



**National Human Rights Consultation Report:
Economic, Social and Cultural Rights
Findings and recommendations**

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ESC rights ‘matter most’:

- **‘The most basic economic and social rights ... matter most to Australians, and they matter most because they are the rights at greatest risk, especially for vulnerable groups in the community.’
(pg 344)**

Key recommendations on ESC rights:

- Any right contained in 7 listed IN agreements (including ICESCR) should be protected and promoted. But what does this require? (17)
- A HRA should be enacted which includes a range of specified rights (non-derogable and C&P). Silent on whether ESC rights should be included (24, 25)
- **If** ESC rights are listed, they should **not** be **justiciable** (i.e. able to be heard by the courts) (22)
- **Rather**, ESC rights complaints to be heard by the AHRC (22)

Key recommendations on ESC rights (cont):

- If ESC rights are included in HRA, **priority** to be given to right to adequate standard of living, health, education (22)
- HRA to contain an interpretive provision but **not** to apply in relation to ESC rights (28)
- Cth public authorities required to **act** consistently with C&P rights, but **not** ESC rights (30)
- However, public authorities required to give proper **consideration** to C&P **and** ESC rights (30)

Key recommendations on ESC rights (cont):

- Individual cause of action in a **court** available **only** in respect of C&P rights (31)
- Interim (then definitive) list of rights to include **selected** ESC rights (5)
- Audit of legislation, policies and practices to include selected ESC rights in list (4)

Key recommendations on ESC rights (cont):

- Statement of compatibility for bills of parliament to refer to selected ESC rights in list (6)
- *ADJR* to be amended to make IN human rights obligations a relevant consideration, including ICESCR (11)
- In absence of HRA, *Acts Interpretation Act* to require legislation be interpreted consistently with list of rights (selected ESC rights) (12)
- AHRC functions to include ESC rights (13)

Key recommendations on ESC rights (cont):

- Human rights **education** to be based on IN HR obligations as well as rights implemented domestically – includes full range of ESC rights
- Committee proposes a ‘readily comprehensible list of rights and responsibilities which is non-legally binding’ and includes responsibility to ‘ensure that we are attentive to the **needs** of our fellow human beings and contribute according to our means’

Other findings on ESC rights

- **Colmar Brunton report showed that ESC rights were at top of the list of rights considered most important by Australian community (95% - health care; 96% - adequate standard of living)**
- **Right most mentioned in submissions was right to health**
- **Focus groups identified a number of ESC rights as ‘unconditional and not to be limited’**
- **‘considerable number’ of submissions argued ESC rights should *not* be given legal protection**

Loose threads/ Unresolved issues?

- **Not clear whether definitive list of rights would include all ESC rights or only selected rights in interim list (5)**
- **ESC rights missing from proposed interim list include: right to work; social security; to form and join trade unions; take part in cultural life**
- **Inconsistency between recommendations on *Acts Interpretation Act* and HRA (12 and 28)**

Conclusions

- **Despite weaker legal protections for ESC rights than C&P rights, there is a strong message that ESC rights matter and should be better protected**
- **Range of recommendations on ESC rights which would significantly improve the policy and legislative process**