

by Ankush Sharma

The International Law/Relations Section of the Queensland Law Society has prepared this information paper to inform members of the alternative models available for a proposed Queensland charter or bill of rights. It contains a brief summary of the key elements of established human rights instruments in the Australian Capital Territory, Victoria, New Zealand, Canada and the United Kingdom.

Members are invited to make submissions to the Society on:

(a) the model they consider most appropriate for Queensland, or

(b) which of the various elements from the models presented should form part of a Queensland charter or bill of rights.

Members should note that this paper presents only a summary of the various models and is not meant as a comprehensive study of all the possible forms a state charter or bill of rights could take.

### (1) Australian Capital Territory – *Human Rights Act 2004*<sup>1</sup>

The *ACT Human Rights Act 2004* (the ACTHRA) was the first “bill of rights” legislation in any Australian jurisdiction. It came into force on July 1, 2004, as an ordinary statute.

#### What human rights are protected?

Most of the rights protected by the ACTHRA are sourced from the International Covenant on Civil and Political Rights (ICCPR). Therefore, many of the legal principles applicable to the interpretation and operation of the ACTHRA are imported from international law (see for instance, s31).

The ACTHRA stipulates that it is not exhaustive of all the rights individuals may enjoy under domestic or international law (s7). A sample of the rights which do appear in Part 3 of the ACTHRA is as follows:

- (a) The right to life (s9)
- (b) The freedoms of movement (s13), expression (s16) and thought, conscience, religion and belief (s14)
- (c) The right to a fair trial (s21)
- (d) The right not to be tried or punished more than once (s24) and not to be subject to retrospective criminal laws (s25).

#### What (if any) limitations or restrictions of those rights are permitted?

The ACTHRA provides that human rights may only be subject to those limits which are reasonable, authorised by an ACT law and can be demonstrably justified in a free and democratic society (s28). This introduces the proportionality test. It requires that any proposed restriction of a human right is only to the extent necessary to achieve a legitimate aim.

#### Who is entitled to rights protection? And who is bound to observe human rights?

The ACTHRA states explicitly that it is only individuals who have human rights (s6). By implication, the ACTHRA applies only to natural persons and not to corporations or other incorporated bodies.

Whether the ACTHRA binds only public officials is not

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entirely clear. The extent of its reach is the subject of some debate. On the face of the statute, it appears the intention was to formally entrench a practice of interpreting ACT legislation consistently with human rights (s30). However, the ACTHRA’s reach may extend to capturing all conduct of public officials and, arguably, private conduct.<sup>2</sup>

#### How are human rights protected?

As the ACTHRA is an ordinary statute, it does not override other legislation. It does, however, provide a wide range of mechanisms by which human rights are protected. The more important of these are as follows:

(a) As mentioned, the ACTHRA requires legislation be interpreted in a way that is compatible with human rights, so far as that is consistent with its purpose (s30). This rule of construction is applicable to the judiciary and public decision makers.

(b) Also as previously mentioned, the ACTHRA permits consideration of foreign and international jurisprudence when interpreting human rights (s31).

(c) The Supreme Court may make a declaration of incompatibility where it is satisfied that an ACT law is not consistent with a human right. However, such a declaration does not render the offending law invalid or affect its operation or enforcement, nor does it affect the rights or obligations of anyone (s32). The Attorney-General must prepare a written response to the declaration of incompatibility and present it to the Legislative Assembly (s33).

(d) The ACTHRA requires the Attorney-General to prepare a written compatibility statement for bills presented to the Legislative Assembly. The compatibility statement must state whether the bill is consistent with human rights and, if it is not, how it is inconsistent (s37). The ACTHRA also requires a standing committee to report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly (s38). However, a failure to comply with either of those procedures will not affect the validity, operation or enforcement of an ACT law.

(e) The ACTHRA establishes the office of the human rights commissioner (s40). The commission does not receive complaints about alleged human rights infringements. It does however, along with the Attorney-General, possess a right of intervention in a proceeding before a court that involves the application of the ACTHRA (ss35 and 36).

(f) As of this year, the ACTHRA also permits individuals to commence proceedings against a public authority (as defined) where that person claims they are a victim of a contravention of the ACTHRA by the public authority (s40C).

A contravention occurs where the public authority:

- (i) acts in a way which is incompatible with a human right, or
- (ii) when making a decision, fails to give proper consideration to a relevant human right (s40B).

Significantly, courts and the legislative assembly are not considered public authorities (except in their administrative capacities), although police and public employees are (s40). Other than having the right to commence proceedings against the public authority, the affected individual may rely on their rights under the ACTHRA in other legal proceedings.

## What remedies are available when human rights are denied or violated?

### What remedies are available when human rights are denied or violated?

The ACTHRA contains no express remedy clause. However, in proceedings against a public authority for a contravention of the ACTHRA, the Supreme Court may grant the relief it considers appropriate except damages (unless there is a separate right to damages). Generally, it appears that the intention was for human rights arguments to be raised in proceedings and to provide fresh grounds on which a claim can be based. In this regard, it is expected that ACT courts will develop a remedial jurisdiction which may grant a range of remedies, such as injunctive relief, declaratory relief, mandamus and certiorari. Ascertaining the appropriate remedy is likely to depend on the nature of the proceedings and the breach in question.

## (2) Victoria – Charter of Human Rights and Responsibilities Act 2006<sup>3</sup>

The *Victorian Charter of Human Rights and Responsibilities Act 2006* (the Victorian Charter) came into force on January 1, 2007.

### What human rights are protected?

The human rights protected by the Victorian Charter are based largely on those contained in the *International Covenant on Civil and Political Rights* (ICCPR). They are numerous and include:

- (a) the right to life (s9)
- (b) the right to protection from torture and cruel, inhuman or degrading treatment (s10)
- (c) the freedoms of movement (s12), expression (s15) and thought, conscience, religion and belief (s14)
- (d) cultural and property rights (ss19-20)
- (e) the right to liberty and security of person (s21)
- (f) rights concerning criminal proceedings and in respect of retrospective criminal laws (ss25-27).

### What (if any) limitations or restrictions of those rights are permitted?

The Victorian Charter provides that 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 (s7). The provision goes on to list a number of factors which closely reflect elements of the internationally recognised test of proportionality. As is the case for the ACTHRA, the test in effect provides that restrictions on human rights are permissible so long as the

extent of the limitation is proportionate to the permitted objective sought to be achieved.

All the rights protected by the Victorian Charter are therefore subject to such reasonable limits. That is, there are no absolute rights.

### Who is entitled to rights protection? And who is bound to observe human rights?

Only natural persons (and not legal entities such as corporations) receive the benefit of the human rights protected and promoted by the Victorian Charter (ss3 and 6).

The Victorian Charter binds the three branches of government – the legislature, the judiciary and the executive (s6). However, each branch must observe the provisions of the Victorian Charter in different ways. How this is achieved is discussed under the next subheading.

### How are human rights protected?

The Victorian Charter binds each of the three branches of government to the protection and promotion of human rights.

The legislature must receive a “statement of compatibility” from the member of parliament who introduces a new bill (s28). The statement must state whether the bill is compatible with human rights and if so, how. Alternatively, if the member considers the bill is incompatible with human rights, the statement must state the nature and extent of that incompatibility. Significantly, a failure to provide a statement of compatibility does not affect the validity, operation or enforcement of the subject legislation (s29).

In addition to statements of compatibility, the Victorian Charter also requires a committee consider any proposed bill and report on whether it is compatible with human rights (s30).

Under the Victorian Charter, and so far as it is possible, courts and tribunals are required to interpret all statutory provisions in a way that is compatible with human rights. In doing so, consideration may be given to foreign and international jurisprudence (s32). Where the Supreme Court considers it cannot interpret a legislative provision consistently with a human right, it may make a declaration of inconsistent interpretation (s36). Where such a declaration is made, notice of it must be given to the Attorney-General and the Minister in charge of administering the affected statutory provision must prepare a written response for parliament within six months (s37). Significantly, a declaration of inconsistent interpretation does not affect the validity, operation or enforcement of the statutory provision in question, nor does it create any legal right or give rise to any civil cause of action (s36).

Where, in any proceeding, a question arises concerning the application of the Victorian Charter or the interpretation of a statutory provision in accordance with the Victorian Charter, the question may be referred to the Supreme Court for determination (s33). In the same circumstances, the Attorney-General has a right to intervene in the proceedings and be taken as a party to those proceedings (s35).

The third branch of government, the executive, is referred to in the Victorian Charter as “public authorities”. Its definition is broad enough to capture government Ministers, public servants, local councils, the Victoria Police and potentially a private corporation when exercising public functions on behalf of the state (s4). The Victorian Charter provides that it is unlawful for a public authority to act incompatibly with a human right or fail to give proper consideration to a relevant human right when making a decision (s38).

The Victorian Equal Opportunity and Human Rights Commission also receives an expanded role under the Victorian Charter (ss40-43). It has a wide range of functions which relate to monitoring and reporting on the implementation and operation of the Victorian Charter.

### **What remedies are available when human rights are denied or violated?**

The Victorian Charter does not create an independent cause of action (s39). However, a breach of its provisions can be of assistance in obtaining relief under some other cause of action. This may include excluding evidence obtained by a public authority in breach of a human right or construing an otherwise lawful act as unlawful by virtue of the requirement that legislation be interpreted consistently with human rights.

It also appears that the Victorian Charter permits a person to seek a judicial review, a declaration of unlawfulness, an injunction or a stay of proceedings in an existing cause of action, by relying on the provisions of the Victorian Charter to establish a further cause of action. However, the Victorian Charter specifically excludes an award of damages for any breach of its provisions, but does not affect any right of a person who may otherwise have a right to damages.

### **(3) New Zealand – New Zealand Bill of Rights Act 1990<sup>4</sup>**

The *New Zealand Bill of Rights Act 1990* (the NZBRA) came into force in 1990. In part, it seeks to affirm New Zealand's obligations under the ICCPR.

#### **What human rights are protected?**

The NZBRA largely reflects the content of the ICCPR. However, it is not an exact replica. The rights it affords protection to are grouped into four classes:

- (a) Rights concerning the life and security of the person. This includes a right not to be deprived of life (s8).
- (b) Democratic and civil rights. This includes freedom of religion (s13), expression (s14) and movement (s18).
- (c) Non-discrimination and minority rights. This includes freedom from discrimination (s19).
- (d) Rights concerning search, arrest and detention. This includes the rights of persons arrested or detained (s23) and minimum standards of criminal procedure (s25).

It is worth noting that the NZBRA does not affect any existing right or freedom, not having created any new rights (s28). It has merely confirmed existing common law rights.

#### **What (if any) limitations or restrictions of those rights are permitted?**

The rights and freedoms contained in the NZBRA may be subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society (s5).

#### **Who is entitled to rights protection? And who is bound to observe human rights?**

The rights and freedoms protected by the NZBRA can be enjoyed by all natural and legal persons, except where the provisions otherwise provide and only so far as is practicable (s29).

The NZBRA applies only to public bodies (s3). Specifically, its application extends only to those acts done by the legislative, executive or judicial branches of the government or by any person or body in the performance of any public function.

#### **How are human rights protected?**

The NZBRA ensures protections of the rights and freedoms in two key ways:

- (1) Where an enactment can be given a meaning which is consistent with the NZBRA, that meaning shall be the meaning preferred to any other (s6)
- (2) When a bill is introduced to parliament, the Attorney-General shall bring the parliament's attention to any provision in the bill which appears to be inconsistent with any of the rights and freedoms in the NZBRA (s7).

### **The New Zealand courts have determined the most effective and appropriate remedy based on the individual circumstances of each case.**

#### **What remedies are available when human rights are denied or violated?**

The NZBRA contains no express remedies clause for breaches of the protected rights and freedoms. However, the courts in New Zealand have applied a broad range of remedies, having taken the view that it is their positive duty to provide appropriate redress to persons whose rights have been infringed. The courts have therefore determined the most effective and appropriate remedy based on the individual circumstances of each case. As a result, courts have awarded a wide range of remedies, including:

- (a) Excluding evidence obtained through an infringement of a protected right
- (b) Issuing a stay of proceedings
- (c) An award of compensation
- (d) Referring a decision back to the original decision-maker
- (e) Reducing the sentence of an offender; and
- (f) Issuing injunctions requiring positive action or an order for return of property.

The *New Zealand Human Rights Act 1993* also provides a complaints mechanism (to the Human Rights Tribunal) for breaches of the freedom from discrimination provision in the NZBRA.

### **(4) Canada – Canadian Charter of Rights and Freedoms<sup>5</sup>**

The *Canadian Charter of Rights and Freedoms* (the Canadian Charter) came into effect in 1982. It forms part of the Constitution of Canada.

#### **What human rights are protected?**

The Canadian Charter guarantees a wide range of freedoms and rights. It ensures protection of fundamental freedoms, which include the freedoms of religion, expression and peaceful assembly (s2). It also provides protection for:

- (a) democratic rights, which guarantee Canadians a democratic government, such as the right to vote (ss3-5)
- (b) mobility rights, which afford Canadians the right to move from place to place (s6)
- (c) legal rights, which concern dealings with the justice system, such as the right not to be arbitrarily detained or imprisoned or various rights on arrest or detention (ss7-14), and
- (d) equality rights, which are directed at ensuring equality before and under the law and preventing

discrimination (s15).

There are also provisions concerning the official languages of Canada (ss16-22) and minority language educational rights (s23).

The Canadian Charter does not contain all of the rights which are afforded legal protection in Canada (s26), there being a number of other federal, provincial and territorial laws which create and protect rights and freedoms.

## The Canadian Charter allows the government to impose reasonable limits on the guaranteed rights and freedoms which can be demonstrably justified in a free and democratic society.

### What (if any) limitations or restrictions of those rights are permitted?

The Canadian Charter allows the government to impose reasonable limits on the guaranteed rights and freedoms which can be demonstrably justified in a free and democratic society (s1). The government is also permitted to make laws which are exempt from those provisions of the Canadian Charter concerning the fundamental freedoms, legal rights and equality rights (s33). Where a law containing such an exemption is made, it will expire after five years (unless re-enacted).

The Canadian Charter may be amended only when seven out of the 10 provincial legislatures agree to it and the population of those seven provinces make up at least half of the total population of Canada.

### Who is entitled to rights protection? And who is bound to observe human rights?

Any person in Canada is afforded the rights and freedoms contained in the Canadian Charter. This includes private corporations. However, some of the rights are available to Canadian citizens only – in particular, the right to vote and certain mobility rights.

The Canadian Charter applies only to Canada's federal and provincial governments. Therefore, only public authorities, and not private entities (such as private individuals or businesses), are bound to observe the Charter's rights and freedoms.

### How are human rights protected?

That the Canadian Charter forms part of the Canadian Constitution means that governments must ensure that any proposed laws are consistent with it. This is in addition to the remedial provisions of the Canadian Charter.

### What remedies are available when human rights are denied or violated?

There are three possible legal remedies available to a person whose rights or freedoms have been infringed or denied:

(a) they can apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances (s24(1))

(b) where evidence has been obtained in violation of any of the guaranteed rights or freedoms, a court can exclude that evidence because, having regard to all the circumstances, the admission of it would bring the administration of justice

into disrepute (s24(2))

(c) under the *Constitution Act 1982*, if a court finds that a law is inconsistent with the Canadian Charter, it can rule that the law is of no force or effect, to the extent of the inconsistency.

## (5) United Kingdom – Human Rights Act 1998<sup>6</sup>

The *United Kingdom Human Rights Act 1998* (the UKHRA) came into force in 2000. It gives further effect to the European Convention on Human Rights (the ECHR).

### What human rights are protected?

The UKHRA affords protection to most of the rights and fundamental freedoms set out in the ECHR and its specified Protocols (s1). Some of the key rights covered by the UKHRA include:

- (a) The right to life (Art.2 of the ECHR)
- (b) Freedom from torture or inhuman or degrading treatment (Art.3)
- (c) The right to a fair trial (Art.6)
- (d) No punishment without law (Art.7)
- (e) Freedoms of belief (Art.9), free expression (Art.10) and assembly and association (Art.11)
- (f) Freedom from discrimination (Art.14)
- (g) Rights concerning property, education and free elections (Arts 1-3 of the First Protocol) as well as the abolition of the death penalty (Art.1 of the Sixth Protocol).

It is significant that UK courts must take into account the jurisprudence developed by the European Court of Human Rights as well as the opinions and decisions of the European Commission of Human Rights when determining a question in connection with the rights protected by the UKHRA (s2).

### What (if any) limitations or restrictions of those rights are permitted?

While the UKHRA contains no express provision stipulating what restrictions are permitted (unlike, for instance, the Canadian Charter), there is an established distinction under the ECHR between absolute, limited and qualified rights. Absolute rights, such as the right to life, should never be interfered with by the state. Limited rights, such as the right to a fair trial, can be limited in the certain specified circumstances set out in the ECHR. Qualified rights, such as the right to religion and belief, may be restricted only if such interference has a basis in law, is necessary in a democratic society and is in furtherance of a permissible aim set out in the relevant Article, such as the prevention of crime or the protection of public order or health. Importantly, any interference with rights will only be justified if the limitation or restriction is proportionate to the achievement of the permissible aim.

### Who is entitled to rights protection? And who is bound to observe human rights?

Where a public authority commits an act against a person which is incompatible with any of the protected rights, the UKHRA allows the person to bring legal proceedings against that authority (s7).

The entitlement to bring the legal proceedings (or rely on the UKHRA in existing proceedings) is given to the same category of persons permitted to bring applications under the ECHR. Specifically, any person, non-governmental organisation or group of individuals is entitled to rights protection under the UKHRA so long as they are the victim of the unlawful act by the public authority.

On the other hand, it is public authorities who are compelled to observe the rights protected by the UKHRA. This includes courts, tribunals and any person whose functions are functions of a public nature, but does not include parliament (s6).

Although there is no direct application of the UKHRA between private parties, commentators have noted that as courts must act consistently with the protected rights, it is inevitable that the UKHRA will have some effect on the rights of persons in proceedings between private parties.

### How are human rights protected?

The UKHRA requires that legislation be read and given effect in a way which is compatible with the protected rights, so far as that is possible (s3). Where a court does find an inconsistency between a provision of legislation and a protected right, it may make a declaration of incompatibility (s4). However, such a declaration does not affect the continuing validity and operation of the legislation and is not binding on the parties to the proceedings in which it is made. That being said, a Minister may amend infringing legislation following a declaration of incompatibility if he or she considers there are compelling reasons to do so (s10).

The UKHRA also requires a Minister to make a written statement that a proposed Bill is compatible with the protected rights. If the Minister is unable to make such a statement of compatibility, he must make a statement to that effect and that the government nevertheless wishes to proceed with the Bill (s19).

### What remedies are available when human rights are denied or violated?

Where a court finds that the act of a public authority is unlawful, it may grant such relief or remedy as it considers just and appropriate, provided it is within its powers (s8). The relief may include an award of damages provided that it

is necessary to afford just satisfaction to the person in whose favour it is made.

### Concluding remarks

The purpose of this paper has been to inform members of the various elements of a possible Queensland statutory charter or bill of rights by breaking down and comparing the key features of existing human rights instruments in comparable jurisdictions. The Section emphasises that it is not necessary to advocate a model identical to any of those featured above. It may be that members will consider a model incorporating various components from the examples provided to be the most appropriate for Queensland.

To this end, the Section has also prepared an Executive Summary containing a concise comparison of the differences between the alternative models. It also features a table which contrasts the some of the key characteristics of weak and strong human rights instruments as is apparent from the preceding examination. Members may find this of some benefit when making submissions to the Society. ◆

*Ankush Sharma is a former member of the QLS International Law and Relations Section.*

#### Notes

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2 Andrew S Butler, 'The ACT Human Rights Act: A New Zealander's View'. July 2004. Accessible at <http://www.jcs.act.gov.au/HumanRightsAct/Publications/THE%20HUMAN%20RIGHTS%20ACT%20-%20A%20New%20Zealander%27s%20View.pdf>

3 Pamela Tate SC, 'The Charter of Human Rights and Responsibilities A Practical Introduction'. Paper to the Victorian Bar. March 7, 2007. Accessible at <http://www.hrlrc.org.au/files/OPMGZ2X-110/Tate%20-%20THE%20CHARTER%20OF%20HUMAN%20RIGHTS.pdf>;

Human Rights Law Resource Centre Ltd, 'Human Rights Law Resource Manual', Chapter 5 – The Victorian Charter of Human Rights and Responsibilities. September 2006. Accessible at <http://www.hrlrc.org.au/files/DY0SFK243S/Ch%205.pdf>

4 See <http://www.justice.govt.nz/pubs/reports/2004/bill-of-rights-guidelines/index.html>

5 See [http://www.pch.gc.ca/progs/pdp-hrp/canada/guide/overview\\_e.cfm](http://www.pch.gc.ca/progs/pdp-hrp/canada/guide/overview_e.cfm)

6 Department for Constitutional Affairs, 'A Guide to the Human Rights Act 1998: Third Edition', October 2006. Accessible at <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/act-study-guide.pdf>

# Executive Summary

## Alternative Models for a Queensland Charter or Bill of Human Rights

	<b>ACT</b> <i>Human Rights Act 2004</i>	<b>Victoria</b> <i>Charter of Human Rights and Responsibilities Act 2006</i>	<b>New Zealand</b> <i>New Zealand Bill of Rights Act 1990</i>	<b>Canada</b> <i>Canadian Charter of Rights and Freedoms</i>	<b>United Kingdom</b> <i>Human Rights Act 1998</i>
<b>What form does the protection take?</b>	Ordinary statute	Ordinary statute	Ordinary statute	Constitutional	Ordinary statute
<b>What rights are protected?</b>	Civil and political rights sourced predominantly from the ICCPR.	Civil and political rights sourced predominantly from the ICCPR.	Civil and political rights influenced by the ICCPR.	Broad range of rights including fundamental freedoms, democratic rights, mobility rights, legal rights and equality rights.	Most of the rights and fundamental freedoms set out in the ECHR and its protocols.
<b>How are those rights protected?</b>	<ul style="list-style-type: none"> <li>• Legislation interpreted compatibly with human rights</li> <li>• Declaration of incompatibility</li> <li>• Written compatibility statements for bills</li> <li>• Establishes office of the human rights commissioner</li> <li>• Affected individual can bring proceedings against public authority for acting inconsistently with human rights</li> </ul>	<ul style="list-style-type: none"> <li>• Courts and tribunals must interpret legislation compatibly with human rights</li> <li>• Supreme Court can make a declaration of inconsistent interpretation</li> <li>• Legislature must receive a statement of compatibility for each proposed bill</li> <li>• Unlawful for public authority to act incompatibly with a human right</li> </ul>	<ul style="list-style-type: none"> <li>• Where possible, legislation shall be given a meaning consistent with human rights</li> <li>• Any provision in a bill inconsistent with human rights shall be brought to the legislature's attention</li> </ul>	<ul style="list-style-type: none"> <li>• The government must ensure that any proposed laws are consistent with the Charter.</li> </ul>	<ul style="list-style-type: none"> <li>• Legislation interpreted compatibly with human rights</li> <li>• Declaration of incompatibility</li> <li>• Written compatibility statements for bills</li> </ul>
<b>What limitations or restrictions are permitted?</b>	Only those which are reasonable and can be demonstrably justified in a free and democratic society. Introduces the proportionality test.	Only those which are reasonable and can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Introduces the proportionality test.	Only those which are reasonable and can be demonstrably justified in a free and democratic society. Introduces the proportionality test.	Those which are reasonable and can be demonstrably justified in a free and democratic society. Introduces the proportionality test. Can make laws exempt from certain protected	No express provision but the distinction between absolute, limited and qualified rights applies. Introduces the proportionality test.

				rights but will expire after 5 years.	
<b>To whom does protection apply?</b>	Natural persons only. Appears to bind public officials only, but may extend to private conduct.	Natural persons only. Binds the three branches of government.	All natural and legal persons. It applies only to the government or persons performing public functions.	Any person in Canada (including corporations). Binds only public authorities.	Any person, non-governmental organisation or group of individuals. Binds public authorities.
<b>What are the remedies for rights violation?</b>	No express remedy clause but Supreme Court can grant relief it considers appropriate (except damages) in proceedings against public authority. Expected to develop a remedial jurisdiction.	No independent cause of action, but is a further ground in an existing cause of action. Specifically excludes an award of damages.	No express remedy clause but courts have developed a broad range of remedies. Also a complaints mechanism to Human Rights Tribunal.	A court may grant such relief or remedy as it considers just and appropriate. This may include excluding evidence obtained in violation of the protected rights or ruling that a law is of no force or effect to the extent of its inconsistency with the protected rights.	A court may grant such relief or remedy as it considers just and appropriate. This may include an award of damages.

ICCPR – International Covenant on Civil and Political Rights

ECHR – European Convention on Human Rights

### Distinguishing Between Weak and Strong Human Rights Regimes

It is worth drawing the distinction between weak and strong human rights instruments. Their different characteristics can be summarised as follows:

<b>Strong</b>	<b>Weak</b>
Usually forms part of the constitution and therefore is only capable of introduction or amendment by referendum.	Statutory.
Forbids parliament making any law which is inconsistent with human rights.	Parliament is required to subject new legislation to scrutiny to see whether it infringes any protected rights. The fact that it does, however, will not prevent its enactment.

Courts can invalidate a law which is found to be incompatible with human rights.	Courts can issue 'declarations of incompatibility' which identify a piece of legislation as inconsistent with human rights, but does not affect its continued validity.
Provide its own legal cause of action where a person's rights are infringed.	Only provides a further ground in an existing cause of action.
Can be enforced against public authorities and other private citizens.	Applies only to public authorities directly.