

# A CHARTER OF RIGHTS FOR WA

A FUTURE  
FOR ALL OF US



# A CHARTER OF RIGHTS FOR WA

## Protecting the rights and freedoms of all Western Australians.

As Australians, we pride ourselves on enjoying so many freedoms, yet our laws do not adequately reflect, or protect them.

Australia is the only western democracy that does not protect the basic rights and freedoms of its people in either legislation or the constitution.

Without a Charter of Rights it is too easy for governments and corporations to abuse the rights and freedoms of minorities, communities, and the environment.

The Greens have a plan to protect the rights of all Western Australians in law by introducing a Charter of Rights.

### The Greens will:

- ▲ **Introduce a Charter of Human Rights to protect the rights of all Western Australians**



# WHY WE NEED A CHARTER

**Individual rights and freedoms are a hallmark of our democracy and yet, unlike other similar nations, they are not protected in our law or the Constitution.**

A Charter of Rights is essential in Western Australia to ensure that our broad range of rights are protected including personal rights and freedoms, digital rights, economic rights, the right to a clean environment, and conventional civil and legal rights.

The government is not always required to make decisions that uphold our human rights. Too often people are denied their right to education, or their right to equality before the law, because of discrimination and lack of access.

These rights that many of us take for granted and which are recognised at the international level, must be enshrined into Western Australian law.

**Queensland, the ACT and Victoria have acted to address this gap. It's time Western Australians also have statutory human rights protections.**

## A Human Rights Charter will:

- ▲ **Protect a broad range of rights including personal rights and freedoms, digital rights, economic rights, the right to a clean environment, and conventional civil and legal rights.**
- ▲ **Act as an important check on government power.**

- ▲ **Require public authorities to act in ways that are compatible with human rights.**

- ▲ **Ensure human rights are taken into account when new laws are developed.**

- ▲ **Guarantee access to essential services no matter who you are.**

A WA Charter of Rights will ensure we have the opportunity to shape our own lives and help all Western Australians to live with dignity and respect. **The Greens will establish a robust consultation process to determine the appropriate scope and form of a legislated Human Rights Charter for WA.**

## What rights could be included?

- ▲ Cultural rights
- ▲ The right to education
- ▲ The right to health care
- ▲ Children's rights
- ▲ The right to free assembly
- ▲ Freedom of expression
- ▲ Protection of reputation
- ▲ Privacy rights
- ▲ The right to work and rights at work
- ▲ Non-discrimination in the workplace and education
- ▲ Freedom of thought and belief
- ▲ The right to a fair trial and equality before the law
- ▲ The right to freedom from arbitrary detention
- ▲ The right to a clean environment

## By entrenching these rights in a Charter, Western Australia will have:

- ▲ Enhanced protection for First Nations heritage, cultural sites, language and education.
- ▲ Improved measures to uphold equality of opportunity in the workplace, ensuring employers are not allowed to discriminate on the basis of sex, sexual orientation, gender identity or religious belief. This would include ending the right of religious institutions to prevent members of the LGBTQIA+ community from employment.
- ▲ Safeguards to ensure legislation and policies do not restrict access to education or healthcare for anyone, but particularly vulnerable people. For example, ensuring people with disability or mental health issues have access to inclusive education that meets their needs.
- ▲ Better standards for a right to privacy. The Charter will be a crucial first step towards adequate privacy protections as it will ensure that no new laws can unjustifiably infringe upon the right to privacy.
- ▲ Ensure that housing is accessible to all regardless of disability, mental illness, sexuality, sex, ethnicity or gender identity.

## What have human rights laws achieved elsewhere?

- ▲ **Disability support** - In Victoria, eligibility for disability support services was expanded to include children on the autism spectrum, and in a separate case a 19 year old woman with cerebral palsy was able to obtain support services and case management, because of provisions in the Charter<sup>1</sup>.
- ▲ **Aged care** – Using human rights laws in the UK, aged care residents challenged a policy in some aged care homes which prevented many residents who were otherwise mobile from getting out of their chairs and moving freely. A human rights organisation successfully argued that the policy infringed on the right of residents not to be subject to inhuman or degrading treatment and the policy was changed<sup>2</sup>.
- ▲ **Discrimination** – In Victoria existence of the Charter assisted an elderly woman with a brain injury gain access to critical medical treatment. She was previously denied because she wasn't considered a priority due to her age<sup>3</sup>.
- ▲ **Housing** – In the ACT a family with a young child with special needs was returned to the High Needs Housing list after having been removed after the Civil and Administrative Tribunal found that their human rights were contravened by the decision to remove them from the list<sup>4</sup>.

▲ **Discrimination** – In the UK a mental health hospital practice of not using interpreters for involuntary patients who spoke little or no English was successfully changed after advocates argued that it breached a patient’s right not to be discriminated against on the basis of language and their right to liberty<sup>5</sup>.

▲ **Participation in public life** – In the UK a gay man with disability asked if his support worker could accompany him to a gay pub. This request was denied even though other service users were regularly supported to attend pubs and clubs of their choice. Human rights protections meant the man could challenge the decision by invoking his right to respect for private life and his right not to be discriminated against on grounds of sexual orientation.

▲ **First Nations cultural rights** - In *Cemino v Cannan* (2018) the Victorian Supreme Court found that courts must take into account the cultural rights of First Nations peoples when considering where to hold a sentencing hearing. Using provisions in the Victorian Charter a 22-year-old Yorta Yorta man successfully appealed to have his matter heard in the culturally-sensitive Koori Court rather than in the Magistrates’ Court<sup>6</sup>.

▲ **Respect for family life** – In the UK a mother was facing having her children taken into care when the family became homeless after fleeing domestic violence. An advocate helped the mother to challenge this claim on the basis of the right to respect for family life. As a result, the family were told they could remain together and that the social services department would provide the deposit if they could secure private rented accommodation<sup>7</sup>.

1. See [https://www.aph.gov.au/About\\_Parliament/Senate/Whats\\_On/Conferences/sl\\_conference/papers/williams](https://www.aph.gov.au/About_Parliament/Senate/Whats_On/Conferences/sl_conference/papers/williams)

2. British Institute of Human Rights, *The Human Rights Act – Changing Lives* (2nd ed, 2008) 15. Referred to in ‘Free and Equal: An Australian Conversation on Human Rights’

3. See [https://www.aph.gov.au/About\\_Parliament/Senate/Whats\\_On/Conferences/sl\\_conference/papers/williams](https://www.aph.gov.au/About_Parliament/Senate/Whats_On/Conferences/sl_conference/papers/williams)

4. Refer to *Anyar v Commissioner for Social Housing* (2017) ACAT 33. Referred to in ‘Free and Equal: An Australian Conversation on Human Rights’ at p8.

5. See <https://www.bihhr.org.uk/Handlers/Download.ashx?IDMF=3c184cd7-847f-41b0-b1d1-aac57d1eacc4>

6. Refer to *Cemino v Cannan* [2018] VSC 535, referred to in ‘Free and Equal: An Australian Conversation on Human Rights’

7. See <https://www.bihhr.org.uk/Handlers/Download.ashx?IDMF=3c184cd7-847f-41b0-b1d1-aac57d1eacc4>