) if, in the member's opinion, any part of the Bill is incompatible with human rights, the nature and extent of the incompatibility.
- 30 (4) A statement of compatibility made under this section is not binding on any court or tribunal.

#### **36—No effect on South Australian law**

A failure to comply with section 35 in relation to any Bill that becomes an Act does not affect the validity, operation or enforcement of that Act or of any other statutory provision.

#### **35 37—Consideration by Legislative Review Committee**

Each Bill introduced into Parliament is, by force of this section, referred to the Legislative Review Committee, and the Committee must consider each Bill and report to both Houses of Parliament as to whether the Bill is, in the opinion of the Committee, incompatible with human rights.

## **Division 2—Override declaration**

### **38—Override by Parliament**

- 5 (1) Parliament may expressly declare in an Act that the Act, or a provision of the Act, has effect despite being incompatible with 1 or more of the human rights or despite anything else set out in this Charter.
- (2) If an override declaration is made in respect of an Act or a provision of an Act, that declaration must be taken to extend to any statutory instrument made under or for the purpose of that Act or provision.
- 10 (3) A member of Parliament who introduces a Bill containing an override declaration, or another member acting on their behalf, must make a statement to the Legislative Council or the House of Assembly (as the case requires) explaining the exceptional circumstances that justify the inclusion of the override declaration.
- (4) It is the intention of Parliament that an override declaration will only be made in exceptional circumstances.
- 15 (5) A statement under subsection (3) must be made—
- (a) during the second reading speech for the Bill that contains the override declaration; or
  - (b) after not less than 24 hours notice is given of the intention to make the statement but before the third reading of the Bill; or
  - 20 (c) with the leave of the Legislative Council or the House of Assembly (as the case requires) at any time before the third reading of the Bill.
- (6) If an override declaration is made in respect of a statutory provision, then to the extent of the declaration this Charter has no application to that provision.
- 25 (7) A provision of an Act containing an override declaration expires on the fifth anniversary of the day on which that provision comes into operation or on such earlier date as may be specified in that Act.
- (8) Parliament may, at any time, reenact an override declaration, and the provisions of this section apply to any reenacted declaration.
- 30 (9) A failure to comply with subsection (3) or (5) in relation to any Bill that becomes an Act does not affect the validity, operation or enforcement of that Act or of any other statutory provision.

## **Division 3—Interpretation of laws**

### **39—Interpretation of laws**

- 35 (1) So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.
- (2) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.

- (3) This section does not affect the validity of—
- (a) an Act or provision of an Act that is incompatible with a human right; or
  - (b) a statutory instrument or provision of a statutory instrument that is incompatible with a human right and is empowered to be so by the Act under which it is made.

#### **40—Referral to Supreme Court**

- (1) If, in a proceeding before a court or tribunal, a question of law arises that relates to the application of this Charter or a question arises with respect to the interpretation of a statutory provision in accordance with this Charter, that question may be referred to the Supreme Court if—
- (a) a party has made an application for referral; and
  - (b) the court or tribunal considers that the question is appropriate for determination by the Supreme Court.
- (2) If a question has been referred to the Supreme Court under subsection (1), the court or tribunal referring the question must not—
- (a) make a determination to which the question is relevant while the referral is pending; or
  - (b) proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question.
- (3) If a question is referred under subsection (1) by the Supreme Court or the District Court, the referral is to be made to the Court of Appeal.
- (4) Despite a provision of any other Act or law, or rules of court, if a question arises of a kind referred to in subsection (1), that question may only be referred in accordance with this section.

#### **41—Attorney-General's right to intervene**

- (1) The Attorney-General may intervene in, and may be joined as a party to, any proceeding before any court or tribunal in which a question of law arises that relates to the application of this Charter or a question arises with respect to the interpretation of a statutory provision in accordance with this Charter.
- (2) If the Attorney-General intervenes in a proceeding under this section, then, for the purpose of the institution and prosecution of an appeal from an order made in that proceeding, the Attorney-General may be taken to be a party to the proceeding.

#### **42—Notice to Attorney-General and Commissioner**

- (1) A party to a proceeding must give notice in the prescribed form to the Attorney-General and the Commissioner if—
- (a) in the case of a Supreme Court or District Court proceeding—a question of law arises that relates to the application of this Charter or a question arises with respect to the interpretation of a statutory provision in accordance with this Charter; or
  - (b) in any case—a question is referred to the Supreme Court or the Court of Appeal under section 40.

- (2) For the purpose of subsection (1), a notice is not required to be given to—
- (a) the Attorney-General if the State is a party to the relevant proceeding; or
  - (b) the Commissioner if the Commissioner is a party to the relevant proceeding.

### **43—Declaration of inconsistent interpretation**

- 5 (1) This section applies if—
- (a) in a Supreme Court proceeding a question of law arises that relates to the application of this Charter or a question arises with respect to the interpretation of a statutory provision in accordance with this Charter; or
  - (b) the Supreme Court has had a question referred to it under section 40; or
  - 10 (c) a matter before the Court of Appeal relates to a question of a kind referred to in paragraph (a).
- (2) Subject to any relevant override declaration, if in a proceeding the Supreme Court is of the opinion that a statutory provision cannot be interpreted consistently with a human right, the Court may make a declaration to that effect in accordance with this section.
- 15 (3) If the Supreme Court is considering making a declaration of inconsistent interpretation, it must ensure that notice in the prescribed form of that fact is given to the Attorney-General and the Commissioner.
- (4) The Supreme Court must not make a declaration of inconsistent interpretation unless the Court is satisfied that—
- 20 (a) notice in the prescribed form has been given to the Attorney-General and the Commissioner under subsection (3); and
  - (b) a reasonable opportunity has been given to the Attorney-General and the Commissioner to intervene in the proceeding or to make submissions in respect of the proposed declaration of inconsistent interpretation.
- 25 (5) A declaration of inconsistent interpretation does not—
- (a) affect in any way the validity, operation or enforcement of the statutory provision in respect of which the declaration was made; or
  - (b) create in any person any legal right or give rise to any civil cause of action.
- 30 (6) The Supreme Court must cause a copy of a declaration of inconsistent interpretation to be given to the Attorney-General—
- (a) if the period provided for the lodging of an appeal in respect of the proceeding in which the declaration was made has ended without such an appeal having been lodged, within 7 days after the end of that period; or
  - 35 (b) if on appeal the declaration is upheld, within 7 days after any appeal has been finalised.
- (7) The Attorney-General must, as soon as reasonably practicable, give a copy of a declaration of inconsistent interpretation received under subsection (6) to the Minister administering the statutory provision in respect of which the declaration was made, unless the relevant Minister is the Attorney-General.
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#### 44—Action on declaration of inconsistent interpretation

Within 6 months after receiving a declaration of inconsistent interpretation, the Minister administering the statutory provision in respect of which the declaration was made must—

- 5           (a) prepare a written response to the declaration; and
- (b) cause a copy of the declaration and of the response to it to be—
- (i) laid before each House of Parliament; and
- (ii) published in the Gazette.

#### Division 4—Obligations on public authorities

##### 10 45—Conduct of public authorities

- (1) Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.
- 15 (2) Subsection (1) does not apply if, as a result of a statutory provision or a provision made by or under an Act of the Commonwealth or otherwise under law, the public authority could not reasonably have acted differently or made a different decision.
- (3) This section does not apply to an act or decision of a private nature.
- (4) Subsection (1) does not require a public authority to act in a way, or make a decision, that has the effect of impeding or preventing a religious body (including itself in the case of a public authority that is a religious body) from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.
- 20 (5) In this section *religious body* means—
- (a) a body established for a religious purpose; or
- 25           (b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

##### 46—Legal proceedings

- 30 (1) If, otherwise than because of this Charter, a person may seek any relief or remedy in respect of an act or decision of a public authority on the ground that the act or decision was unlawful, that person may seek that relief or remedy on a ground of unlawfulness arising because of this Charter.
- (2) This section does not affect any right that a person has, otherwise than because of this Charter, to seek any relief or remedy in respect of an act or decision of a public authority, including a right—
- 35           (a) to seek judicial review of the act or decision; or
- (b) to seek a declaration of unlawfulness and associated relief including an injunction, a stay of proceedings or exclusion of evidence.
- (3) A person is not entitled to be awarded any damages because of a breach of this Charter.
- 40

- (4) Nothing in this section affects any right a person may have to damages apart from the operation of this section.

## **Part 5—Role of Equal Opportunity and Human Rights Commissioner under Charter**

### **47—Intervention by Equal Opportunity and Human Rights Commissioner**

- (1) The Equal Opportunity and Human Rights Commissioner may intervene in, and may be joined as a party to, any proceeding before any court or tribunal in which a question of law arises that relates to the application of this Charter or a question arises with respect to the interpretation of a statutory provision in accordance with this Charter.
- (2) If the Commissioner intervenes in a proceeding under this section, then, for the purpose of the institution and prosecution of an appeal from an order made in that proceeding, the Commissioner may be taken to be a party to the proceeding.

### **48—Functions of the Commissioner**

The Commissioner has the following functions in relation to this Charter—

- (a) to present to the Attorney-General an annual report that examines—
- (i) the operation of this Charter, including its interaction with other statutory provisions and the common law; and
  - (ii) all declarations of inconsistent interpretation made during the relevant year; and
  - (iii) all override declarations made during the relevant year; and
- (b) when requested by the Attorney-General, to review the effect of statutory provisions and the common law on human rights and report in writing to the Attorney-General on the results of the review; and
- (c) when requested by a public authority, to review that authority's programs and practices to determine their compatibility with human rights; and
- (d) to provide education about human rights and this Charter; and
- (e) to assist the Attorney-General in the review of this Charter under sections 51 and 52; and
- (f) to advise the Attorney-General on anything relevant to the operation of this Charter; and
- (g) any other function conferred on the Commissioner under this Charter or any other Act or by the Minister.

### **49—Powers**

The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Commissioner's functions under this Charter.

## 50—Reports to be laid before Parliament

- 5 (1) The Attorney-General must cause a copy of any report prepared by the Commissioner in accordance with section 48(a) or (b) (as amended under subsection (2), if applicable) to be laid before each House of Parliament on or before the sixth sitting day of that House after the Attorney-General has received the report.
- (2) The Attorney-General may amend a report received under section 48(a) or (b) if the Attorney-General considers it necessary to do so to prevent disclosure of—
- 10 (a) the identity of any person whose human rights have, or may have been, contravened; or
- (b) the identity of any person who may have contravened another person's human rights; or
- (c) information that could, in the Attorney-General's opinion, harm the public interest.
- 15 (3) If the Attorney-General amends the report in accordance with subsection (2), the Attorney-General must present a statement that the report has been amended when laying the report before Parliament in accordance with subsection (1).

## Part 6—Miscellaneous

### 51—Review of Charter after 4 years of operation

- 20 (1) The Attorney-General must cause a review to be made of the first 4 years of operation of this Charter and must cause a copy of a report of the review to be laid before each House of Parliament before the fifth anniversary of the commencement of this section.
- (2) A review under subsection (1) must include consideration as to whether—
- 25 (a) additional human rights should be included as human rights under this Charter, including but not limited to, rights under—
- (i) the International Covenant on Economic, Social and Cultural Rights; and
- (ii) the Convention on the Rights of the Child; and
- (iii) the Convention on the Elimination of All Forms of Discrimination against Women; and
- 30 (b) the right to self-determination should be included in this Charter; and
- (c) regular auditing of public authorities to assess compliance with human rights should be made mandatory; and
- (d) further provision should be made in this Charter with respect to proceedings that may be brought or remedies that may be awarded in relation to acts or
- 35 decisions of public authorities made unlawful because of this Charter.

### 52—Review of Charter after 8 years of operation

- 40 (1) The Attorney-General must cause a review to be made of the fifth to eighth years of operation of this Charter and must cause a copy of a report of the review to be laid before each House of Parliament before the ninth anniversary of the commencement of this section.

- (2) A review under subsection (1) must include consideration of the matters referred to in section 51(2).
- (3) A report under subsection (1) must include a recommendation as to whether any further review of this Charter is necessary.

5 **53—Regulations and fee notices**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
  - 10 (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
  - (b) fines, not exceeding \$10 000, for offences against the regulations; and
  - (c) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
  - 15 (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the  
20 Commissioner or any other specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the  
25 regulations—
  - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - 30 (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.
- (5) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- 35 (6) A fee notice may provide for the waiver, reduction or remission of a fee.

