

Human rights and drug policy: Where to next?

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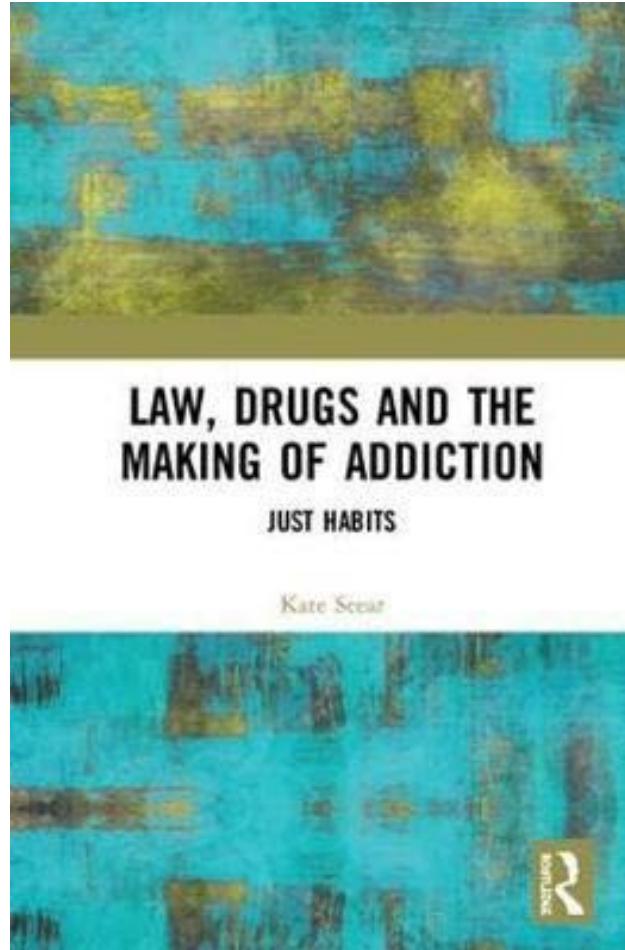
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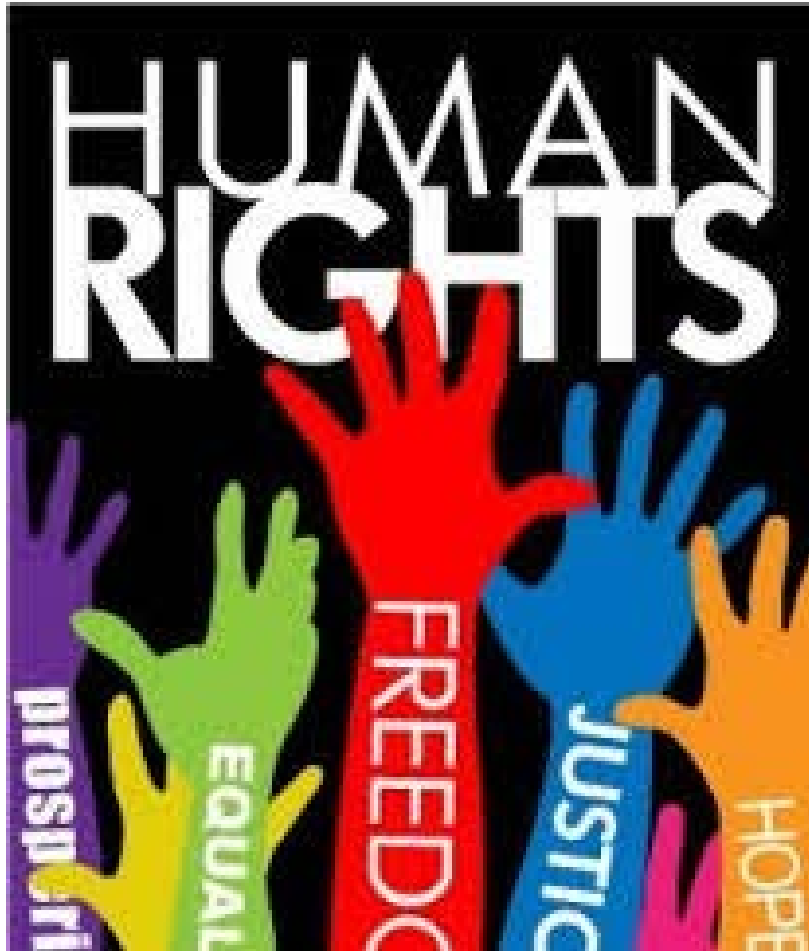
Dr Alex Wodak, President, Australian Drug Law Reform Foundation & Director, Drug & Alcohol Service, St Vincent's Hospital

Today's presentation



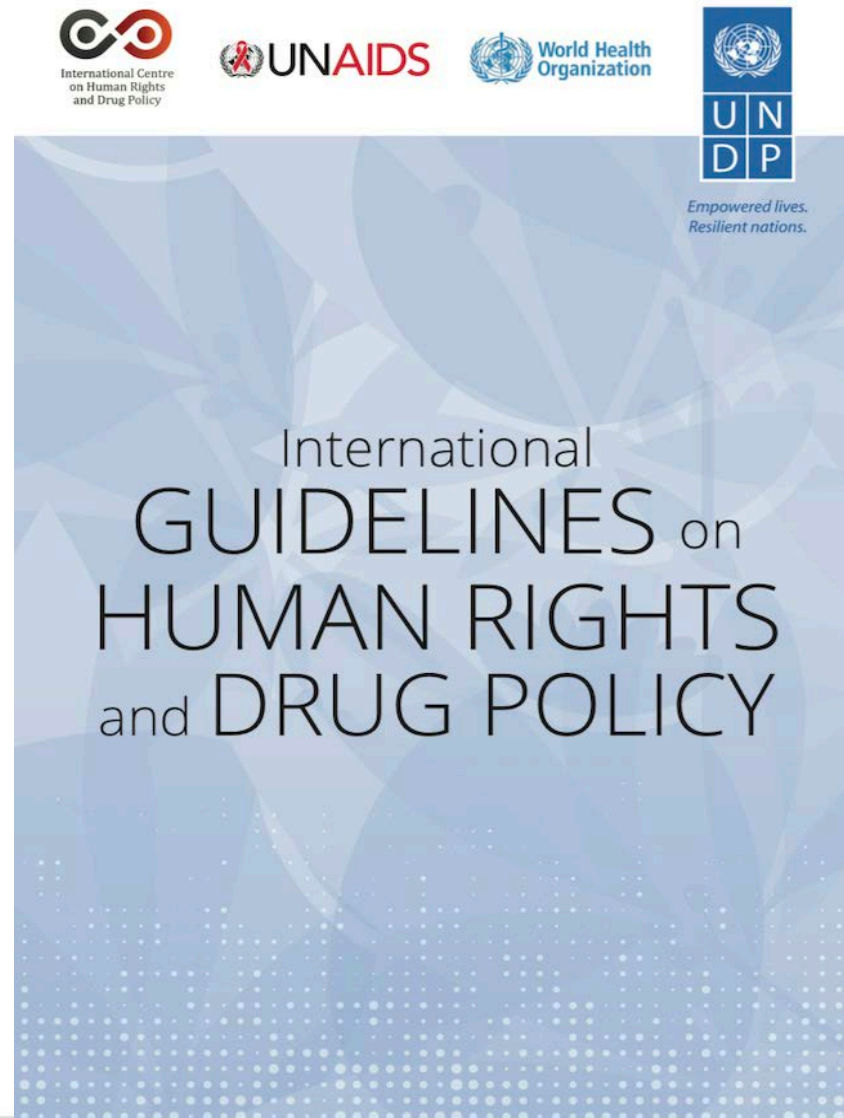
- This book focuses on numerous legal practices, including human rights processes.

Why human rights?



- UN landmark
communique in January
2019
- Many calls for human-
rights based approaches
- Human rights abuses
around the world
- Drug treatment for young
people
- Other activity in Australia
on human rights

The International guidelines on human rights and drug policy



What are human rights?

- *But what are human rights?*

- *And how do they work?*

The Universal Declaration of Human Rights 1948



THE UNIVERSAL DECLARATION OF Human Rights

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations between nations,

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

THE GENERAL ASSEMBLY

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

ARTICLE 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 3 Everyone has the right to life, liberty and security of person.

ARTICLE 4 No one shall be held in slavery or servitude; and slavery or servitude shall be prohibited in all their forms.

ARTICLE 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6 Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ARTICLE 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.

ARTICLE 9 No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10 Everyone is entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11 (1) Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public hearing in which he has had the opportunity to defend himself. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time that it was committed. Nor shall a person be punished more than the law applicable at the time the penal offence was committed.

ARTICLE 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

ARTICLE 13 (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.

ARTICLE 14 (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

ARTICLE 15 (1) Everyone has the right to nationality. (2) No one shall be arbitrarily deprived of this nationality; nor shall the right to change his nationality.

ARTICLE 16 (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights in marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to special protection and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE 17 (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

ARTICLE 18 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his faith, in worship, observance and observance through rites and observance of customs.

ARTICLE 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without restriction and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20 (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

ARTICLE 21 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by secret ballot and universal suffrage and shall be held by secret vote or by equivalent free voting procedures.

ARTICLE 22 Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and institutions of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23 (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family.

ARTICLE 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

ARTICLE 25 (1) Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ARTICLE 26 (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

ARTICLE 27 (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to take part in scientific, literary or artistic productions of which he is the author. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

ARTICLE 28 Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

ARTICLE 29 (1) Everyone has duties to the community, in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

ARTICLE 30 Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein, or to engage in any such activity, teaching, incitement and dissemination.

UNITED NATIONS

Adopted by the United Nations General Assembly, in the 48th meeting held at Geneva on 10 December 1948.
Revised by the Commission on Human Rights.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1 Equality

Everyone is born free and equal in dignity and with rights.



2 Freedom from Discrimination

You should never be discriminated against for any reason.



3 Life, Liberty and Security

Everyone has the right to life, liberty and personal security.



4 Freedom from Slavery

No-one shall be held in slavery or servitude.



5 Freedom from Torture

No-one shall be subjected to torture or to cruel or degrading treatment.



6 Recognition as Person Before Law

You have the right to be treated as a person in the eyes of the law.



7 Equality Before the Law

You have the right to be treated by the law in the same way as everyone else.



8 Remedy by Tribunal

You have the right to remedy by competent tribunal.



9 Freedom from arbitrary arrest

No-one shall be subject to arbitrary arrest, detention or exile.



10 Fair Public Hearing

You have the right to a fair public hearing.



11 Innocent until Proven Guilty

You have the right to be considered innocent until proven guilty.



12 Privacy

No-one has the right to interfere with your privacy, family, or home.



13 Freedom of Movement

You have the right to freedom of movement in and out of the country.



14 Asylum

You have the right to seek asylum in other countries from persecution.



15 Nationality

You have the right to a nationality.



16 Marriage and Family

You have the right to marriage and to raise a family.



17 Property

You have the right to own property.



18 Freedom of Belief

You have the right to freedom of belief and religion.



19 Freedom of Opinion

You have the right to freedom of opinion and expression.



20 Freedom of Assembly

You have the right to freedom of peaceful assembly and association.



21 Take Part in Government

You have the right to take part in the government of your country.



22 Social Security

You have the right to social security.



23 Work

You have the right to desirable work and to join trade unions.



24 Rest and Leisure

You have the right to rest and leisure.



25 Adequate Living Standard

You have the right to a decent life, including food, clothing, housing, and medical care.



26 Education

You have the right to education.



27 Participate in Cultural Life

You have the right to participate in the Cultural Life of Community.



28 Social Order

You have the Right to a Social Order that Articulates this Document.



29 Mutual Responsibility

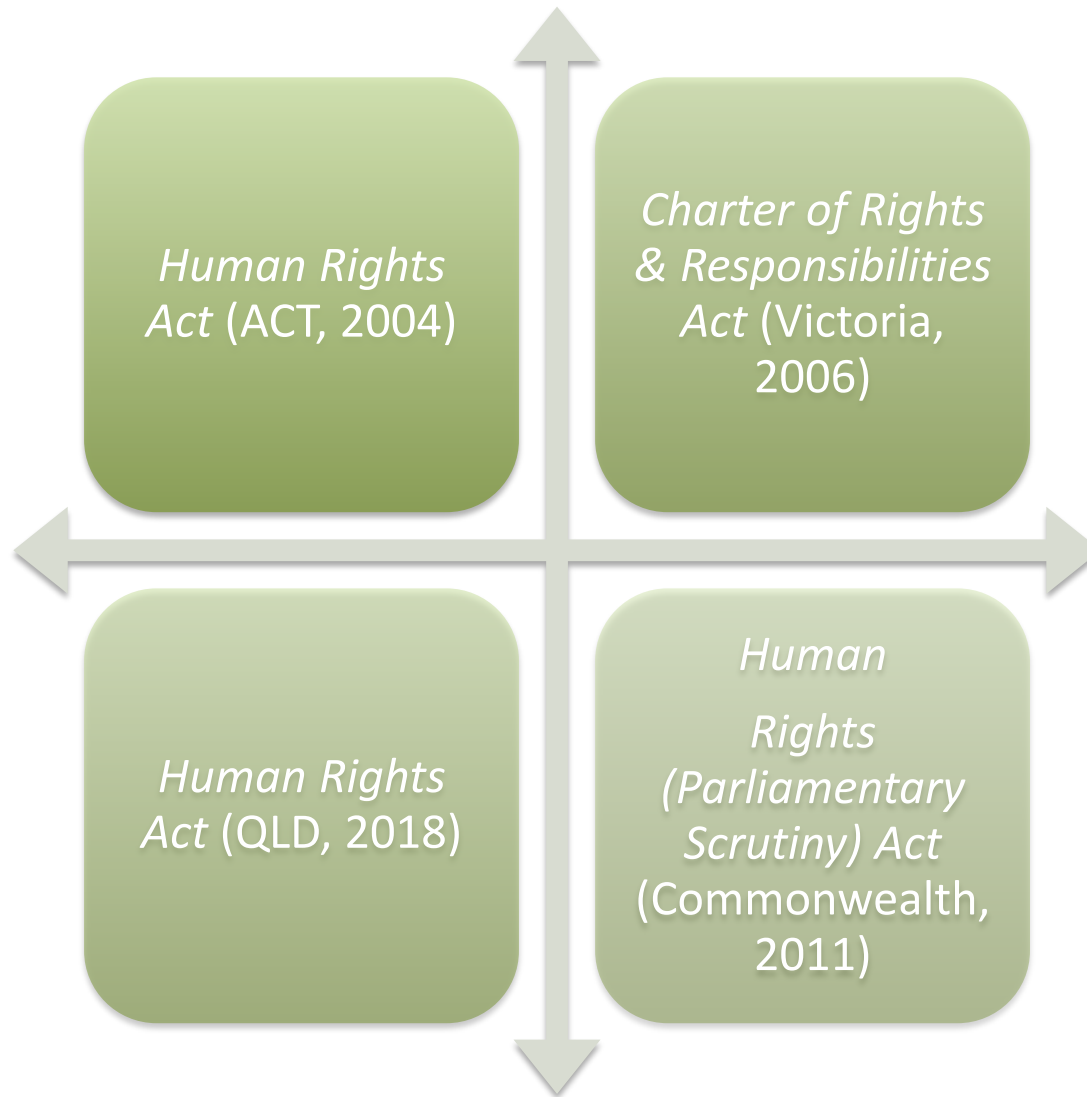
We all have a responsibility to the people around us and should protect their rights and freedoms.



30 Freedom from State or Personal Interference

There is nothing in this declaration that justifies any person or country taking away the rights to which we are all entitled.

Human rights in Australia

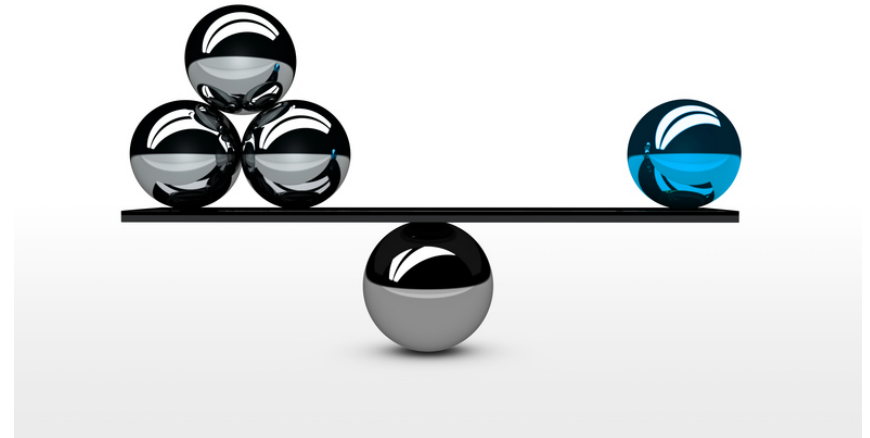


Victoria's rights

- The Victorian Charter protects 20 human rights including:
 - Your right to life (section 9)
 - Protection from torture, and cruel, inhuman or degrading treatment (section 10)
 - Your right to privacy and reputation (section 13)
 - Your right to freedom of thought, conscience, religion and belief (section 14).
 - Families and children (section 17)
 - Cultural rights (section 19)
 - Rights in criminal proceedings (section 25)

How do rights work?

- Parliaments are obliged to consider them whenever they propose new laws;
- This is the process of 'parliamentary scrutiny'.

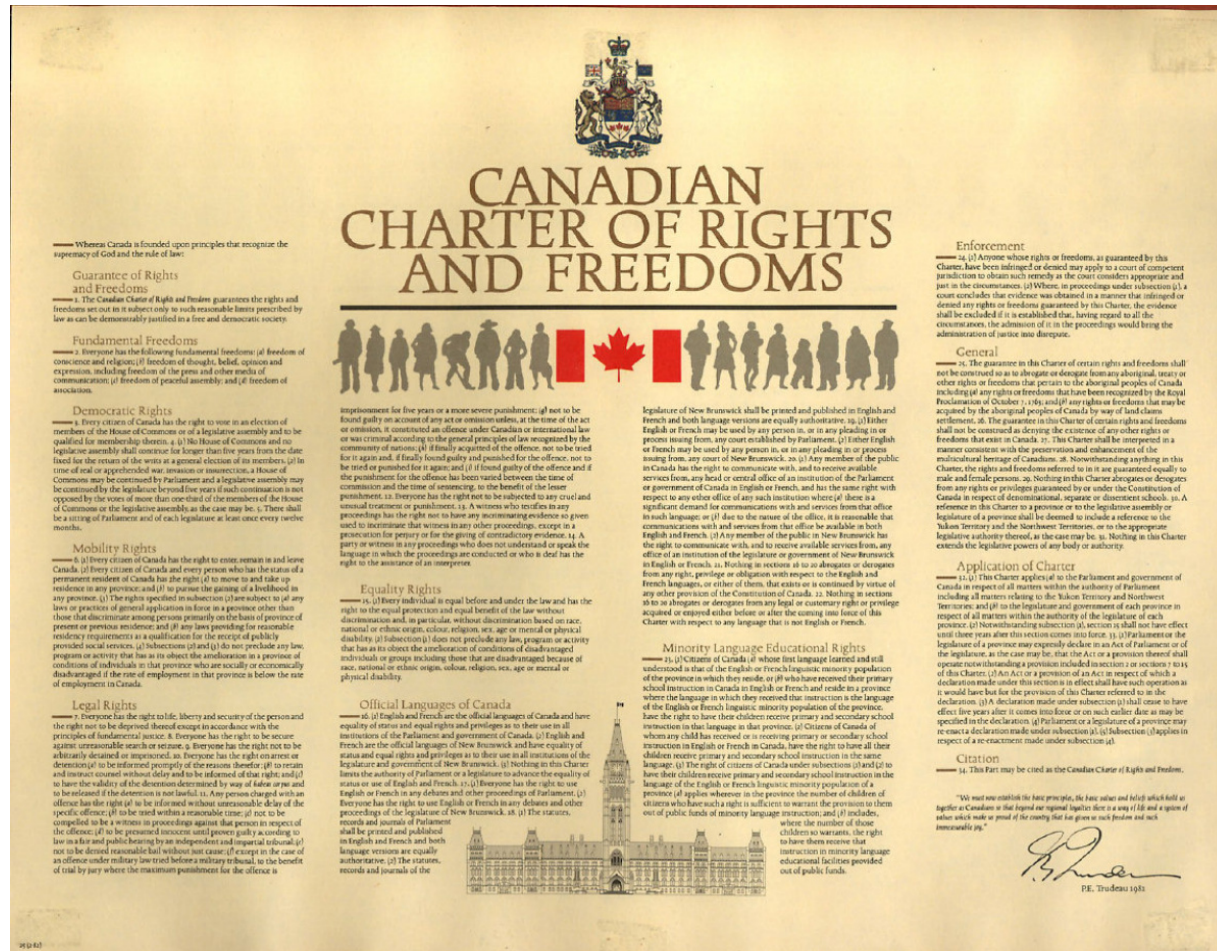


When can rights be limited?

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.

Canada: a contrasting case



Case study: Proposal to drug test welfare recipients

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Social Services Legislation Amendment (Drug Testing Trial) Bill 2018

No. , 2018

(Social Services)

**A Bill for an Act to amend the law relating to social
security, and for related purposes**

The Social Services Legislation Amendment (Drug Testing Trial) Bill

Two objectives:

- Maintain the integrity of, and public confidence in, the social security system by ensuring that tax-payer funded welfare payments are not being used to purchase drugs or support substance abuse;
- Provide new pathways for identifying recipients with drug abuse issues and facilitating their referral to appropriate treatment where required.

The rights infringed/engaged

- the right to social security,
- the right to an adequate standard of living and the rights of the family and child to special protection and assistance (Articles 9, 10 and 11 of the International Covenant on Economic, Social and Cultural Rights);
- the right to equality and non-discrimination (Article 2(2) of the International Covenant on Economic, Social and Cultural Rights);
- the right to equality before the law, the right to privacy and the rights of the child to special protection and assistance (Articles 10(3), 17 and 26 of the International Covenant on Civil and Political Rights);
- obligations under the Convention on the Rights of Persons with Disabilities;
- obligations under the Convention on the Elimination of all forms of Racial Discrimination; and
- obligations under the Convention on the Rights of the Child.

Other factors?



Faces of Unemployment

September 2018



What is a 'public authority'?

- Public authorities must act compatibly with the Charter;
- 'Core' public authorities include Ministers, Government departments, public officials and servants, Vic police, local governments & statutory bodies;
- 'Functional' public authorities: entities discharging 'functions of a public nature on behalf of the state or a public authority' (s.4(1)(c));

Functional public authorities

- *Metro West v Sudi* [2009] VCAT 2025:
 - 'the definition of "public authority" in section 4 must be given a wide and generous interpretation which is consistent with the central purpose of the Charter to protect and promote human rights';
 - Obligations cannot be avoided by outsourcing: **'The state cannot shirk its human rights responsibilities by implementing its programs and policies through private entities acting on its behalf'**.

How can we better consider rights?

- Undertake an audit
- Seek external guidance and advice
- Advocate for better rights compliance when in dialogue with government
- Mention human rights in submissions to inquiries
- Seek out the work of experts who have written on these issues
- Look at the *International guidelines on human rights and drug policy*

What do the *International guidelines on human rights and drug policy* say?

- Social security should not be denied to people who experience drug problems;
- Children should not be removed from parents solely because of drug use or dependence;
- States should take positive measures to increase the life expectancy of people who use drugs, including through facilities, goods and services;

What do the *International guidelines on human rights and drug policy* say?

- States should immediately close centres which require compulsory drug treatment and replace them with voluntary services;
- The use and cultivation of drugs for religious, spiritual or cultural purposes should not be interfered with; and
- States should consider decriminalisation of drugs.

PLUS MANY MORE EXAMPLES APPEAR IN THE GUIDELINES

Conclusions

- Great enthusiasm for human rights for drug policy futures.
- But Australia's system appears to be less effective.
- Ideas about drugs and the people who use them are important to rights interpretations.
- We need to engage critically with governments on how they interpret human rights.
- Do we need a national bill of rights?