

Constitutional, Legislative and Policy Framework

Democratic freedoms

Recent human rights advances

The Parliamentary Joint Committee on Human Rights (PJCHR) inquiry into Australia's Human Rights Framework and the Commission's *Free & Equal* report identified actions to fully protect human rights in Australia, with a focus on strengthening institutional protections.

Since 2021 there have been a number of significant national inquiries that set out, in concrete terms, what needs to be done to improve human rights outcomes across the country. In particular, the Commission notes the national human rights reform agenda that it has set out in the Free and Equal project (see further below). This project informed the recommendations of the Australian Parliamentary Joint Committee on Human Rights (PJCHR) calling for a new national human rights framework.

In 2023, the federal Attorney-General referred an inquiry to the PJCHR to consider a new Australian Human Rights Framework. The PJCHR reported in May 2024, making 17 recommendations to improve human rights in Australia.

Recommendation 1 of the PJCHR substantially endorsed the recommendations of the Commission for a new national human rights framework and recommended the adoption of a Human Rights Act based on the Commission's model.

The Australian Government has not yet responded to the recommendations of the Commission's Free and Equal project reports and the report of the PJCHR.

Human Rights Framework

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Urgent human rights issues

Australia continues to lack comprehensive human rights protections. Reforms proposed by the PJCHR report and the Commission's *Free & Equal* report have not been implemented. Priority actions include introducing a federal Human Rights Act, improving federal discrimination laws, strengthening the role of Parliament in considering and protecting human rights and introducing a rights tracker to measure progress on human rights.

National Human Rights Act

Australia has an incomplete legal framework for protecting human rights. The Commission and the Australian Parliament's human rights committee have both recommended a Human Rights Act that would require government to comply with human rights standards.

No matter who we are or where we are, we should all be treated with dignity and respect and be able to live well. Human rights provide the roadmap to achieving this and creating the kind of society we all want to live in.

There are many gaps in the protection of human rights in Australian law. While Australia has agreed to protect human rights set out in United Nations treaties, we have not properly translated those international commitments into our own national laws.

A Human Rights Act will help to address this. A Human Rights Act will protect the rights of all Australians, promote better understanding of those rights and give people the power to take action if their rights are breached.

There are Human Rights Acts in Victoria, Queensland and the Australian Capital Territory and in similar nations like New Zealand, Canada and the United Kingdom. They have all had proven positive impacts. But Australia has no national Human Rights Act.

The Commission has proposed a model for a Human Rights Act. The Australian Parliament's human rights committee drew heavily on this model when it recommended a Human Rights Act in its [*Inquiry into Australia's Human Rights framework in 2024*](#).

Our model Human Rights Act would apply to Australian Government bodies like Government Departments, Ministers, public servants and agencies like the Australian Federal Police, Centrelink, Medicare, the National Disability Insurance Agency and more. It won't apply to State and Territory government bodies.

A Human Rights Act will require governments and public servants to properly consider and act compatibly with human rights when making decisions, delivering services and developing laws and policies.

Requiring governments to think about people's rights before they act fosters a better understanding of rights and builds a culture that prevents human rights breaches.

To make sure governments take human rights seriously, it is important to give people the power to take action if their rights are breached. Under our model, this will happen efficiently by the person raising the issue directly with government body or with the Commission for conciliation. But if it cannot be resolved at that level, people will have the power to take action in court.

Our model Human Rights Act will be normal legislation passed by the Australian Parliament. The Parliament will be able to change the Human Rights Act in the future if it decides to.

Priority Action

The Australian Government should introduce a national Human Rights Act.

Federal discrimination laws

Australia needs more comprehensive protections against discrimination

Australia's discrimination laws are complex, do not provide comprehensive protection and lack adequate preventative and regulatory mechanisms. The Commission welcomes reforms to the Sex Discrimination Act 1984 (Cth) to create a positive duty to prevent sexual harassment and sex discrimination in workplaces. A similar duty should be introduced to prevent sex, age, disability and race discrimination in all areas of public life.

Australia's federal discrimination laws are outdated and difficult to use. These laws were introduced 20 to 50 years ago and have barely been updated since. The Commission proposes reforms to these laws to:

(a) Build a preventative culture:

We need to shift the focus from a reactive model that responds to discrimination after it happens to a proactive model that prevents discrimination from happening in the first place. This should be achieved by creating a positive duty which requires organisations and businesses to take reasonable and proportionate measures to eliminate unlawful discrimination, harassment and victimisation.

Shifts towards building a preventative culture are already happening. A positive duty was introduced into the Sex Discrimination Act in 2022 to prevent sexual harassment and sex discrimination in workplaces. The government is currently considering a positive duty in the Disability Discrimination Act as recommended by the Disability Royal Commission in 2024. However, introducing these changes in a piecemeal fashion across different Acts causes discrepancies, creates confusion and makes it harder to address intersecting discrimination issues such as race and sex discrimination. We need consistent, harmonised anti-discrimination laws.

(b) Provide better regulatory tools for the Australian Human Rights Commission to prevent discrimination.

The Commission currently has limited regulatory functions to promote compliance with legal requirements to prevent discrimination. Far broader regulatory functions exist in many other areas of law such as privacy, consumer rights and company law. However, these broader functions have by-passed federal discrimination laws rendering them out of date and less effective.

New regulatory tools could include codes of practice, voluntary audits, special measures certificates, enforceable standards and stronger inquiry functions. These regulatory tools would mean that the Commission can better assist businesses to comply with discrimination laws, improving business confidence and certainty when they act to prevent discrimination.

(c) Enhance access to justice:

Discrimination laws are often difficult to use and rely on individuals who have been discriminated against taking action to achieve justice. The Commission provides free access to justice through conciliation services. However, there are significant barriers for achieving access to justice when matters are not resolved at this stage and people have to take action in court. We recommend reforms to make the process of going to court fairer.

(d) Address the gaps in discrimination law protections:

Our national discrimination laws have gaps. For example, they do not protect people against discrimination on the grounds of religion or on the basis of an old, irrelevant criminal record. In the workplace, volunteers and interns are not protected across all discrimination laws. There are also exemptions to some discrimination laws that are too broad and allow, for example, religious schools to discriminate against students and teachers on the grounds of sexual orientation and gender identity. The Commission recommends reforms to address these gaps in protection.

Priority Action

The Australian Government should reform discrimination laws to ensure comprehensive protection and improved effectiveness.

Australia needs a rights Measurement Framework

How well does Australia protect people's human rights? Are we moving forward in addressing human rights challenges, or are we going backwards?

To answer these questions and to guide the decisions of government we need better national measurement and tracking of human rights progress and regress. Tracking promotes transparency on human rights and accountability for government on its responsibilities to protect community wellbeing.

The Australian Government should develop a national mechanism to track and periodically report to the nation on how well Australia protects everyone's human rights.

The Parliamentary Joint Committee of Human Rights (PJCHR)

The Australian PJCHR is mandated to analyse bills and legislative instruments before the federal Parliament for compliance with human rights. The PJCHR has been in place for approximately 12 years and has made an important contribution to the consideration of human rights at the parliamentary level. However, the Commission remains concerned about the quality and consistency of 'Statements of Compatibility with Human Rights' that accompany bills. The Commission is also concerned that there is limited consideration of the views of the PJCHR prior to the passage of legislation.¹ There is also limited human rights education and training for public officials to assist in the preparation of these Statements of Compatibility.

Priority Action

The Australian Government ensure that Statements of Compatibility are of a consistently high standard; and ensure that the views of the PJCHR are actively considered prior to enacting legislation.

Human Rights Education

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Other priority human rights issues

There is a pressing need for human rights education, especially for public servants and to build understanding of human rights among the community.

Human rights education is piecemeal and under-resourced with limited references to human rights in the school curriculum, civics education and in training public servants across all levels of government.

Education is one of the most powerful tools for upholding human rights.

Human rights education means understanding what human rights are, the impact of human rights breaches and how to take action to uphold human rights. Human rights education must be accessible and wide reaching to create an enduring culture of understanding and respecting human rights in Australia.

A robust National Human Rights Education Action Plan, grounded in lived experience and developed to meet the needs of learners, would build understanding, transform culture and improve attitudes and actions.

Human rights education should exist in all areas of Australian public life.

Human rights education should target key audiences:

- Public servants, who must consider the human impacts of laws, policies, service delivery
- Teachers and students, to build cultures of engagement, respect and safety in schools.
- Workers and employers, to support safe and equal workplaces.
- Law enforcement agencies, whose conduct must accord with human rights principles.
- The general community, to understand their rights and have the skills and confidence to assert them.

Limited funding has constrained the delivery and coordination of human rights education across Australia

Human rights education is a statutory responsibility of the Australian Human Rights Commission, however specific government funding for human rights education ceased in 2014. Currently, human rights education is scattered and ad hoc across Australia. Increased momentum for civics education across state and federal sectors could provide a vehicle for improved human rights education.

A national human rights education action plan requires coordination and resources to ensure human rights education reaches all people living in Australia.

A national action plan would demonstrate government's commitment to human rights education through a clear strategy and commitment to adequate funding for its implementation, monitoring and evaluation.

Priority Action

The Australian Government should develop a National Human Rights Education Action Plan for public servants, schools, workplaces, law enforcement and the general community.