



AN AUSTRALIAN CONVERSATION ON HUMAN RIGHTS



Australian
Human Rights
Commission

Free & Equal

Free & Equal Summary Report



Acknowledgments

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The Commission has benefited from support from across the NGO sector, academia and legal profession throughout the Inquiry. Particular thanks to Hugh De Kretser, Daney Fadoul and Caitlin Reiger at the Human Rights Law Centre.

The Commission is grateful to all those who provided submissions to the Issues Paper and Discussion Papers, and participated in consultations and roundtable discussions throughout the inquiry.

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Please cite this report as: © Australian Human Rights Commission 2023, *Free & Equal Summary Report*

ISBN 978-1-925917-87-1

This publication can be found in electronic format on the Australian Human Rights Commission's website:

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Original design: We are 27 Creative. Final Report layout and design: Lisa Carroll, Australian Human Rights Commission.

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Foreword

The Final Report of the Free & Equal project is the culmination of 5 years of research and consultations – across the community and the nation. It proposes a re-imagined National Human Rights Framework and is aptly titled, *Revitalising Australia’s Commitment to Human Rights*, outlining a major reset on how we talk about human rights, and how they are protected. This document is the Summary Report of the whole project.

The measures that we propose complement each other, to ensure that our national approach to human rights is comprehensive and balanced. The emphasis is on better understanding and awareness of human rights and a more proactive focus from government and decision makers – by building a culture of ‘rights-mindedness’.

No matter who we are or what our life circumstances, we all have the right to be treated with respect and dignity by our government, the people who work for it, and by our fellow community members.

It is time to put into place appropriate transparency and accountability for human rights protection at the national level, supported by the tools to rigorously monitor our progress. It is time to bring rights home.

Many people have generously engaged in this Inquiry, sharing their vision and passion for a future Australia that is focused on ensuring that everyone is treated with dignity and respect.

The Commission is deeply grateful for the insights and commitment shared throughout the Inquiry. To you all, I say thank you.

Now we stand ready to embrace the challenges of getting to work, with Government and other partners, towards truly revitalising Australia’s commitment to human rights.



**Emeritus Professor Rosalind Croucher AM FAAL FRSA
FACLM(Hon) FRSN**

President





1. Overview

This Summary Report provides an overview of *Revitalising Australia's Commitment to Human Rights: Free & Equal Final Report 2023*, which sets out a reform agenda for human rights in Australia.

The report is the outcome of the Australian Human Rights Commission's 5-year project: 'Free & Equal: An Australian conversation on human rights'.

Through the project, we spoke with people across the nation to identify what makes an effective system of human rights protection for 21st century Australia, and what steps Australia needs to take to get there.

The purpose of Free & Equal was to:

- promote awareness of the importance of human rights to 21st century Australia
- identify current limitations and barriers to better human rights protections
- identify what key principles should underpin the reform of human rights in Australia
- build agreement across the Parliament, government and the community about what we can do collectively to better promote, protect and fulfil human rights

The scope of the Free & Equal project has been wide and ambitious and the work has been delivered in 3 parts:

- discrimination law reform
- developing a model Human Rights Act
- accountability mechanisms.

We engaged with over 1000 people – those with lived experience, experts, civil society organisations, policy-makers, academics, advocates and other stakeholders who contributed through submissions, consultations, roundtables, technical workshops and a national conference. The Commission acknowledges the meaningful contributions of all those who participated throughout the Free & Equal Inquiry process – those contributions have without doubt strengthened this final report.

2. A new National Human Rights Framework for Australia

Australia needs a National Human Rights Framework to achieve an effective system of human rights protection for 21st century Australia.

The national framing of human rights protections in Australia to date has been intermittent and incomplete. There has been patchy implementation, false starts and abandoned plans and frameworks. This has resulted in significant gaps in protection of human rights at home and failure to fully implement our international obligations.

The experience during the COVID-19 pandemic and of decision making in relation to the Robodebt scheme are illustrations of how decision making can lose focus of the human rights impacts on people when decisions are being made without human rights guidance. The final report of the Royal Commission into violence, abuse, neglect and exploitation

of people with disability also highlights the need for better protection of human rights as integral to addressing the findings of that Royal Commission.

This Report outlines the actions necessary for the Australian Government to meet its obligations to respect, protect and fulfil human rights in a revitalised Human Rights Framework.

We recommend that the Australian Government introduce a National Human Rights Framework (see **Figure 1**).

The proposed National Human Rights Framework would also create a 'human rights eco-system' in which human rights impacts are front of mind at all stages of the legislative, policy design, and decision-making process as set out in **Figure 2**.

 **We recommend that the Australian Government introduce a National Human Rights Framework.**



Figure 1: National Human Rights Framework

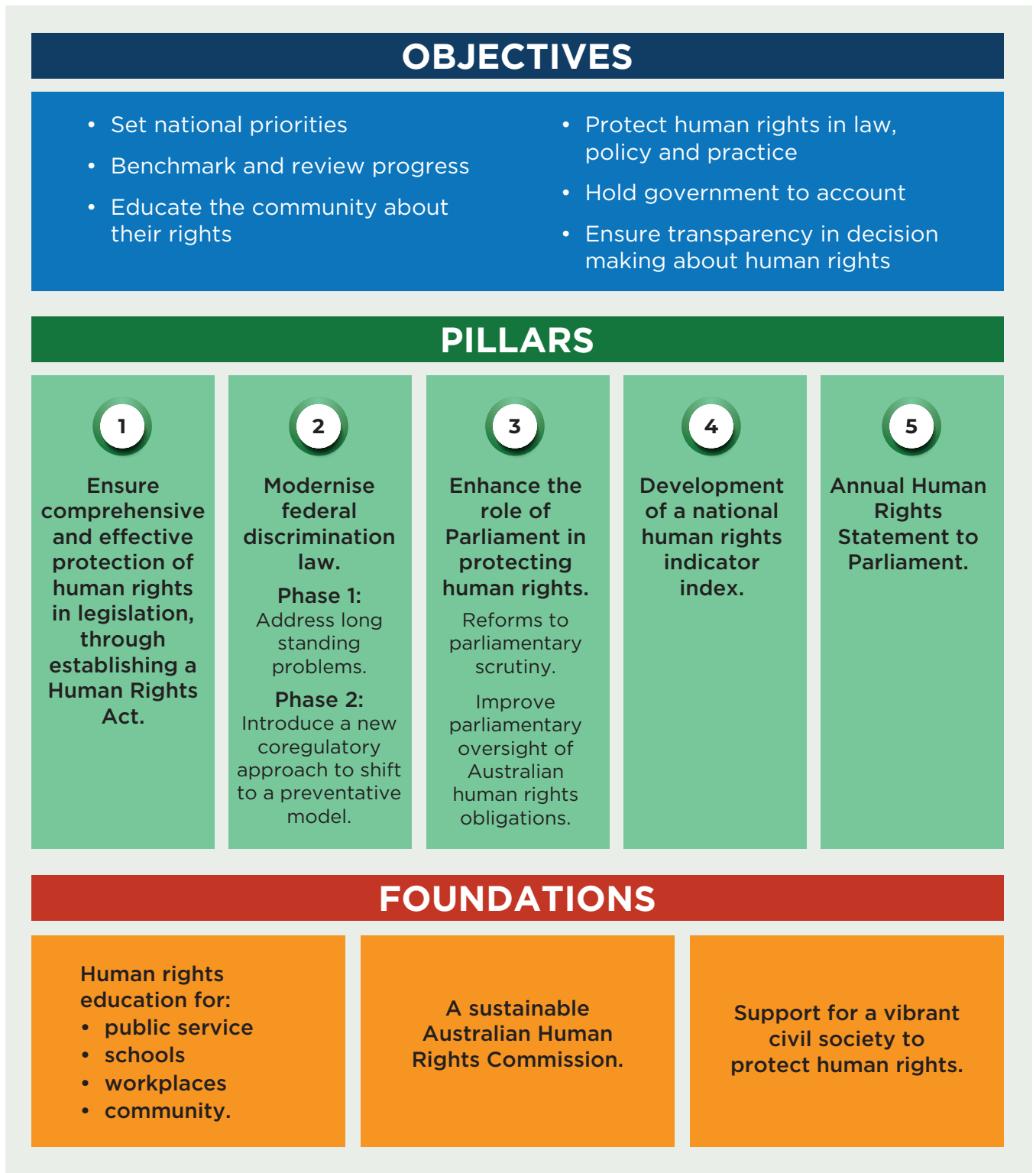
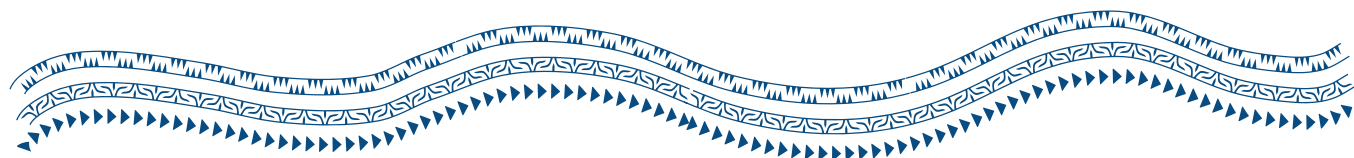
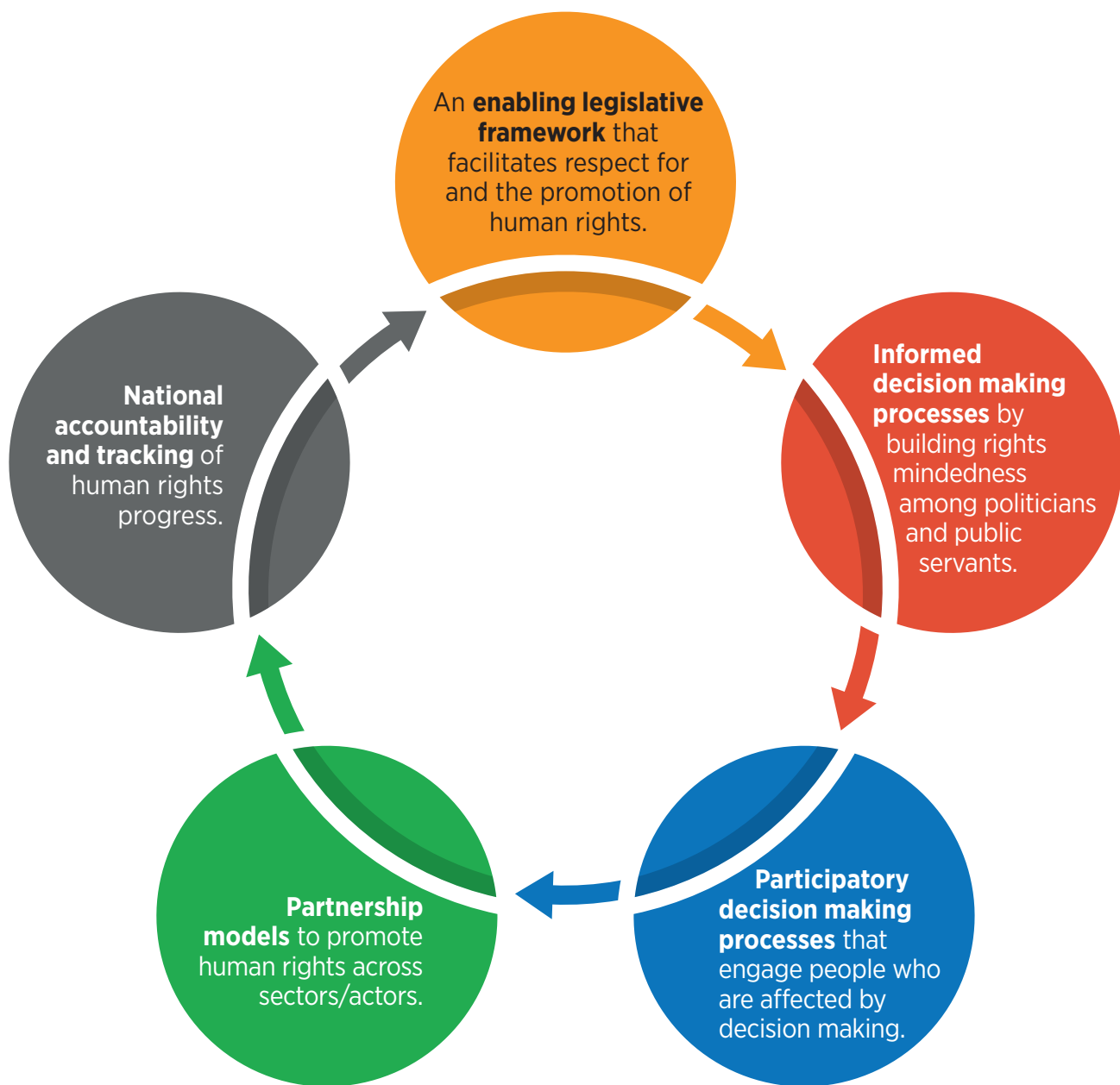


Figure 2: Human rights eco-system



3. Why does Australia need a new Human Rights Framework?

There are 5 key factors that underpin the call for a new human rights framework. They include the need to:

- build a human rights culture, through ‘rights-mindedness’
- close the implementation gap between our international human rights commitments and our domestic actions, by ‘bringing rights home’
- put into place effective governance for the protection of human rights
- build mechanisms that ensure the effective participation of community members whose rights are impacted
- ensure that we adopt a cohesive, comprehensive approach that can respect, protect and fulfil our human rights obligations.

3.1 Human rights culture

At present, our legal framework and supporting policy framework for human rights is very limited and reactive in focus. It relies too heavily on discrimination laws to set the standard, which mostly come into operation when harm has already occurred.

There is not enough focus on proactive measures to advance human rights in the first place or to bring these issues to the front of mind when decisions are made.

A National Human Rights Framework is of vital importance if we are to build a human rights culture at the federal level.

The Victorian Equal Opportunity and Human Rights Commission has identified the benefits of a human rights culture as set out in **Table 1**.¹

Table 1: Benefits of a human rights culture in Victoria

Benefits of a human rights culture for government

- Builds relationship with the community
- Identifies problem areas
- Improves democratic legitimacy by demonstrating to the Victorian community a genuine commitment to human rights
- Connects Victoria with international efforts to translate human rights goals and standards into results for the people of Victoria
- Reinforces other work, for example safety, equality, multiculturalism.

Benefits of a human rights culture for community members

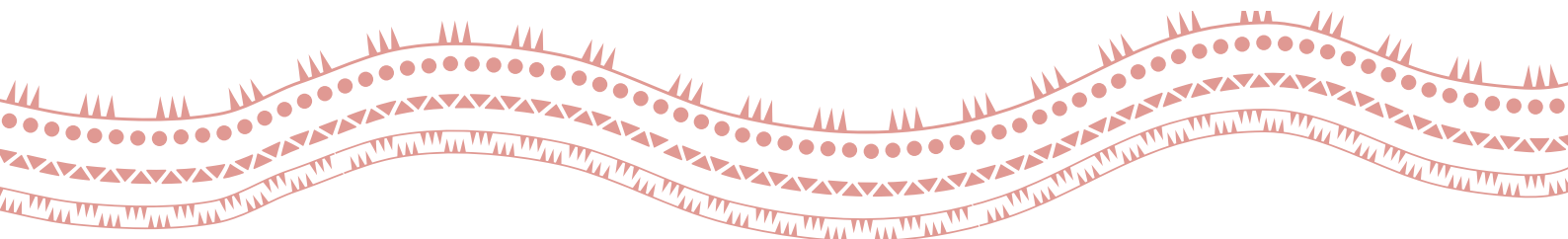
- Assists government to make decisions that consider rights
- Establishes clear non-negotiable standards
- Strengthens cases where change is needed
- Empowers individuals
- Contributes to a fairer and more inclusive society
- Encourages community participation in decision-making.

Benefits of a human rights culture for public authorities

- Improves quality of service design, in particular for the most marginalised, excluded and disadvantaged in our community
- Improves decision-making by providing a framework to identify, assess and balance human rights against other rights and interests
- Helps manage organisational risks, such as litigation
- Builds reputation and credibility
- Creates a framework for solving problems
- Provides a protective mechanism to engage compliance and adherence to human rights laws.

Benefits of a human rights culture for public servants

- Inspires staff
- Reconnects staff with core public service values
- Gives staff a framework to act with a moral compass when dealing with people.



3.2 Closing the implementation gap

There is an implementation gap between the longstanding international human rights standards which Australia has committed to, and their domestic protection. This is due to the lack of robust, cohesive processes to set national priorities, measure progress in the achievement of human rights and to monitor compliance with international standards.

Whenever Australia participates in UN periodic reviews of our performance under human rights treaties, the limitations of our domestic legal protections of human rights are always raised as a concern.

A National Human Rights Framework 'brings rights home' and places accountability for their protection within our domestic borders – in our Parliament, government and community.

The Free & Equal report makes recommendations to ensure robust mechanisms exist for the implementation of our international obligations, including processes for the Government to set implementation priorities and to be held to account for progress in achieving the realisation of human rights.

3.3 Ensuring effective governance for human rights protection

Our proposed National Human Rights Framework adopts a dialogue model, between the 3 branches of government (the Parliament, the Executive and the Courts). Each has a role to play in protecting human rights for the benefit of all people in Australia.

The national framework proposes that the respective roles of the different branches of government are clear – so Australians can hold government to account for its actions. This will ensure transparency and accountability.

The national framework also sets out in broad terms how we all have a role and

responsibilities in protecting human rights in Australia – as businesses, as civil society organisations, as a national human rights institution, and as members of the community.

A governance framework for the protection of human rights in Australia is necessary because:

- We need multiple actions undertaken by multiple actors – there is no one measure that can fully protect human rights in Australia.
- Commitments to action do not always result in better outcomes – without naming key priority actions for the country, and without capacity to monitor progress, it is difficult to make progress to realise human rights.
- Time and again, we have seen our systems for protecting human rights in Australia lose their way. For example, anti-discrimination laws have languished for a generation without considered thought as to their effectiveness and broader purpose. This reflects the lack of an effective governance framework for human rights at the national level.

A revitalised National Human Rights Framework would ensure that we have the right governance in place to protect human rights more effectively, with tangible benefits for all in our community.

3.4 Ensuring the effective participation of people about whom decisions are being made

The Free & Equal project has focused on the need for law, policy and practice at the federal level to be developed with the genuine and effective participation of those directly affected.

The right to participation is both a stand-alone right and a means to realising other human rights.

A common factor with laws and policies that breach human rights is that they were developed without the participation of groups most impacted by those policies.²

One of the key findings of this Inquiry is that ensuring the participation of people in decision making that affects them, particularly for vulnerable or marginalised groups, is one of the most fundamental challenges for getting better human rights outcomes in Australia.

A national framework on human rights would embed participation principles across the range of actions that are proposed, and set out accountability mechanisms to ensure that these principles are continually met and improved over time.

3.5 Adopting a cohesive framework that respects, protects and fulfils human rights

There is no one measure that is capable of fully meeting Australia’s human rights obligations. What is required is a suite of measures that can act together to achieve different objectives.

In this project, the Commission has used the ‘respect, protect, fulfil’ framework of human rights obligations to provide the conceptual lens to guide what actions should be taken to meet our human rights obligations (see **Table 2**).³

By using this framing of rights protection, we have a reference point to ensure that we take a comprehensive approach to the task of protecting human rights.

Table 2: How a National Human Rights Framework will meet Australia’s obligations to respect, protect and fulfil human rights



RESPECT

Own actions do not breach human rights

Cohesive legal protections for human rights through a domestic human rights act with remedies available

Positive duty in human rights act to prevent breaches, along with procedural duties to enhance participation and access to justice

Cohesive discrimination law regime through holistic discrimination law reform

Positive duty across all discrimination acts to prevent discrimination in public life

Strengthened Parliamentary scrutiny regime



PROTECT

Action taken by government to prevent others from breaching human rights and obligations on people and institutions across the community to respect human rights

Early consideration of human rights impacts in policy, law and decision-making

Private contractors providing public services on behalf of government bound by Human Rights Act – other private businesses may voluntarily opt-in to human rights obligations

Positive duty on businesses to prevent discrimination

Education measures

Stronger regulatory powers for the AHRC to increase compliance with human rights and discrimination standards



FULFIL

Positive actions taken to advance human rights

Overarching human rights framework with long- and short-term priorities, with sufficient resourcing and in-built accountability mechanisms

Indicator framework – including tracking progressive realisation of rights

Domestic reporting requirements under the Human Rights Act, including by the AHRC

Processes to ensure better responsiveness to international mechanisms

Strengthening the role of civil society in advocating and educating on human rights

Strengthening institutional accountability and the development of a human rights culture across government

4. Key elements of a human rights framework

The Commission's overarching finding in Free & Equal is that Australia can, and should, do better in protecting human rights.

Our federal system of law, policy and practice needs significant reform and modernisation in order to serve the needs of 21st century Australia.

It is time to put into place appropriate transparency and accountability for human rights at the national level, supported by the tools to rigorously monitor our progress in protecting human rights.

Crucially, we need the right tools to have national conversations about human rights. This is at a time where the fragmentation of media makes such conversations harder than ever to conduct.

That is why the measures proposed in this report focus on large, structural reforms at the national level through the creation of a clearly articulated National Human Rights Framework.

The reforms proposed in this report will contribute to a better quality of life for all Australians.

They will embed safeguards for people's human rights, ensuring that dignity and respect are at the centre of government actions and decision making.

A new National Human Rights Framework will achieve benefits across the community, as well as at the individual level.

The Framework should include the following, inter-related, action areas:

- comprehensive and effective protection of human rights in legislation through the introduction of a national Human Rights Act
- modernised federal discrimination laws that shift the focus from a reactive model that responds to discriminatory treatment to a proactive model that seeks to prevent discriminatory treatment in the first place
- an enhanced role for Parliament in protecting human rights, through reform to the processes for parliamentary scrutiny and the introduction of new oversight mechanisms for Australia's human rights obligations
- a National Human Rights Indicator Index to independently measure progress on human rights
- an annual statement to Parliament on human rights priorities is made by the Government.

The National Human Rights Framework will be enabled by following foundations:

- a National Human Rights Education Program
- an effective and sustainable national human rights institution
- support for vibrant and robust civil society organisations to protect human rights.

The scope of this proposed National Human Rights Framework is extensive. It's implementation will require dedicated and co-ordinated focus over a sustained period in each of the thematic areas. Accordingly, **recommendation 2** of the Final Report is that the National Human Rights Framework should:

- set out commitments over a 10 year period, with 2 five-year implementation plans
- be adequately, appropriately and sustainably resourced
- include mechanisms for community engagement and participation in the framework's operation
- set measurable targets
- identify how the framework interacts with other national frameworks, agreements and plans
- include a monitoring, evaluation and learning framework with public reporting at regular intervals (for example, 5 and 10 years).

Strong support for this model has emerged through the conduct of the inquiry into Australia's Human Rights Framework by the Parliamentary Joint Committee on Human Rights in 2023.

5. A Human Rights Act for Australia

A national Human Rights Act is the centrepiece of the Commission’s proposed National Human Rights Framework. Our report sets out the key elements of a model Human Rights Act, and how it will significantly improve the protection of human rights for all people in Australia.

We recommend that the Government develop an Exposure Draft Bill of the Commission’s model Human Rights Act for further consideration.

The need for a national Human Rights Act can be summed up in one simple statement: **people’s human rights matter, all of the time** (see **Figure 3**).

Figure 3: The impact of a Human Rights Act

People’s rights matter, all of the time

-  The impact of laws, policy and practice on people’s human rights should always be considered.
-  Parliament, governments and public officials should be held to account for how they consider human rights impacts in their decision-making.
-  This reflects: our commitment to democratic principles, and ‘Australian values’ that respect civil liberties, rights and fundamental freedoms.

It means that:

-  Laws should respect human rights.
-  When decisions are made, the human rights impacts should be considered.
-  Remedies should be available where human rights have not been considered or have been breached without justification.



The legal framework should:

- **Protect** human rights.
- **Prevent** violations of human rights.
- **Provide** effective relief for breaches of human rights.



No matter who we are, we all deserve to be treated with dignity and respect by our government. The Human Rights Act would embed these values into public life in Australia by making the government accountable for protecting our rights – no matter who is in power.

A Human Rights Act would mean that all of us, no matter who we are, will have a better understanding of our human rights. We will be empowered to stand up for ourselves and our communities and take action to seek justice when someone in the government tries to violate our rights.

No matter who we are or what our life circumstances are, we all have the right to be treated with respect and dignity by our government and the people that work for it. When we know what our rights are under the law, we can stand up for ourselves and our communities if the government does something unfair or even abusive.

But right now, it's too hard to understand just what rights are protected under Federal law. That can make it difficult for us to know what to do when we are treated badly or denied our fundamental freedoms by someone who works for the government. Our human rights are scattered across a patchwork of different and sometimes contradictory laws – and some rights are not protected at all.

Society works best when we all know what the basic rules are – and anchored in responsibility and accountability. A Human Rights Act would be a central document that everyone can access – a way to make sure we all know what our rights are – and what action we can take if they are not respected.

5.1 Key features of a Human Rights Act

With a Federal Human Rights Act, all our rights would be clearly laid out in one place and accessible to anyone who needs them – from families navigating the healthcare system to people detained by immigration authorities. The Human Rights Act would be a powerful new tool not only to protect ourselves and our communities, but to achieve justice when governments fail us.

A national Human Rights Act would mean that:

- the impact of laws, policy and practice on people's human rights would always be considered
- the Parliament, government officials and decision makers would be held to account for how they consider the human rights impact of their actions and decisions
- people in Australia would have access to a remedy when their rights have been breached unjustifiably.

A Human Rights Act would provide a level of accountability to elevate the consideration of human rights by explicitly naming Australia's human rights obligations in a domestic legal framework and placing positive duties on public authorities to fully consider human rights. This provides a framework to improve human rights outcomes and to intervene early to prevent human rights breaches. Importantly, a Human Rights Act would ensure that there are consequences for failing to appropriately consider and protect human rights.

Table 3 sets out the key features of the Commission's proposed Human Rights Act.

Table 3: Summary of key features of proposed national Human Rights Act

The Human Rights Act (HRA) should be a 'dialogue' model, that preserves parliamentary sovereignty but necessitates consideration of human rights at all stages of decision making processes
The HRA should incorporate rights derived from the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and include a right to a healthy environment (drawn from the above instruments)
The HRA should reflect key rights and principles contained in the United Nations Declaration on the Rights of Indigenous Peoples
There should be a positive duty on public authorities to act compatibly with human rights
The scope of public authorities should include core executive bodies and contractors/entities providing public services
The positive duty should be implemented alongside a comprehensive education and training program for public authorities
The HRA should include key procedural duties – a 'participation duty' and an 'access to justice' duty
It should also account for technological decision-making
The HRA should apply to all within Australia's federal jurisdiction
The HRA should provide guidance about how rights in the HRA should be interpreted.
The HRA should provide guidance to courts about how they should interpret legislation in light of the human rights contained within the HRA.
The HRA should include a limitations clause describing the circumstances in which human rights may be permissibly limited.
The HRA should include a mechanism to provide notification to Parliament regarding laws that are incompatible with human rights, for further consideration by Parliament
The HRA should include a standalone cause of action for all rights, with remedies as considered appropriate by the courts
The HRA should allow a person to make a human rights complaint to the Australian Human Rights Commission or for the administrative review of a decision about them
There should be representative standing under the HRA
The HRA should be subject to periodic reviews to ensure its effective operation
Existing Parliamentary scrutiny mechanisms should be improved alongside the introduction of an HRA
The Commission should be granted additional powers to enable education measures and compliance with the HRA

In the development of the proposed model for a Human Rights Act in Australia, the Commission was guided by the following principles. An Act must be:



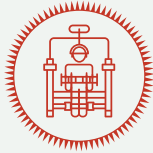

























1. **Australian:** We need a Human Rights Act that reflects our shared values and embeds rights into our domestic system.
2. **Democratic:** We need a Human Rights Act to strengthen existing democratic and rule of law principles. The model should be parliamentary, accountable, participatory and balanced.
 - **Parliamentary** - by preserving parliamentary sovereignty in a model based on dialogue.
 - **Accountable** - by enhancing the rule of law and providing a check on executive power.
 - **Participatory** - by improving the quality of public debate and enabling minority and vulnerable groups to have a voice in decisions that affect them.
 - **Balanced** - by setting out a framework for navigating the intersection of varied public interests and rights.
3. **Preventative:** We need proactive measures to prevent human rights abuses. A Human Rights Act should embed procedural measures to enable early consideration of human rights, and foster a culture of respect for human rights throughout the whole of government.
4. **Protective:** We need safeguards against human rights abuses, through a Human Rights Act with pathways for individuals to access justice and redress through courts.
5. **Effective:** We need a Human Rights Act that facilitates better decision making based on human rights standards, and equality of access to effective interventions to protect human rights.



5.2 What rights should be included in a Human Rights Act?

The key function of the Human Rights Act will be to coherently implement Australia’s international obligations domestically, and to reflect and codify fundamental common law rights. It would provide the ‘bedrock of rights’ in Australian law. The Commission’s proposed Human Rights Act includes the rights set out in **Table 4**.

Table 4: Rights reflected in the Human Rights Act

				
Recognition and equality before the law; and freedom from discrimination	Right to life	Protection from torture and cruel, inhuman or degrading treatment	Protection of children	Protection of families
				
Privacy and reputation	Freedom of movement	Freedom of thought, conscience, religion and belief	Peaceful assembly and freedom of association	Freedom of expression
				
Taking part in public life	Right to liberty and security of person	Humane treatment when deprived of liberty	Children in the criminal process	Fair hearing
				
Rights in criminal proceedings	Compensation for wrongful conviction	Right not to be tried or punished more than once	Retrospective criminal laws	Freedom from forced work
				
Cultural rights	Cultural rights – First Nations peoples	Right to education	Right to health	Right to an adequate standard of living
				
Right to a healthy environment	Right to work and other work-related rights	Right to social security		

5.3 Cause of action, complaints and remedies

The integration of human rights considerations into the decision-making processes of public authorities should make public servants more aware of the impacts of their decisions, and therefore help to prevent human rights breaches in decision making and policy design by greater responsibility.

However, sometimes better processes and education will not be enough, and breaches of human rights may occur (see **Figure 4**). In those circumstances a Human Rights Act should provide a cause of action, a complaints pathway, and enforceable remedies – for greater accountability (see **Figure 5**).

The Commission recommends that each right should have a direct cause of action, and an associated range of remedies.

Figure 4: What happens in my rights are breached?

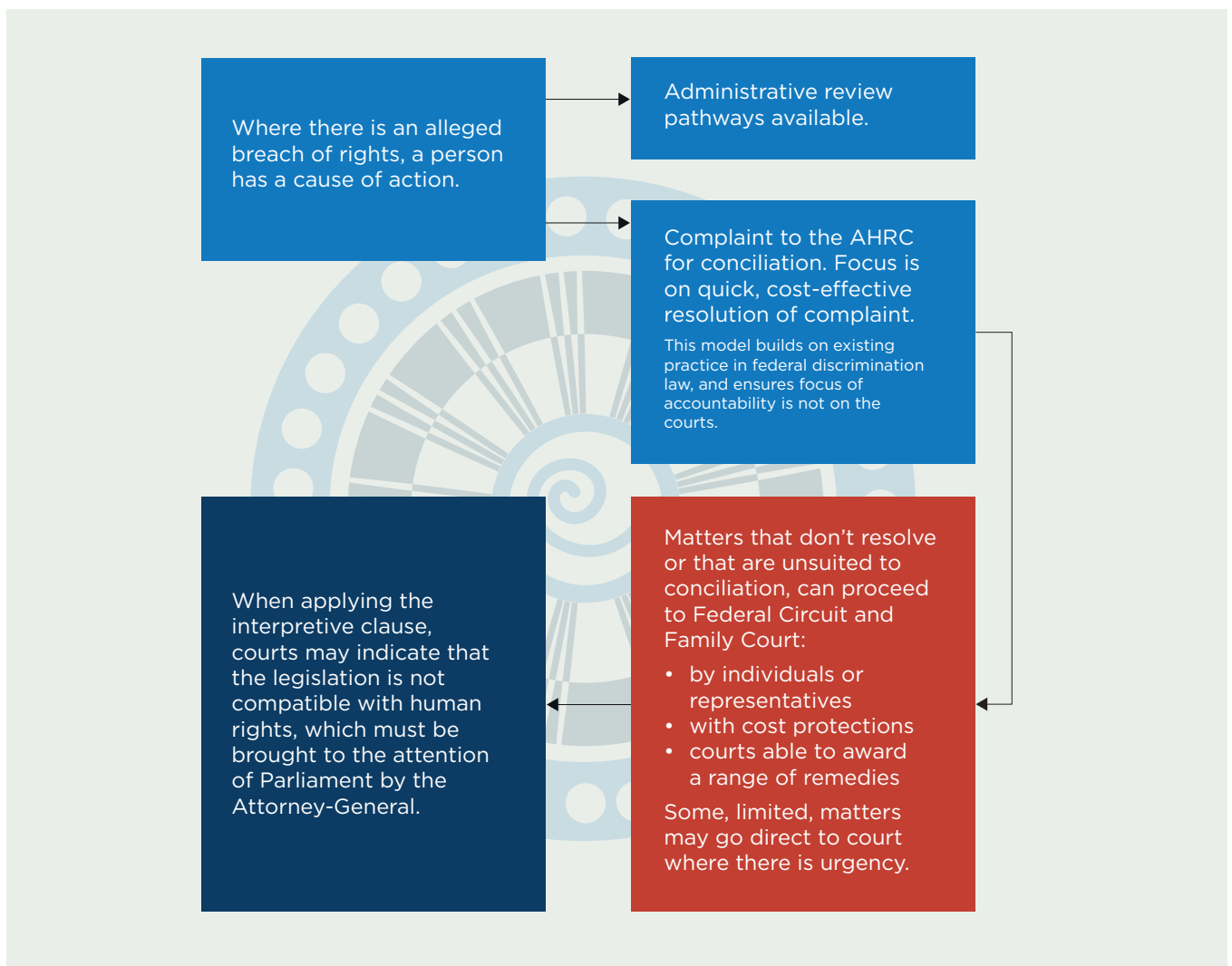
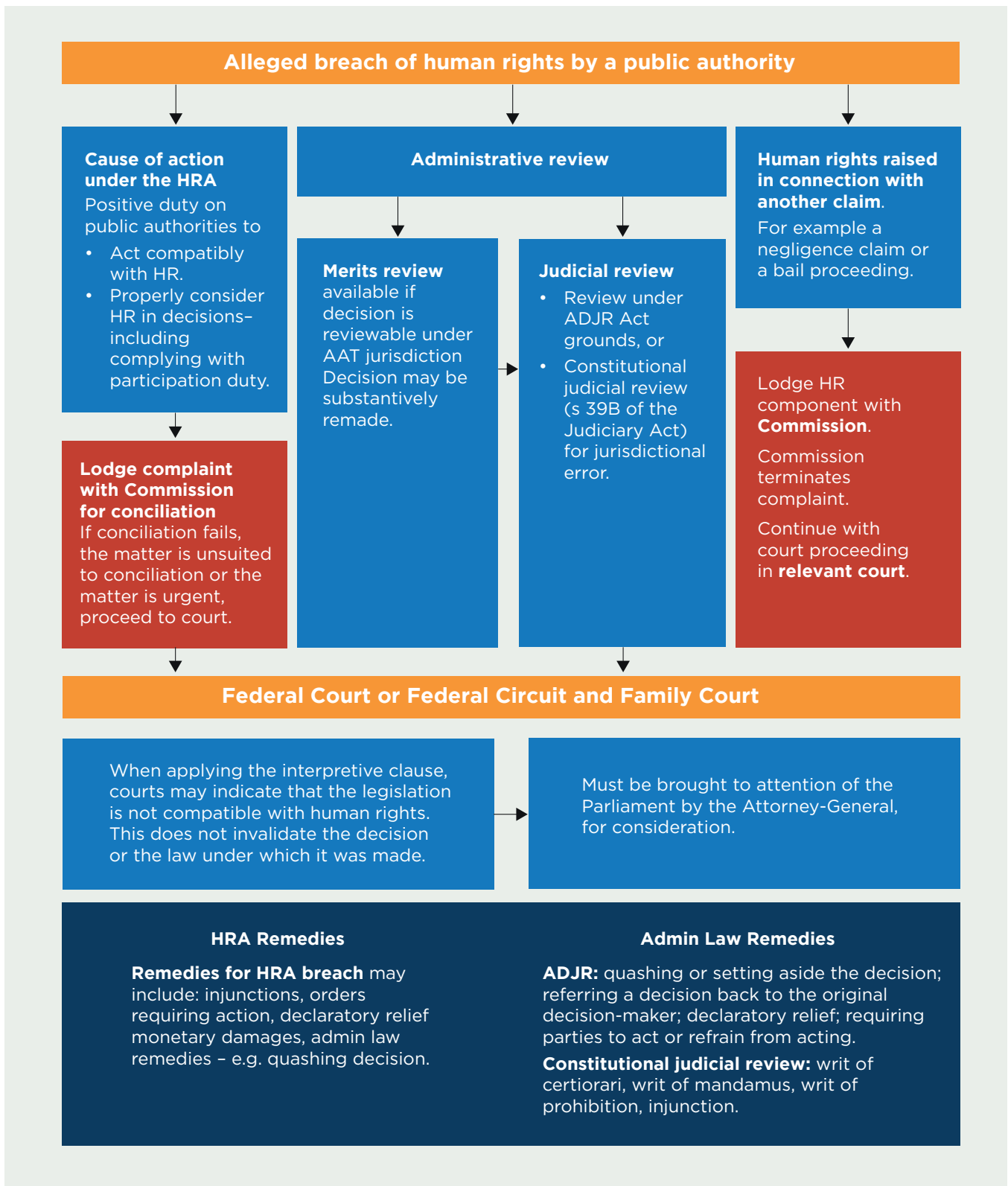


Figure 5: Pathways through complaints and courts



5.4 Ten ways a national Human Rights Act would make a difference to people in Australia

1. **There is a better understanding of human rights:** A lesson from Human Rights Acts in other jurisdictions is that over time they result in increased human rights literacy among Parliamentarians, public officials and the general community.
2. **'Rights-mindedness' leads to better decision making:** The combination of measures contained in the Human Rights Act encourage the early consideration of human rights impacts in developing laws, policy and programs. A Human Rights Act builds a mindset that is focused on preventing violations of human rights in the first place. It encourages understanding how different processes will impact particular groups of people and to consider how to protect their rights in these circumstances.
3. **There is increased transparency and accountability about the impact of decision making on human rights.** A Human Rights Act sets out criteria for the balancing of rights and how to appropriately limit human rights (so that the chosen option for law, policy or programs has the least restrictive impact on people's human rights, and is appropriately tailored to the circumstances).
4. **The focus of decision makers will be on ensuring law and policy causes the least harm to people's human rights.** Where laws and policies negatively impact people's human rights, it will be incumbent on public officials to demonstrate how the approach proposed is the least restrictive option, how it is necessary, and how such restriction will be for the minimum period required. The Human Rights Act embeds a 'do no harm' principle in decision-making processes.
5. **Engagement with the community on proposed laws and policies will be improved.** The combination of a positive duty on public servants to fully consider human rights and enhanced parliamentary focus on human rights will require better engagement with the community in the development of laws and policies, especially if they propose to negatively impact on people's rights. A failure to ensure such engagement could breach the proposed positive duties, and be considered in remedial processes.
6. **The views of persons with disability, Aboriginal and Torres Strait Islander peoples and children will matter under a Human Rights Act.** Multiple provisions in the Commission's model Human Rights Act ensure that engagement and participation is central to all stages of the decision-making process. Government would be obliged to seek out and fully consider the views of these groups on laws, policies and programs that disproportionately or directly impact them.
7. **The proposed participation duty will improve individualised decision making.** The Human Rights Act would embed the requirement to ensure the participation of persons with a disability at an individual level by ensuring that supported decision-making processes are adopted in all decisions that directly affect an individual.
8. **There are pathways for addressing breaches of people's rights:** The range of mechanisms proposed in the Human Rights Act (from the informal conciliation process of the AHRC, to review of decisions through to court action) will ensure that people have a pathway to address breaches of their rights.
9. **The remedial framework under a Human Rights Act is accessible to the most vulnerable in the community.** Through the availability of conciliation at the AHRC, administrative review and access to courts, those most affected by human rights breaches will have the ability to hold government to account for breaching their rights.
10. **The requirement of reasonable adjustment is built into the administration of justice.** This is through the operation of the proposed equal access to justice duty. This would ensure that persons with a disability, Aboriginal and Torres Strait Islander peoples, and people from culturally and linguistically diverse communities, among others, have equal treatment in the operation of the civil and criminal justice systems, and administrative review.

6. A law reform agenda for federal discrimination laws

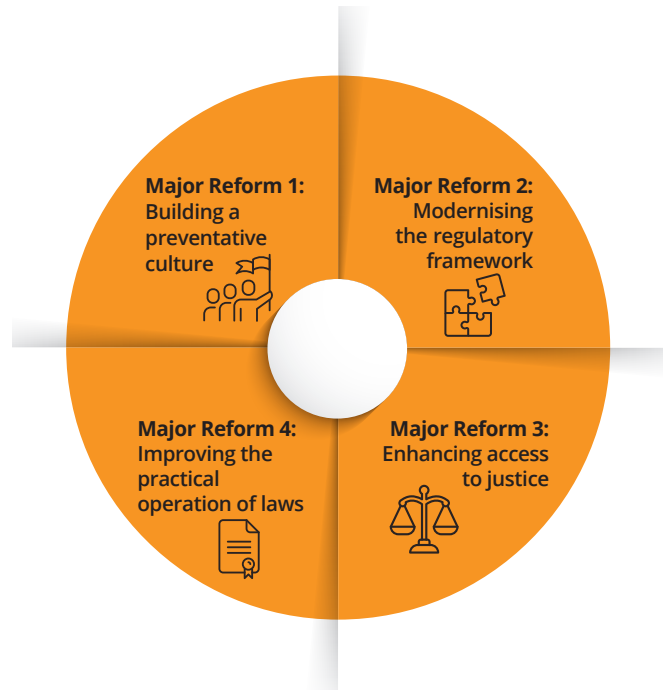
Discrimination laws are an integral component of a National Human Rights Framework. They send a message to the broader community that we should all be able to live without being discriminated against, harassed or vilified in all areas of public life.

For too long, the suite of federal discrimination laws has been left untouched and without consideration as to how they would best serve the community. They are now riddled with complexities and inconsistencies, with uneven levels of protection depending upon which characteristic discrimination is based on, and they are difficult to access. Federal discrimination law is outdated and not effective as a remedial process.

The 'modern' regulatory landscape has also by-passed discrimination law. This new landscape shifts the expectation about the role of the law from being solely focused on a remedial framework when harm is caused, to being an enabling framework to prevent discriminatory treatment in the first place. We propose a range of reforms that are required so that federal discrimination laws can effectively provide an enabling environment.

The Commission's reform agenda for federal discrimination law will substantially improve the effectiveness of these laws – encouraging and supporting preventative action across the community, while ensuring that remedies are more accessible where discrimination is experienced.

There are 4 integrated sets of reforms required to improve the effectiveness of federal discrimination laws. This is built on 4 pillars:



The Commission recommends a staged approach to federal discrimination law reform in a new Human Rights Framework that can:

- address these immediate priorities that are already underway and address urgent technical fixes to federal discrimination laws that would improve their operation (to be completed in year 1 of the new framework)
- commit to undertaking a broader reform of federal discrimination laws to shift the model and introduce new co-regulatory approaches (to be completed in years 2 and 3 of the new framework)

7. Strengthening the role of Parliament in protecting human rights

The Commission proposes reforms that would enhance the effectiveness of the Parliamentary Joint Committee on Human Rights and the associated process for analysing the human rights impact of proposed laws and regulations.

We also make recommendations to enhance parliamentary oversight of decision-making in relation to the scope of Australia's international human rights obligations, and actions to be taken to respond to breaches of our international human rights obligations.

7.1 Parliamentary Joint Committee on Human Rights (PJCHR)

The work of the PJCHR is inherently limited due to the inadequate legal protection of human rights under Australian law. The single biggest change that can improve the effectiveness of the PJCHR's work is for this to occur in conjunction with a Human Rights Act. This would:

- provide stronger accountability measures for public servants to fully consider human rights (in accordance with the proposed positive duty)
- ensure that laws, policies and programs are developed with the full engagement of affected communities (in accordance with the proposed participation duty and the role of the PJCHR to assess the adequacy of this participation)
- ensure there is domestic guidance on human rights standards and obligations over time, that can assist in the quality of consideration of human rights issues
- increase the weight that public servants and parliamentarians attach to human rights considerations due to the possibility of those whose rights are restricted having a cause of action to have those impacts addressed.

These proposed reforms to the parliamentary review of human rights are complementary to the need for a Human Rights Act. They are not a substitute for a Human Rights Act. Similarly, a Human Rights Act is not a substitute for these reforms also being undertaken.

Our recommendations to enhance the effectiveness of the PJCHR include:

- that Bills may not be passed until a final report of the PJCHR has been tabled in Parliament, with limited exceptions for urgent matters. In the event that a Bill proceeds to enactment by exception, provision should be included for a later review of the legislation if the Bill relevantly engaged human rights
- the ability for the PJCHR make special reports on any human rights issues which it may think fit to bring to the notice of Parliament
- improving the scope of Statements of Compatibility to:
 - require Statement of Compatibility for all legislative instruments
 - include consideration of consultations undertaken
 - include consideration of compliance with the United Nations Declaration on the Rights of Indigenous Peoples
- improving the quality of statement of compatibility by:
 - providing greater clarity on expectations in statements of compatibility
 - introducing a public sector human rights education program to provide training and resources to public servants to understand and analyse human rights
 - considering having designated human rights advisers in Departments

7.2 Parliamentary oversight of international human rights treaty obligations

In Australia, treaty obligations may not be entered into without a rigorous process of oversight by Parliament, through what is known as a National Interest Analysis by the Joint Standing Committee on Treaties.⁴

But once a treaty is ratified, engagement with Parliament is more limited and inconsistent.

A more systematic approach needs to be taken to our international human rights treaty engagement so that there is greater transparency and public engagement. This includes a role for Parliament.

We recommend actions to:

- publicise and consider the findings of periodic reviews by treaty committees
- respond to complaints that have been considered by human rights committees
- a more systemic approach to the role of Parliament in considering the appropriateness of the scope of Australia's human rights obligations – such as through consideration of taking on new treaty obligations (through the ratification process) and the reducing of 'exceptions' to our existing obligations (through reservations and interpretative statements).

It can be anticipated that fewer communications (individual complaints) would progress to UN committees if Australia had domestic processes to consider human rights breaches in the first place.

8. Accountability and human rights indicators

A major focus of Free & Equal has been the need for accountability to advance human rights at the national level.

Critical to a new National Human Rights Framework recommended by this report is the ability to properly measure and track Australia's human rights performance.

Measurement and accountability require evidence. The Commission therefore proposes a national Human Rights Indicator Index, to play a key role in tracking Australia's performance in key areas over time.

We also recommend that the Australian Government commit to an annual National Human Rights Statement to Parliament.

Such a statement would provide a basis for the Government to:

1. identify its priorities both within Australia and internationally for the protection of human rights
2. report on and celebrate the progress that it has made over the course of each year, as well as reflect on key human rights challenges.

The Human Rights Indicator Index and an annual statement to parliament, in conjunction with reforms to enhance the effectiveness of the Parliamentary Joint Committee on Human Rights and parliamentary oversight of decision-making, are required to maximise the effectiveness of a Human Rights Act and in moving from standard setting to effective implementation.



9. Human rights education

Educative and awareness raising measures are needed across all areas of the proposed National Human Rights Framework set out in the report. This requires a new approach to human rights education at the national level.

At its simplest, human rights education is about ensuring that people understand human rights concepts, consider the human impact of their actions and decisions on others, and that they can also have awareness about their own rights and the community expectations of how they will be treated.

Education is needed to support businesses, community organisations, service providers and individuals to understand their obligations under discrimination laws. It is needed for public servants and politicians so that they

are aware of the human rights impacts of their actions and decisions. It is needed among the general community so that we treat each other with respect and dignity.

Critical to the success of any human rights education is:

- valuing lived experience
- strength-based, community-centred and trauma informed approaches
- ensuring accessibility
- supporting longevity

We recommend that a National Human Rights Education Action Plan be introduced targeted to the Australian Public Service, primary and secondary schools, workplaces and the general community.

10. A sustainable human rights community

Critical to the success of the National Human Rights Framework is a properly resourced and appropriately independent Australian Human Rights Commission and a vibrant and robust civil society.

A sustainable Australian Human Rights Commission will play a central role in the framework and in achieving significant improvements in the protection of human rights in Australia.

We recommend that the Australian Government ensure the Australian Human Rights Commission is appropriately and sustainably resourced to perform its functions including supporting the Framework, in accordance with the Paris Principles.

An engaged and supported civil society can help to ensure accountability for human rights and embedding a societal culture of human rights. We recommend the Australian Government support measures that invest in and build community capacity to realise human rights and freedoms.

We also recommend that the Australian Government develop a National Action Plan on Business and Human Rights.



11. Looking forward: A revitalised National Human Rights Framework is required to better protect human rights in Australia

The focus of this report has been on how to reform the federal government's overall approach to human rights protection for the maximum benefit of all people in Australia.

The measures contained in this report are intended to:

- benefit all people in Australia
- ensure government decision making contributes positively to a human centred world, where reforms will contribute to enabling a better Australia into the future, for example:
 - where technological advances are beneficial to the community
 - where decision making responds to the challenges for sustainable development and environmental concerns
- promote awareness of human rights among the community, and strengthen dialogue about human rights
- centre dialogue about human rights protections within our domestic, democratic institutions – particularly the Parliament
- ensure that there is rigorous evidence about who is experiencing human rights violations in Australia and then focusing action on addressing this
- ensure that no one is left behind: the National Human Rights Framework focuses on ensuring equal enjoyment of rights, tracks progress towards this and seeks to shift focus where this is not the case
- promote a broad-based partnership across government, business, the community sector and general community centring the importance of protecting human rights
- facilitate better compliance with international treaty obligations.

We are confident that the implementation of a new National Human Rights Framework would provide significant benefit in realising additional human rights protections for distinct groups in our community in most need of protection.

It will do so by creating the basis for these conversations to be had within a coherent national framework that is transparent and for which there is genuine accountability for outcomes. This broad human rights approach would also

ensure that all Australians can see themselves respected and valued in this Framework.

The introduction of the proposed Human Rights Act would mean that the following are protected in our federal laws:

- assurance of fairness in government, legal and administrative decisions that affect rights
- priority given to respecting and protecting human life
- freedom to speak, create, protest, travel and organise
- freedom to live in accordance with your own beliefs, values and ideals
- freedom to make personal choices without interference, coercion or surveillance, including medical decisions and decisions about your family life
- protections against cruel treatment, arbitrary detention, and unjust court processes
- recognition of the essential standards required for a dignified life – including the provision of access to basic healthcare, housing, education and work; and protections against homelessness, hunger and poor working conditions
- assurance of equal treatment and respect, regardless of your sex, gender, sexual identity, disability, age, nationality, race or religion
- embedding of support to ensure the full autonomy of people with disabilities
- recognition and respect for the self-determination of First Nations peoples
- ensuring that the best interests of children are prioritised in decisions that affect them
- opportunities for disadvantaged, disenfranchised and vulnerable people and groups to participate more fully in the democratic process.

These are protections worth fighting for.

The time has come for Australia to revitalise its National Human Rights Framework, for the benefit of all people in Australia.



12. Free & Equal Final Report: Recommendations

Recommendation

1

Australia establishes a National Human Rights Framework

The Commission recommends that the Australian Government introduce a National Human Rights Framework. The Framework should include the following, inter-related, actions:

1. comprehensive and effective protection of human rights in legislation through the introduction of a national Human Rights Act
2. modernised federal discrimination laws that shift the focus from a reactive model that responds to discriminatory treatment to a proactive model that seeks to prevent discriminatory treatment in the first place
3. an enhanced role for Parliament in protecting human rights, through reform to the processes for parliamentary scrutiny and the introduction of new oversight mechanisms for Australia's human rights obligations
4. a National Human Rights Indicator Index to independently measure progress on human rights
5. an annual statement to Parliament on human rights priorities is made by the Government.
6. a National Human Rights Education Program
7. a sustainable National Human Rights Institution, the Australian Human Rights Commission, to support the Framework.
8. support for vibrant and robust civil society organisations to protect human rights.

Recommendation

2

Implementing the National Human Rights Framework

The National Human Rights Framework should:

- set out commitments over a 10 year period, with 2 five-year implementation plans
- be adequately, appropriately and sustainably resourced
- include mechanisms for community engagement and participation in the framework's operation
- set measurable targets
- identify how the framework interacts with other national frameworks, agreements and plans; and
- include a monitoring, evaluation and learning framework with public reporting at regular intervals, in line with the commitments.

Recommendation

3

A national Human Rights Act

The Commission recommends that the Australian Government enact a federal Human Rights Act. Further, the Commission recommends that a Draft Exposure Bill be developed based on the Commission's model Human Rights Act.

Recommendation

4

Reform of federal discrimination laws

The Commission recommends that the Australian Government modernise federal discrimination laws to ensure their effectiveness and shift the focus from a reactive model that responds to discriminatory treatment to a proactive model that seeks to prevent discriminatory treatment in the first place.

Consideration should be given to undertaking these reforms in 2 stages:

Stage 1: addressing immediate priorities and fixing longstanding problems in the operation of federal discrimination law (year 1)

Stage 2: introducing a new co-regulatory model that broadens and expands on the positive duty under the Sex Discrimination Act (years 2-3).

Recommendation

5

Parliamentary scrutiny and the role of the PJCHR

The Commission recommends that:

- A. Amendments be made to House and Senate Standing Orders requiring that bills may not be passed until a final report of the PJCHR has been tabled in Parliament, with limited exceptions for urgent matters. In the event that a Bill proceeds to enactment by exception, provision should be included for a later review of the legislation if the Bill relevantly engaged human rights.
- B. Amendment of section 7 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), along the lines of the power of the UK Human Rights Committee, to allow it to 'make special reports on any human rights issues which it may think fit to bring to the notice of Parliament' (but excluding consideration of individual cases). The Commission recommends that the resourcing of the PJCHR be increased to enable it to perform the wider inquiry role.
- C. Amendment of section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to require statements of compatibility for all legislative instruments.
- D. That the range of matters to be addressed in a Statement of Compatibility should include consideration of consultations undertaken.
- E. That Statements of Compatibility include consideration of compliance with the United Nations Declaration on the Rights of Indigenous Peoples.
- F. That with the introduction of a Human Rights Act, the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) is amended, or an accompanying legislative instrument drafted, to provide greater clarity on expectations in statements of compatibility, both in regard to rights and freedoms set out in the Human Rights Act and the remaining obligations under international treaties not expressly included in the Human Rights Act.
- G. A public sector human rights education program be introduced, to provide training and resources to public servants to enable them to understand and analyse human rights.
- H. Consideration be given to having designated human rights advisers in Departments.

Recommendation

6

Parliament's role in reviewing Australia's implementation of our international human rights obligations

The Commission recommends that:

- A. The Attorney-General reinstate the practice of tabling Concluding Observations of human rights treaty committees in both houses of Parliament.
- B. The Australian Government should maintain a publicly available and up to date database about the Concluding Observations made by each UN treaty committee and their status.
- C. The Government reform the Standing National Mechanism for Treaty Body Reporting to include public reporting on treaty bodies and individual communications.
- D. The Attorney-General table information about individual communications in Parliament on an annual basis, along with the Australian Government's response to these.
- E. The Parliamentary Joint Committee on Human Rights be empowered to review the adequacy of the Australian Government's response to individual communications and/or Concluding Observations from time to time.
- F. The Joint Standing Committee on Treaties conduct a review of all existing reservations and interpretive declarations under human rights treaties.

Recommendation

7

A National Human Rights Indicator Index

The Commission recommends that the Australian Government introduce a National Human Rights Indicator Index that can measure progress on human rights over time.

Recommendation

8

A National Human Rights Statement

The Commission recommends that the Australian Government commit to an annual National Human Rights Statement to Parliament.

Recommendation

9

A National Human Rights Education Plan

The Commission recommends that a National Human Rights Education Action Plan be introduced targeted to the Australian Public Service, primary and secondary schools, workplaces and the general community.

Recommendation

10

An appropriately resourced AHRC

The Commission recommends that the Australian Government ensure the Australian Human Rights Commission is appropriately and sustainably resourced to perform its functions including supporting the Framework, in accordance with the Paris Principles.

Recommendation 11**A robust civil society to protect human rights**

The Commission recommends that the Australian Government support measures that invest in and build community capacity to realise human rights and freedoms, including by:

- instituting regular forums for dialogue with the NGO sector on human rights
- providing funding support for NGOs to advance human rights protection
- supporting the independent participation of NGOs in UN human rights processes
- maintaining and re-establishing programs that build capacity and support the participation of Indigenous peoples and persons with disability in UN human rights mechanisms.

Recommendation 12**The role of business in protecting human rights**

The Commission recommends that the Australian Government develop a National Action Plan on Business and Human Rights.

Endnotes

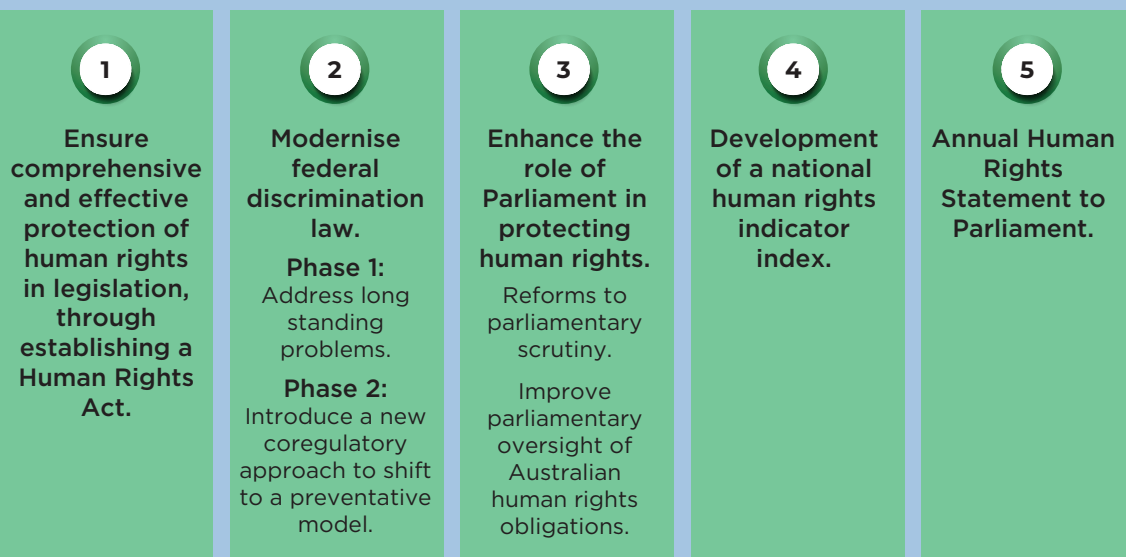
- 1 Victorian Equal Opportunity and Human Rights Commission, (June 2019), *The Charter of Human Rights and Responsibilities – A guide for Victorian public sector workers*, 2nd edition, p. 8, <https://www.humanrights.vic.gov.au/static/e5f7d882b4ac4082403ad0f57606369c/Resource-Responsibilities-VPS_Charter_Guide.pdf>.
- 2 Australian Human Rights Commission, (March 2023), *Position paper: A Human Rights Act for Australia*, p. 162, <<https://humanrights.gov.au/human-rights-act-for-australia>>.
- 3 See further: Australian Human Rights Commission, (April 2019), *Free & Equal Issues Paper: An Australian conversation on human rights*, Sydney, pp. 13-14, <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_free_equal_issues_paper_2019_final.pdf>.
- 4 For further information see: <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Role_of_the_Committee>. This process was introduced in 1996.

National Human Rights Framework

OBJECTIVES

- Set national priorities
- Benchmark and review progress
- Educate the community about their rights
- Protect human rights in law, policy and practice
- Hold government to account
- Ensure transparency in decision making about human rights

PILLARS



FOUNDATIONS

Human rights education for:

- public service
- schools
- workplaces
- community.

A sustainable Australian Human Rights Commission.

Support for a vibrant civil society to protect human rights.