

A Human Rights Act for Queensland

How could a Human Rights Act assist older people?

A Human Rights Act will help to create a fair, just and equal society for everyone. When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Protections offered by a Human Rights Act will also have relevance for particular groups of people – including older people.

This factsheet provides examples of how human rights legislation in other places has improved the lives of older people.

Deprivation of liberty

An elderly woman with high needs moved in with her niece and the niece's husband in the UK. When her niece went on holiday with her husband, the woman was placed in a residential care home without her consent. The woman expressly and repeatedly stated that she did not want to be there and asked to leave. Because her stay was extended twice – to a period longer than 6 months – the Court found that this constituted a detention that was an unlawful deprivation of the woman's liberty, a breach of the UK's Human Rights Act and therefore illegal.

Source: Re AJ (DOLS) (2015) EWCOP 5, (2015) MHL0 11

Inhuman and degrading treatment

Workers in an English hospital ward were in the practice of strapping some of their patients into wheelchairs to stop them from walking. This was done because of a fear that the patients might fall and hurt themselves whilst walking. A consultant found a woman in the ward crying out in distress due to being strapped into a wheelchair. The consultant spoke to the staff and noted that, while their concerns were understandable, strapping patients into wheelchairs for long periods of time without their consent was inappropriate because their human rights had not been taken into account. The right to be free from degrading treatment was particularly relevant, especially in light of the patient's complaints. The staff agreed to unstrap the patient and, after a physiotherapist assessed her, they were encouraged to support her to improve her mobility.

Source: British Institute of Human Rights, The Human Rights Act – Changing lives, 2nd edition (2008) www.merseycare.nhs.uk/media/1750/older-people-guide-second-edition-final.pdf (p 17).

Right to family

An elderly couple had lived together for more than 65 years in England. The husband could not walk unaided and relied on his wife to help him move. The wife, meanwhile, was blind, and used her husband as her eyes. The husband fell ill and was moved into a residential care home. In spite of the wife's pleas, she was not allowed to move into the care home with him. She said, "We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership." A public campaign was launched, on the grounds of their right to respect for family life. The right to respect for family life is protected in the UK's Human Rights Act. The authority agreed to reverse its decision so the couple could be reunited.

Source: British Institute of Human Rights, *The Human Rights Act – Changing lives*, 2nd edition (2008) www.merseycare.nhs.uk/media/1750/older-people-guide-second-edition-final.pdf (p 20).

Equality before the law

Amendments to the law in Victoria allowed same sex couples to access superannuation death benefits from one another. Because the amendments operated prospectively, they discriminated against older people in same sex relationships. An older woman and her advocate wrote to the Human Rights Unit at the Department of Justice advocating for an amendment to the law based on the claim that the amendments should be consistent with the Charter of Human Rights and Responsibilities. As a result an amendment to the law was made so that same sex couples could access superannuation death benefits both retrospectively and prospectively.

Source: Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 <http://www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf> Case Study 6 (p 16).

Which rights?

The case studies above show that the rights that protect everyone have been used to protect the rights of older people. Many of these rights originally come from the United Nations International Covenant on Civil and Political Rights.

In order for the rights contained in the United Nations International Covenant on Civil and Political Rights to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.

