

# Human Rights: what, how, which and whose?

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**Securing Territorians Rights:  
Statehood and a Bill of Rights**

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# Outline

- *What* are “human rights”?
- *Institutionalising* human rights: *how*?
- *Which* rights and *whose* rights?



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# *What are “human rights”?*

- Human rights treaties are not “human rights”
- “Human rights” are moral claims
- Human rights are:
  - Universal
  - Important
  - Relate to fundamental well-being of human beings
  - Establish minimal norms for political society
  - Capable of practical recognition



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# *What are human rights?*

- rights associated with physical security
- the right to a minimally adequate share of resources
- a right to a basic education
- basic rights of due process and the rule of law
- a right to political participation
- basic liberties of conscience, expression, and association
  - (Mandle 2006)



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# Institutionalising human rights



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- moral claims can be institutionalised as social rights or legal rights
- societal rights before legal rights
- first: human rights education
- then: improving democratic institutions
- last: human rights as legal rights

# Improving democratic institutions



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- law-makers should know about
  - the extent to which rights are realised and not realised in the community
  - the impact of legislative proposals on rights
  - the impact of legislation and government action on rights

# Improving democratic institutions



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- human rights integrated into the policy process
- ministers take responsibility for human rights impact
- ministers and agencies report on human rights realisation
- parliamentary committee on human rights
- strong and independent human rights commission

# Legal mechanisms

- legislation must be interpreted in line with human rights
- government (and some others) must comply with human rights
- judicial remedies for breach of human rights
- anti-discrimination commissions and the ombudsman

# Legal mechanisms

- no striking down of legislation
- enabling legislatures to respond to courts
  - improved declarations of incompatibility
  - improved override provision
- improved remedies provision
- common law
- judicial and professional education



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# Whose rights?

- human rights as universal rights
- right to be free from discrimination
- cultural rights



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# *Which rights?*

- economic, social and cultural rights are rights
- role of human rights commission



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