



2009

Let's talk about rights



A toolkit to help individuals and groups participate in the Australian Government's National Human Rights Consultation



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

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This publication can be found in electronic format on the Australian Human Rights Commission's website at: www.humanrights.gov.au/letstalkaboutrights

For further information about the Australian Human Rights Commission, please visit: www.humanrights.gov.au or email paffairs@humanrights.gov.au. You can also write to:

Public Affairs Unit
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001

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About this toolkit

This toolkit, produced by the Australian Human Rights Commission (the Commission) is designed to help individuals and groups in the Australian community who wish to participate in the Australian Government's National Human Rights Consultation.

The consultation is an opportunity for *everyone* in Australia to tell the government what they think about human rights and how they think human rights should be protected in our country.

We hope that this toolkit will encourage you to take part in the consultation and will give you some of the information that you might need. It will help you answer the following questions:

- What are human rights?
- How are human rights relevant to me?
- How are human rights protected in Australia?
- Are current human rights protections in Australia strong enough?
- How could we improve human rights protections in Australia?
- How could a Human Rights Act make a difference?
- How can I have my say in the National Human Rights Consultation?

This toolkit is accompanied by a series of information sheets about how human rights protections could be improved in particular areas. Together with the information in this toolkit, they are designed to assist you to make a submission about the human rights issues that you feel most strongly about. The information sheets cover the following topics:

- Human rights and Aboriginal and Torres Strait Islander peoples
- Human rights and asylum seekers and refugees
- Human rights and children and young people
- Human rights and counter-terrorism laws
- Human rights and faith-based communities
- Human rights and gay, lesbian, bisexual, transgender and intersex people
- Human rights and homelessness and housing
- Human rights in a culturally diverse society
- Human rights and people with disability
- Human rights and older people
- Human rights and women
- A Human Rights Act for Australia: commonly asked questions.

About the National Human Rights Consultation

During the first half of 2009, the Australian Government will ask everyone in Australia what they think about human rights through the National Human Rights Consultation.

The consultation will be conducted by an independent Committee headed by Father Frank Brennan, a Jesuit priest and lawyer. Father Brennan will be assisted by Mary Kostakidis (a former television news presenter), Tammy Williams (an Indigenous barrister) and Mick Palmer (a former Australian Federal Police Commissioner).

The Committee will ask the Australian community three questions:

- Which human rights (including corresponding responsibilities) should be protected and promoted?

- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

The Committee is expected to report to the government by 31 August 2009.

The Committee wants members of the public to make submissions so that it can report what people in Australia really think about protecting human rights. Submissions can be made online or can be mailed to the Committee.

For full details about the National Human Rights Consultation, including how to make a submission, visit the consultation website: www.humanrightsconsultation.gov.au.

How can I have my say in the National Human Rights Consultation?

There are many ways you could take part in the National Human Rights Consultation. For example, you could:

- write a submission on behalf of yourself or your organisation. You can make an online submission at www.humanrightsconsultation.gov.au, or you can mail your submission to:

National Human Rights Consultation Secretariat
Attorney-General's Department
Central Office
Robert Garran Offices
National Circuit
BARTON ACT 2600

- talk to your friends, family and colleagues and encourage them to write a submission

- run a workshop with your clients/service users or member organisations and encourage them to write a submission
- attend one of the consultation community forums (a schedule is available on the consultation website – www.humanrightsconsultation.gov.au)
- join the Commission's email list to keep informed about events – visit www.humanrights.gov.au/letstalkaboutrights
- check out the Commission's resources for children and young people to get involved in the consultation – visit www.humanrights.gov.au/letstalkaboutrights
- join the Australian Human Rights Group – see www.humanrightsact.com.au/ahrg.

About the Australian Human Rights Commission

The Australian Human Rights Commission is an independent statutory body. Part of our job is to help build a human rights culture in Australia where the human dignity of all people is respected.

We do this by running national inquiries, handling complaints about discrimination and certain human rights breaches, helping with public education and awareness-raising, and occasionally appearing in court cases that involve human rights issues.

No matter what your views are, we encourage you to share them during the consultation and tell your human rights story.

We hope that as many people as possible will take part in the National Human Rights Consultation so that the Australian Government gets a real sense of what people in Australia think about human rights and how they want their rights to be protected.

We think that human rights will be best protected if the Australian Parliament enacts a comprehensive Human Rights Act. So we are encouraging people to make a submission to the National Human Rights Consultation in support of a Human Rights Act for Australia.

However, we know that there are a wide range of ideas about how to improve the protection and promotion of human rights in Australia. The toolkit therefore also explains some of the other options for protecting human rights in Australia. *No matter what your views are, we encourage you to share them during the consultation and tell your human rights story.*

For more information about the Australian Human Rights Commission, visit the Commission's website at www.humanrights.gov.au.

What are human rights?

Human rights are important for everyone, everywhere, every day. Human rights are about basic values such as dignity, freedom and equality.

These basic values are essential for promoting an inclusive society in which all people in Australia can freely participate. Human rights are about creating and maintaining an environment of mutual respect and understanding.

Human rights are written down in international agreements called ‘conventions’, ‘covenants’ and ‘treaties’.

These agreements are made by national governments. They reflect international agreement about what human rights are, and how they should be protected and promoted.

The first attempt to develop a complete statement of human rights was made in 1948 in the *Universal Declaration of Human Rights*. Australia was involved in drafting this important document. The Universal Declaration is still the most important international statement of the fundamental values of equality, dignity and freedom.

In addition to the Universal Declaration, human rights are set out in two core agreements, both of which Australia has signed. They are the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR). All Australians are entitled to enjoy the human rights described in these documents.

The human rights set out in the ICESCR include rights such as:

- your right to live with your family
- your right to work and to be treated fairly at work
- your right to form and join a trade union
- your right to an adequate standard of living, including adequate food, clothing and housing
- your right to access appropriate health care
- your right to a basic education
- your right to maintain your culture and language
- your right to access services regardless of your race, gender, age or disability.

The human rights set out in the ICCPR include rights such as:

- your right to life
- your right to be free from torture and other cruel or degrading treatment

- your right to be free from slavery and forced labour
- your right to liberty and to be free from arbitrary arrest or detention
- your right to be treated with humanity if you are deprived of your liberty
- your right to freedom of movement
- your right to be treated equally by the courts, to be presumed innocent until proven guilty and to be tried without delay
- your right to privacy
- your right to think what you like and to practise any religion
- your right to say what you like (without inciting hatred or violence)
- your right to vote and to participate in public affairs
- your right to be treated equally by the law.

Australia has also signed up to other international human rights agreements, including:

- *Convention on the Rights of the Child*
- *Convention on the Elimination of All Forms of Discrimination against Women*
- *International Convention on the Elimination of All Forms of Racial Discrimination*
- *Convention on the Rights of Persons with Disabilities*
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- *International Labour Organisation Discrimination (Employment and Occupation) Convention ILO 111* (which prohibits discrimination in employment).

These treaties set out more specific rights which may be relevant to you and/or the people you work with.

Certain human rights are absolute. For example, under the ICCPR some rights such as the right to life and freedom from torture should not be breached in any circumstances. These are known as ‘non-derogable’ rights.

However, most human rights can be limited in certain circumstances, provided that the restrictions are necessary and are a proportionate way of achieving a legitimate purpose. This allows for different rights to be balanced against each other if they conflict – for example, one person’s right to free speech might need to be balanced against another person’s right to be free from discrimination. It also allows human rights to be limited when necessary – for example, to deal with a state of public emergency.

How are human rights relevant to me?

Many of us feel that Australia is a pretty safe place. Most of us don't suffer the terrible poverty witnessed in some parts of the world, our judicial system works well by international standards, and most of us can vote in elections by secret ballot. We can say what we like most of the time, practise our religion in peace most of the time, and most of us have access to decent education and health services. So, why should protecting human rights matter to us?

First, all the things we have just described are human rights! So if you think that those things are important, then protecting human rights should be important to you.

Second, everyone in Australia should be able to enjoy their human rights. There may be times in all of our lives when we might find ourselves or people we know in a situation where our human rights are not respected. So we need a safety net for when things don't go as planned.

Third, even if you feel that that you personally have not had your human rights violated, you may wish to live in an inclusive and fair society, where instances of human rights violations are prevented as much as possible.

Unfortunately, not everyone's human rights are respected. Some people are more likely than the rest of us to experience human rights problems.

For example,

- all of us should have access to appropriate education and appropriate health and mental health care, no matter where we live – but some of us have better access to good schools, hospitals, doctors and mental health facilities than others
- all of us should have water, food and adequate housing – but this can be harder if we live in a remote community, and many homeless Australians don't have these things
- all our children should be safe at school – but children are still bullied
- people living in aged care homes should be treated in a way that respects their dignity – but some of us don't have a choice about where our elderly relatives end up and often we can't do much if they are poorly treated
- everyone who uses a wheelchair should be able to use public transport and enter the same buildings as everyone else – but lots of buses, train stations and government buildings are still inaccessible

- we should all be treated with respect by government officials – but sometimes people from culturally and linguistically diverse backgrounds feel like they don't receive this respect when dealing with public servants and agencies.

These scenarios apply to many of us, to our families and to the people we work with. Human rights matter to us all.



This toolkit includes separate information sheets discussing the human rights issues facing some of those especially vulnerable groups, including:

- Indigenous peoples
- people with a disability
- women
- people of different races and cultures
- children and young people
- older people
- people who are homeless
- people deprived of their liberty
- gay and lesbian people
- refugees and asylum seekers.

Some examples of recent human rights problems facing these groups of people include:

- Indigenous children in the Northern Territory are three times more likely to die under the age of one than all other children in Australia

- on average, women working full-time earn 16 percent less than men in Australia
- every night around 105,000 people in Australia are homeless
- one in every two people requesting accommodation from a homeless service is turned away every day
- some families seeking asylum in Australia were detained in immigration detention centres for more than three years; one child was detained for almost five and a half years.

All of us, at some time in our lives, might need to seek protection for our human rights to ensure we get treated fairly and equally.



Everyone who uses a wheelchair should be able to use public transport and enter the same buildings as everyone else – but lots of buses, train stations and government buildings are still inaccessible.

How are human rights protected in Australia?

Most Australians would be surprised to learn that in our country there are very few legal protections of human rights.

What human rights protections do we have now?

- A few human rights are protected by the Australian Constitution, including
 - the right to vote
 - the right to trial by jury for some offences
 - limited protection of freedom of religion
 - an implied right of political communication.
- Some federal and state laws prohibit discrimination on certain grounds including race, sex, age and disability.
- Victoria and the Australian Capital Territory have Human Rights Acts.
- A range of other laws offer some protection of specific rights, for example laws about evidence and procedure in court cases, or laws about child protection.
- Some common law protections have been established in cases decided by the courts, for example the right to a fair trial.

- Some rights (such as housing, education and health) are not legally protected but are at least partly implemented through policy or services.
- There are also laws to protect your privacy at the federal and state level.



Are current human rights protections in Australia strong enough?

Some people argue that our strong democratic tradition and the independence of the courts are sufficient to ensure that our human rights are protected. But democracy doesn't always work quickly enough to stop human rights breaches, or to help people whose rights have been breached. Sometimes, especially in times of perceived emergency, governments either disregard or fail to consider the human rights implications of new laws or policies in ways that everyone subsequently regrets.

Compared to the human rights standards that Australia has agreed to internationally, there are many gaps in protection under Australian laws.

Did you know?

The government can make laws that breach human rights

- laws requiring the mandatory detention of asylum seekers who arrive without a visa have breached the right to be free from arbitrary detention
- our government has passed laws that discriminate on the basis of race – for example the Northern Territory intervention legislation.

Compared to the human rights standards that Australia has agreed to internationally, **there are many gaps in protection under Australian laws.**



Sometimes not having a law can breach human rights

- there is insufficient legal protection against discrimination on the basis of sexuality
- there are no laws requiring paid maternity or parental leave for all employees.

Governments do not always consider the needs of the most vulnerable people in society when developing policy

- policy development should always consider the needs of those who are most vulnerable – for example, government policies about education, health, and housing would be considerably improved if they were developed with human rights in mind.

Sometimes public authorities breach human rights

- people in immigration detention have been subject to inhuman and degrading treatment.

Sometimes there is no effective solution to a human rights breach

- for example, if someone can prove that they have been discriminated against in employment because of their criminal record, trade union membership, or sexuality, they may not be able to do much about it – they can make a complaint to the Australian Human Rights Commission, but the employer cannot be required to change its behaviour.

Without comprehensive legal protection of human rights, our government is not obliged to make sure that the human rights of all Australians are respected, promoted and protected.

How could we improve human rights protections in Australia?

The Australian Government's National Human Rights Consultation is not promoting any particular way of protecting human rights. The Committee is interested in hearing about a wide range of ideas.

There are many ways in which human rights could be better protected in Australia. Some options include:

- enhanced protection of human rights in the Australian Constitution
- creating new parliamentary processes to make sure that new laws comply with human rights
- requiring government departments to consider and respect human rights when they develop policy and make decisions
- developing a National Human Rights Action Plan backed up by sufficient resources and a commitment to improve human rights protections
- enacting specific laws, for example, a law setting out how people in immigration detention should be treated or a law requiring paid maternity or parental leave
- developing specific national programs to prevent or address specific issues; for example about violence against women and girls
- implementing a national public education program about human rights
- incorporating human rights into a national curriculum
- implementing specific ideas to protect and promote the rights of Indigenous peoples; for example, making sure that Australian laws do not discriminate on the basis of race
- strengthening the role of the Australian Human Rights Commission; for example, expanding the types of complaints the Commission can receive, enhancing the capacity of the Commission to undertake consultations, research and educational activities, or requiring the Australian Government to table a report in Parliament explaining how it intends to respond to the Commission's recommendations.

The Australian Human Rights Commission believes that currently the best way to protect human rights is through the enactment by the Australian Parliament of a Human Rights Act – a national law setting out the human rights of all people in Australia.



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The Commission believes that the options set out above would make a positive difference – but we believe that they should either be a part of or *in addition to*, rather than instead of, a comprehensive Human Rights Act for Australia.

A Human Rights Act would provide the most comprehensive framework for protecting human rights in Australia. It could provide a firm foundation, and the inspiration, for the development of many other initiatives to protect human rights. Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all people in Australia.

How could a Human Rights Act make a difference?

A Human Rights Act would be a national law setting out the fundamental human rights that are universally accepted around the world as deserving of protection.

A Human Rights Act would improve the protection and promotion of human rights in Australia because it would:

- recognise and protect the human rights of **all** people in Australia
- ensure that human rights are respected by our government
- improve government policy and decision making – the government would need to consider human rights when drafting laws, developing policy and delivering services
- protect economically and socially vulnerable people who are more likely than others in Australia to have their human rights breached
- be an important practical tool for advocates of those facing discrimination, disadvantage or exclusion
- ensure that human rights complaints can be considered in Australia before they go to United Nations human rights committees
- bring Australia into line with other countries – Australia will no longer be the only Western democracy without a national law protecting human rights
- help Australia meet its obligations under the United Nations treaties we have promised to uphold
- help all Australians become more aware of their rights and the rights of others, and help build a culture of respect for human rights in Australia.

Human rights consultations have been held in recent years in the Australian Capital Territory (ACT), Victoria, Western Australia and Tasmania. In these consultations, the overwhelming number of people who made submissions said they wanted better legal protection of human rights. A law similar to a Human Rights Act has since been introduced in both the ACT and Victoria.

How would a Human Rights Act work?

A Human Rights Act would be a national law setting out how the Australian government and legal system will protect the human rights of all people in Australia. A Human Rights Act could do some or all of the following:

- Ensure that all new federal laws are put through a ‘human rights test’ by



- requiring that each bill introduced into federal Parliament is accompanied by a human rights compatibility statement
- requiring Parliament to look at each bill to make sure it protects the rights set out in the Human Rights Act (this could be carried out by a special Parliamentary Human Rights Committee)
- requiring Parliament to publicly explain a decision to adopt a law that is inconsistent with the Human Rights Act.
- Ensure that the Australian Government considers the human rights implications of its policy decisions by requiring that all cabinet submissions be accompanied by a Human Rights Impact Assessment.
- Ensure that all federal public authorities (for example Centrelink, the Australian Taxation Office and Medicare) respect the human rights set out in the Human Rights Act by:
 - requiring them to respect human rights when they make decisions and set policies
 - requiring them to prepare internal Human Rights Action Plans
 - requiring them to report annually on compliance with the Human Rights Act.
- Provide for transparent reviews of federal laws to determine whether they are consistent with the rights set out in the Human Rights Act by

- giving federal courts the power to issue a 'declaration of incompatibility' when they find that a law is inconsistent with human rights
- requiring that all declarations of incompatibility be tabled in federal Parliament
- requiring Parliament to consider whether the law in question should be changed to make it consistent with the rights set out in the Human Rights Act
- requiring Parliament to publicly explain its decision if it decides not to change a law to make it consistent with rights set out in the Human Rights Act.
- Ensure that federal courts and tribunals interpret legislation, as far as possible, in a manner that is consistent with the human rights in the Human Rights Act.
- Provide individuals whose human rights under the Human Rights Act have been breached with access to remedies, which might include
 - internal complaint handling mechanisms within federal public authorities
 - conciliation of complaints regarding human rights breaches
 - legal remedies such as an injunction or declaration
 - a cause of action in the courts
 - the right to seek reparations, including compensation where necessary and appropriate.

Has a Human Rights Act made a difference elsewhere?

Yes. There is a Human Rights Act in the ACT, Victoria and the United Kingdom, amongst many other places. A Human Rights Act can be used to advocate for better outcomes for vulnerable people. One of the most important impacts of the Human Rights Acts in those three places is that it has helped to *prevent human rights problems* from happening in the first place.

For example, the Victorian Charter of Human Rights and Responsibilities is starting to make a real difference to people's lives.

- A rehabilitation centre operating as part of a public hospital was seeking to discharge several young people with acquired brain injuries because their contract to care for them had expired. The only alternative care was in an aged care facility which would not provide the appropriate social environment

A Human Rights Act would bring Australia into line with other countries – Australia will no longer be the only Western democracy without a national law protecting human rights.

or support services. A disability advocate raised the Victorian Charter and the rehabilitation centre agreed not to move the young people until it had considered its obligations under the Charter.

- A pregnant single mother with two children was living in community housing. She was given an eviction notice without providing any reasons for the eviction or an opportunity to address the landlord's concerns. The Victorian Charter was used to negotiate with her landlord to prevent an eviction into homelessness and to reach an alternative agreement.

There are many examples from the UK where bad decisions made by public authorities have been challenged on human rights grounds. In many cases, a better decision has been made which respects the human rights of the individual, without the matter having to go to court.

- In one example, an elderly couple in the UK that had been married for 65 years were split up by a local authority when the man had to be moved into residential care. The man was unable to walk without the assistance of his wife who was blind. She was not allowed to join her husband in the residential care facility as she did not satisfy the criteria for admission. Advocates argued that the original decision violated the couple's right to respect for family life. The authority ultimately agreed to reverse their decision and offer the wife a subsidised place with her husband.

Write a submission to the National Human Rights Consultation

1. Why should I make a submission?

Writing a submission to the National Human Rights Consultation is your opportunity to tell the Australian Government about your human rights experience, why you think human rights are important and how you think human rights should be protected in Australia.

2. Writing a submission – some tips

The Commission's experience in conducting inquiries is that the strongest submissions will be those that draw on personal or organisational experience and provide concrete examples – both of situations where human rights were breached and of ideas about what might have made a difference, including a Human Rights Act.

A submission should therefore be based on your personal experience, or the experience of your organisation.

As far as possible, include the stories of real people.

Focus your submission on the issues that you know the most about. For example, if your organisation works with people with a disability, comment on the human rights issues that most affect your clients.

3. What questions should my submission answer?

The three key questions being asked as part of the National Human Rights Consultation are:

- Which human rights and responsibilities should be protected and promoted?
- Are human rights sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

If you would like to make a submission that supports a Human Rights Act for Australia, you may wish to address the following questions in your submission. These questions are suggestions – you do not need to answer all of the questions in this list to make a submission.

Which human rights and responsibilities should be protected and promoted?

- Who am I? What is my organisation and who do we represent?

- What is the full picture of the issues facing me or the people I work with? Remember that human rights are often interconnected: when people experience a problem with one human right, many other rights may also be threatened. For example, if you are homeless it is clear your right to adequate housing has been breached but think about other human rights which this affects (the right to education, the right to the highest standard of physical and mental health, and/or the right to the protection of your family?)
- Why do I think human rights are important?
- Which human rights do I think should be protected and promoted in Australia? What are the most immediate issues in my life or the lives of the people I work with? For example, is it the right to vote or the right to security of person (safety)?

Are human rights sufficiently protected and promoted?

- What is my experience of human rights in Australia? Have I witnessed or heard about what I think is a human rights problem in Australia?
 - What happened?
 - What was the impact on me/the people involved?
 - What do I think should have happened in this situation?
- Do I live in a community where there are human rights problems, for example, limited access to education or healthcare? What would make a difference to my community?
- Do I know of situations where there has been no effective solution to a human rights problem?
- Are there laws or policies which affect my life (or people I know) but that don't seem to match up with their human rights?
- What would be the difference in my life (or people I know) if human rights were better protected and promoted?

How could Australia better protect and promote human rights?

- Do I think that human rights should be comprehensively protected by law in Australia? Do I think Australia should have a Human Rights Act? What are the main reasons why I think a Human Rights Act would make a positive difference in Australia?

- What other ideas do I have about how Australian laws and policies could be changed to better protect and promote human rights? Some possible examples:
 - creating new parliamentary processes to make sure that all new laws pass the human rights test
 - requiring government departments to consider and respect human rights when they develop policy and make decisions
 - a National Human Rights Action Plan backed up by sufficient resources and a commitment to improve human rights protections
 - specific laws, for example, a law setting out how people in immigration detention should be treated
 - specific education programs, for example about domestic violence
 - a national public education program about human rights
 - incorporating human rights into a national curriculum
 - specific ideas to protect and promote the rights of Indigenous peoples, for example making sure that Australian laws do not discriminate on the basis of race
 - a stronger role for the Australian Human Rights Commission.



The Commission's experience in conducting inquiries is that the strongest submissions will be those that draw on personal or organisational experience and that provide concrete examples – both of situations where human rights were breached and of ideas about what might have made a difference, including a Human Rights Act.

- If you think that Australia should have a Human Rights Act, what are your ideas about how this law should work?
 - Should a Human Rights Act require our Parliament to think more about human rights when they make new laws?
 - Should a Human Rights Act require government departments to think more about human rights when they develop policies or deliver services?
 - Should courts be able to declare that a law is inconsistent with the Human Rights Act?
 - Should a court be able to hear and determine complaints about breaches of human rights?
 - Should a court be able to determine what is an effective solution if it finds that there is a breach of human rights (for example, an apology, a declaration that human rights have been breached, an order that the practice or conduct that caused the human rights breach is stopped, and/or compensation)
- If Australia does adopt a Human Rights Act, what should happen next?
 - What kind of education campaign should accompany a Human Rights Act?
 - Should there be a review of a Human Rights Act after a certain period of time?

Where can I find out more?

For more detailed information about human rights generally, visit the Commission's website at www.humanrights.gov.au

For more information about a Human Rights Act for Australia, see *Human rights - what do I need to know?* at www.humanrights.gov.au/letstalkaboutrights/info

You might also like to have a look at:

The Australian Government's National Human Rights Consultation website
www.humanrightsconsultation.gov.au

The Australian Human Rights Commission's website on the National Human Rights Consultation
www.humanrights.gov.au/letstalkaboutrights

Australian Human Rights Group
www.humanrightsact.com.au/ahrg

The Gilbert + Tobin Centre for Public Law
www.gtcentre.unsw.edu.au/resources/charterofhumanrights

Human Rights Law Resource Centre
www.hrlrc.org.au

Public Interest Advocacy Centre
www.piac.asn.au/publications/hrkit

Further information

Australian Human Rights Commission

Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Telephone: (02) 9284 9600
Complaints Infoline: 1300 656 419
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Website: www.humanrights.gov.au

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