

Submission to the Inquiry into Australia's Human Rights Framework

Community Legal Centres National Human Rights Network

September 2023



About Community Legal Centres Australia

Community Legal Centres Australia is the national representative voice for the community legal sector. We are an independent, non-profit organisation set up to support community legal services to provide high-quality, free, and accessible legal, and related services to everyday people, especially people experiencing socio-economic disadvantage, discrimination, and violence.

Our members are the eight state and territory community legal sector peak bodies. Together, we represent over 160 community legal centres, women's legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

Our movement's vision is for a fair and equitable society in which:

- Our legal systems and institutions are accessible to all, decolonised, and no longer criminalise poverty, disadvantage, or disability,
- All members of our community have access to the power, tools and means to live safe, secure, and meaningful lives, free from discrimination, violence, exploitation, and abuse,
- We respect and protect the rights of First Nations people and communities to land, language, culture, and self-determination,
- We respect and protect the natural environment for current and future generations.

Our expertise is grounded in the stories of the 180,000 people who engage our sector's services each year and who experience first-hand the barriers to accessing justice that exist in our legal systems. Our public advocacy ensures that their voices and experiences drive progressive systems reform.

We acknowledge the significant contributions to this submission by community legal services and peaks across Australia including Women's Legal Service NSW, Redfern Legal Centre, the Environmental Defenders Office, Canberra Community Law, Kimberley Community Legal Service, Inner-Melbourne Community Legal Centre, Economic Justice Australia, Kingsford Legal Centre, Southern Communities Advocacy Legal and Education Service Inc. (SCALES), and the Asylum Seeker Resource Centre, Community Legal Centres NSW and the Federation of Community Legal Centres Victoria.

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We acknowledge the Traditional Custodians of the land on which we work and live, and recognise their continuing connection to land, water and community. We also pay our respects to Elders past and present.

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1. Executive summary

We welcome the opportunity to contribute to the Parliamentary Joint Committee on Human Rights (the Committee) Inquiry into a National Human Rights Framework (the Inquiry). There is a clear need in Australia for a more effective human rights framework to prevent human rights violations, to promote access to justice, and to ensure that government decisions are guided by values of fairness, safety, and dignity. To achieve this, it is crucial the Federal Government develops a national Human Rights Act to benefit the whole community in Australia. In this submission, we refer to a Human Rights Act. This terminology is interchangeable with a legislated Charter of Human Rights.

Human rights are fundamental to the work of the community legal sector across Australia. Community legal services provide access to justice to people and communities who need it most, particularly those experiencing high levels of poverty, discrimination, and systemic disadvantage. Community legal services are embedded in their local communities across the country, from metropolitan areas to regional, rural, remote, and very remote regions of Australia. We see firsthand the devastating impact of human rights violations in the communities we serve.

The community legal sector plays a critical role in helping people to achieve fairer outcomes in a broad range of areas that are fundamental to their lives. This includes helping people who are facing eviction and homelessness, incarceration, crippling debts and fines, family breakdown and violence, discrimination, visa cancellation and deportation, exploitation at work and unfair dismissal. The community legal sector is uniquely placed to identify reforms to advance human rights in Australia. This submission draws on input provided by community legal services across Australia. It includes examples of the benefits delivered by existing state and territory human rights legislation, as well as areas where a national Human Rights Act is critical.

Our sector recognises the potential and widespread benefits of advancing human rights in Australia. As reflected in the Universal Declaration of Human Rights, human rights benefit everyone: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind”. The community legal sector strongly supports establishing a national Human Rights Act as a key step towards strengthening human rights in Australia. The model proposed by the Australian Human Rights Commission (AHRC) in their position paper, *Free and Equal: A Human Rights Act for Australia*, provides a strong foundation for what a Human Rights Act could look like on a national level.

We emphasise the need to establish a national human rights framework that has a legislative basis and includes the protection of civil and political rights, economic and social rights, and the right to a healthy environment. A national Human Rights Act must enshrine effective standalone pathways to achieve remedies for breaches of human rights, which are enforceable through the courts. It must also establish a positive enabling framework to guide government decision making in line with values of fairness, safety, and dignity.

This involves placing a positive duty on public authorities to consider and make decisions compatible with human rights and to realise the principle of access to justice in policy, law, and practice. It also requires public officials to ensure meaningful and non-discriminatory participation, including of First Nations communities, children, and people with a disability in decisions that directly or disproportionately impact their rights. We support the government developing a draft exposure bill based on the AHRC’s proposed Human Rights Act model.

To complement a national Human Rights Act, we recommend widespread community education, so all Australians understand their rights, as well as ongoing human rights monitoring mechanisms to track the progress and impact of national human rights legislation. We highlight the importance of government support for robust human rights organisations. This includes sustainable resourcing for the community legal sector to give effect to the fundamental principle of access to justice which is an intrinsic part of human rights.

2. Recommendations

The Federal Government should:

1. **Legislate a national Human Rights Act.** The Act should include civil, political, economic, social, and cultural rights and the right to a healthy environment.
2. **Develop widespread education campaigns** for government bodies and the community to ensure understanding of human rights and effective implementation of human rights legislation.
3. **Implement monitoring mechanisms** to measure progress and impact of a national Human Rights Act and to ensure key human rights priorities are being met.
4. **Support robust civil society organisations** to promote human rights across Australia. This includes sustainable resourcing for the community legal sector to promote the fundamental principle of access to justice – an integral part of human rights.

3. Human rights are not adequately protected in Australia

There is no unifying or comprehensive framework for human rights in Australia. Australia has ratified several international human rights treaties however these have not been adequately implemented into domestic law. Rights that are protected are fragmented and cannot be easily understood by the community. Enforcement of human rights in Australia is limited and there is inadequate remedy when people's human rights are violated.

Since Australia's Human Rights Framework (the Framework) lapsed, there have not been effective processes for advancing human rights reforms or achieving human rights priorities at a national level.¹ The AHRC's report to the UN Human Rights Council for Australia's third Universal Periodic Review in 2012 highlighted that 'Australia does not take a protective approach to human rights' and there are 'limited national targets and commitments to address known human rights challenges, and limited accountability mechanisms'.²

3.1 Australia's 2010 Human Rights Framework is inadequate.

The Framework was released in April 2010 in support of Australia's commitment 'to a fairer and more inclusive Australia.' It promoted goals associated with five core human rights value systems: Reaffirm, Educate, Engage, Protect and Respect.

Under the Framework, the Federal Government committed to:

- Reaffirm its 'commitment to promoting awareness and understanding of human rights... and respecting the seven core United Nations human rights treaties to which Australia is a party'.
- Educate the community and promote greater understanding of human rights, including by investing in education and training programs.
- Engage with state and territory counterparts, the international community, and NGOs, and develop a new National Action Plan on Human Rights.
- Protect human rights by introducing new legislation to (1) establish a Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislative compliance, and (2) require new Bills introduced to Parliament be accompanied by a statement of compatibility with human rights.
- Respect human rights by reviewing existing legislation, policies, and practices to ensure they appropriately reflect human rights and remove unnecessary regulatory overlap, address inconsistencies, and make the system more user-friendly.³

While the goals of the Framework are appealing, many of its objectives and commitments were not completed or lapsed after the Framework ceased to exist.⁴ We consider that the Framework and its implementation represented an insubstantial and inadequate national commitment to protect human rights.

1 Australian Human Rights Commission, Submission to the Inquiry into Australia's Human Rights Framework, May 2023, p.5.

2 Australian Human Rights Commission, Submission to Australia's Third Universal Periodic Review (2020) p.6.

3 Commonwealth of Australia, Australia's Human Rights Framework (April 2010) pp. 2 - 3.

4 Australian Human Rights Commission (AHRC), Inquiry into Australia's Human Rights Framework, Submission to the Parliamentary Joint Committee on Human Rights (May 2023) 40.

A significant cause of the failure to adequately implement the Framework was that there was only a limited degree of funding attached to it.⁵ From the outset, this severely restricted the extent to which the federal, state, and territory governments could commit to implementation. The lack of funding significantly limited governments' ability to conduct key activities to advance human rights priorities and therefore impacted the outcomes achieved. As an example, there was no funding attached to the National Human Rights Action Plan (NHRAP).⁶ Ultimately, the status of NHRAP was uncertain and the incoming Federal Government did not commit to implementing it after 2013. This was compounded by the insufficient funding given to social and community services to assist in the realisation of human rights.⁷

The Framework was also inadequate due to the lack of accountability and independent review processes. There was a distinct lack of transparency mechanisms to hold the government to account for fulfilling (or failing to fulfil) its commitments. There were neither self-reporting processes or quality assessments conducted by independent agencies to assess and report on the progress of government actions. The lack of regular, independent monitoring on the progress of government action contributed to the Framework's failure as there was inadequate systems in place to hold the government to account for fulfilling its commitments.⁸

Another factor which contributed to the Framework's failure was the lack of engagement from state and territory governments. This lack of buy-in meant many of the framework's goals were left unimplemented, and in some cases rendered inoperable without any oversight from state and territory governments. In future, federal, state, and territory governments must adopt an active role in working towards and developing improved human rights protections.⁹

The Framework's failure highlights the insufficient and patchwork nature of human rights protections in Australia. The Hon Catherine Branson AC KC, the President of the Australian Human Rights Commission at the time of the Framework's announcement, commented that the measures included in the Framework would be difficult to deliver 'while human rights protection in Australia remain an incomplete patchwork.'¹⁰ Without a Human Rights Act, there is no single legislative instrument unifying human rights protection in Australia. There is unnecessary regulatory overlap, inconsistencies across laws and a system that is not user-friendly and potentially inaccessible for those that need it most.¹¹

3.2 Australia needs a national Human Rights Act

Since the Framework lapsed the Federal Government has not implemented adequate, alternative processes to protect human rights.¹² Australia continues to fail to fully

5 Ibid, p.40.

6 Ibid, pp.40 – 41.

7 Joint NGO Submission, Joint NGO Submission on Behalf of the Australian NGO Coalition: Australia's Human Rights Score Card (April 2020), p.3.

8 AHRC, May 2023, p.40.

9 AHRC, May 2023, p.40.

10 AHRC, May 2023, pg. 28; Australian Human Rights Commission, President Speech: The National Human Rights Consultation: Outcomes.

11 Commonwealth of Australia, Australia's Human Rights Framework, April 2010, p.3.

12 AHRC, May 2023, p.41.

incorporate its international human rights obligations into domestic law.¹³ The failure to replace the Framework has resulted in a regression in terms of human rights protections at a national level. There is no proactive vision for future improvements in human rights protections.

The Federal Government needs to shift from a reactive model to a proactive model.¹⁴ Australia needs a comprehensive and judicially enforceable Human Rights Act that protects the whole community by ensuring the 'decisions and actions of our governments meet their obligations and are guided by values like fairness, safety and dignity.'¹⁵

¹³ Joint NGO Submission, Joint NGO Submission on Behalf of the Australian NGO Coalition: Australia's Human Rights Score Card, April 2020, pg. 3

¹⁴ AHRC, May 2023, p.80.

¹⁵ Joint NGO Submission, Joint NGO Submission on Behalf of the Australian NGO Coalition: Australia's Human Rights Score Card (April 2020) 3.

4. Key elements of a national Human Rights Act

The establishment of a national Human Rights Act in Australia is crucial to prevent human rights violations, to promote access to justice and to ensure that government decisions are guided by values of fairness, safety, and dignity.

Australia has committed to upholding human rights through its ratification of several international treaties and human rights conventions. A national Human Rights Act would build on this by incorporating human rights standards that Australia has committed to through international instruments, into domestic law, policy, and practice. This will improve government accountability for decisions that impact the human rights of the Australian community and ensure that the development of laws and policies are informed by human rights.¹⁶

A national Human Rights Act will ensure that the government is required to consider human rights from the outset when developing law and policy and provide opportunities for meaningful participation of the Australian community on human rights issues that directly impact them.¹⁷ This will enhance accountability by placing positive duties on public officials to fully consider human rights issues with the aim of preventing human rights violations from occurring and improving outcomes for individuals, families and the broader community.¹⁸ In turn, a national Human Rights Act would give those impacted mechanisms to enforce their fundamental rights which creates a fairer and more equal society for all.¹⁹

4.1 Key human rights elements

The legislated human rights model proposed by the AHRC in their position paper, *Free and Equal: A Human Rights Act for Australia*, provides a strong foundation for what a Human Rights Act could look like on a national level. We support the government developing a draft exposure bill based on the AHRC's proposed Human Rights Act, which includes the following key elements:

Broad rights: The model is legislatively based and incorporates rights in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and key principles from other international treaties. The AHRC's model provides for the protection of civil and political, social, and economic rights and a right to a healthy environment. It also codifies common law rights and freedoms, including the principle of access to justice. Any limitation on human rights would need to be proportionate.²⁰

Positive duty on public authorities: The model places a positive duty on public authorities to ensure that they consider human rights as part of their decision making and

¹⁶ AHRC, May 2023, p.10.

¹⁷AHRC, May 2023, p.13.

¹⁸ Australian Human Rights Commission, Submission to the Inquiry into Australia's Human Rights Framework, May 2023, p.45.

¹⁹ Australian Human Rights Commission, Submission to the Inquiry into Australia's Human Rights Framework, May 2023, p.14.

²⁰ AHRC, May 2023, p.49.

act compatibility with human rights. Compliance with this duty would be reviewable by courts.²¹

Human rights interpretation: In line with the common law ‘principle of legality’, the proposed model includes an interpretative clause directing courts to favour an interpretation of legislation that is compatible with human rights (provided this is consistent with Parliament’s (express) intention.²²

Participation duty: This requires public authorities to ensure meaningful participation of people in government decisions where their human rights are directly or disproportionately impacted, including First Nations people, children, and people with a disability.²³

Equal access to justice: This imposes a positive duty on public authorities to give effect to the principle of access to justice, including providing proper access to legal assistance, disability support and interpreters to support people involved in the legal system. This also establishes obligations to promote rights to a fair hearing, as well as equality before the law, to overcome barriers to accessing justice for particular groups.²⁴

Enforceability: The proposed model provides for standalone causes of action for pursuing a wide range of remedies where people’s human rights are breached which are enforceable through the courts.²⁵

4.2 Key areas that require legislated human rights protections

There have been documented human rights violations in Australia arising from Royal Commissions, parliamentary inquiries and AHRC investigations. This has had profoundly negative consequences for the community as a whole and has an enduring impact for people who experience systemic disadvantage and discrimination, including First Nations people, people with a disability, and elderly people.²⁶ However, without a comprehensive national Human Rights Act, systemic abuses continue with limited avenues to enforce human rights which are being infringed.

Australia is the only remaining liberal democracy without a federal Human Rights Act that has obligations to protect human rights under several United Nations human rights treaties. Australia has ratified the following international treaties:

- *International Convention on Economic, Cultural and Social Rights (ICESCR)*²⁷

²¹ AHRC, May 2023, p.49.

²² AHRC, May 2023, p.50.

²³ AHRC, May 2023, p.50.

²⁴ AHRC, May 2023, p.50.

²⁵ AHRC, May 2023, p.51.

²⁶ Daney Faddoul, Charter of Rights – a Human Rights Charter benefits everyone – Charter of Rights campaign coalition submission to the Inquiry into Australia’s Human Rights Framework (pre-inquiry version), July 2023, p.8.

²⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

- *Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*²⁸
- *International Convention on the Elimination of all forms of Racial Discrimination (CERD)*²⁹
- *Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment (CAT)*³⁰
- *Convention on the Rights of the Child (CRC)*³¹
- *Convention on the Rights of Persons with Disabilities (CRPD)*³²
- *International Convention on Civil and Political Rights (ICCPR)*³³

To meet its obligations under international law, Australia should implement these treaties into domestic law under a legislated Human Rights Act.

Community legal services see firsthand the devastating impact of human rights violations in the communities they serve and have a deep understanding of the critical reforms that could be made to advance human rights in Australia. Drawing on the experiences of the community legal sector nationally and recent Royal Commissions, the remainder of this submission provides examples of areas where human rights violations have occurred and the critical role a national Human Rights Act could play in upholding people's rights.

4.2.1 Economic, social, and cultural rights

Right to housing

Under the ICESCR, all people have the right to an adequate standard of living including adequate food, clothing, and housing, and to the continuous improvement of living conditions (Art 11). In Australia, housing is a particular concern. Australia has a duty to ensure that housing is accessible, affordable, available, habitable, culturally adequate, and accessible for people with disability. Across the country, community legal services have found that our unequal and inaccessible housing system pushes people into homelessness, insecurity, and poverty. With climate and environmental crises escalating, temperatures are rising, extreme weather events are becoming more common, and many houses are becoming unliveable and unhealthy.

28 International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), opened for signature 18 December 1979, 1249 UNTS 14 (entered into force 3 September 1981), Article 7.

29 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

30 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 4 January 1989).

31 Convention on the Rights of the Child (CROC), opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 20 November 1989)

32 Convention on the Rights of Persons with Disabilities (CRPD), A/RES/61/106 (adopted without vote and entered into force 24 January 2007).

33 International Covenant on Civil and Political Rights (ICCPR), opened for signature 16 December 1966 UNTS 999 (entered into force 23 March 1976).

Donna* came to Kingsford Legal Centre for advice. She has been on a social housing transfer list for 4 years and has physical disabilities that make it dangerous for her to mount the multiple storeys in her apartment complex to get to her house. Given this, Donna is at risk of significant harm every time she enters or leaves her home. Donna's house is also filled with severe mould, which is dangerously impacting on her health and the health of her children. In addition to this, Donna needs to move to protect her family from domestic violence. Donna's social housing provider refuses to give Donna information about their housing transfer list and when she may be able to move to a safe property. They are also refusing to undertake repairs to clean the mould, saying that their properties are old, and it is the tenant's responsibility to clean.

**Name changed for confidentiality*

Donna's story demonstrates the importance of adequate government funding to uphold people's rights to safety, adequate housing, and health. A right to access adequate housing is vital for ensuring Donna's other rights are recognised. In practice, it would provide Donna with greater rights in relation to having social housing providers find and secure safe accommodation for her and her family. Such a right could support Donna in accessing a new home or, at a minimum, obtaining more information about the social housing transfer list and the steps that social housing is taking to find suitable accommodation.

Right to social security

Under Article 9 of the ICESCR, everyone has the right to social security, including social insurance. Social security is a federal responsibility, that should come under the remit of a national Human Rights Act. The right to social security should be protected and is fundamental to the realisation of human dignity, and the fulfilment of interrelated rights — in particular, the right to an adequate standard of living.

Australia's social security system does not centre human rights. Policies, administrative decisions, and services often fail to recognise and accommodate people's unique and complex needs or the supports they require. The system has a disproportionate focus on punitive compliance measures, and complex eligibility hoops that lead to exclusion.

Social security recipients are often treated with suspicion by government officials and politicians, who view them as undeserving because they experience poverty and hardship. Without sufficient human rights protections in place, this can lead to laws, policies and administrative practices that do not respect the human rights of social security recipients, resulting in avoidable harms to individuals and communities.

The Robodebt scheme³⁴ implemented from 2017 to late 2019, resulted in thousands of social security recipients being sent inaccurate Centrelink debt notices. The debt notices generated under the scheme were found to be unlawful under the Social Security Act,³⁵ and caused extreme stress for many recipients, some of whom subsequently committed

³⁴ For further discussion of the legal and human rights issues with Robodebt, see Economic Justice Australia's submission to the Robodebt Royal Commission: <https://www.ejaustralia.org.au/wp-content/uploads/Economic-Justice-Australia-submission- Robodebt-Royal-Commission .pdf>.

³⁵ *Deanna Amato v the Commonwealth of Australia*, Federal Court of Australia, VID611/2019, 11 November 2019.

suicide. It led to a class action resulting in a record \$1.8 billion settlement, as well as a Royal Commission.³⁶

Evidence to the Royal Commission highlighted the profound disregard that senior public servants and Ministers had toward the application of the rule of law, human rights standards, and the humanity of the people affected. The Robodebt example shows that our current legal frameworks and ‘business as usual’ approaches to public administration are insufficient to prevent systemic human rights abuses – particularly where they impact upon people who experience systemic disadvantage and discrimination.

Considering human rights has the potential to lead to better quality laws and policies that properly consider affected stakeholders, which has broader benefits for Government and the public. It is ironic that Robodebt ended up being much more costly for government due to the lack of human rights consideration, despite it being designed as a cost-cutting tool. Proactive consideration and investment in human rights can prevent immense downstream financial costs.

4.2.2 The right to freedom from violence

Gender-based violence

The right to freedom from violence includes women’s right to live free from gender-based violence. The CEDAW Committee explains that gender-based violence is violence directed at women because they are women or that impacts women disproportionately.³⁷ It is a form of discrimination that limits women’s achievement of other human rights. Its causes and consequences are rooted in deep-seated sexist and misogynistic societal attitudes, structures, and legal systems.

Gender-based violence is a problem across Australia. As pointed out by Women’s Legal Service NSW, most victim-survivors of domestic and family violence and abuse in Australia are women.³⁸ One in four women have experienced violence from an intimate partner or family member.³⁹ One in five women have experienced sexual violence since the age of 15. As a comparison, one in sixteen men experienced sexual violence since the age of 15.⁴⁰

Upholding the right to be free from gender-based violence requires a duty on public authorities to equal access to justice in criminal matters as well as civil and family law matters which involve substantial human rights issues. Women’s Legal Service NSW notes that inability to access legal assistance in civil and family law matters (or appropriately participate in the court process due to procedural deficiencies) can have serious human rights implications for women and children.

Financial abuse

Economic or financial abuse is a form of family, domestic and sexual violence. It has significant and devastating impacts at an individual, community and societal level.

36 Luke Henriques-Gomes, ‘Robodebt: court approves \$1.8bn settlement for victims of government’s “shameful” failure’, The Guardian (Online) 11 June 2021 <https://www.theguardian.com/australianews/2021/jun/11/robodebt-court-approves-18bn-settlement-for-victims-of-governments-shameful-failure>.

37 CEDAW Committee, (n 16) General Recommendation No. 35 and No. 19.

38 Australian Institute of Health and Welfare (2023), Family, domestic and sexual violence.

39 Australian Bureau of Statistics (2021-22), Personal Safety, Australia.

40 Ibid.

Economic abuse in an intimate partner relationship can take various forms, including accruing debt or other liabilities in the other person's name, not contributing to joint loans, controlling all finances, not making shared financial decisions, withholding necessities, preventing someone from obtaining or remaining in employment, and stopping someone from accessing education or a means to become financially independent.

Financial abuse cuts across many areas of human rights in particular the right to adequate standard of living, right to health, protection of children, and protection of families. It also relates to equal access to justice – specifically sufficient access to legal assistance, as well as the right to a fair hearing and non-discrimination principles that would require certain support and services within the justice system which currently do not exist for many victim-survivors of financial abuse and domestic violence more broadly. It also cuts across the right to social security as this is often an issue for people experiencing economic abuse, as well as the right to education, work, and other work-related rights. This is because perpetrators often deny victim-survivors access to work and education.

Lily's* previous relationship ended in 2017. In 2018, she reached property settlement orders with her ex-partner which involved the sale of the matrimonial home, and she received a portion of the proceeds – approximately \$150,000.

She started a relationship with Theodore in 2019. She had not decided what she wanted to do with the funds from her property settlement and was renting an affordable property while she decided the best steps to take financially. Theodore perpetrated financial and physical abuse against Lily over the next 18 months, stealing over \$120,000 from her bank accounts. Theodore took her debit card while she was sleeping, signed her up for telephone plans and high interest loans without her knowledge or consent, and accessed her banking app to take money out of her accounts directly. She moved the money into new accounts and new banks, but he obtained that information through threats of violence and, in some cases, actual violence. She tried to notify the banks of the domestic violence that she was experiencing, but Theodore threatened her and forced her to contact the bank to lift bans that were in place.

Theodore's financial abuse meant that Lily had little money in the bank and could no longer afford rent. They became homeless and stayed at motels or slept in cars. Theodore isolated Lily from her friends and family so she could not seek their support. Lily began missing work because of the domestic violence she was experiencing, and her health issues worsened. After a very serious assault, Lily was hospitalised for an extended period and was unable to attend work. As a result, she lost her job.

After she reported the violence to police, Lily moved back in with her mother and sought legal advice. Redfern Legal Centre's Financial Abuse Service assisted Lily to work with lenders and telecommunications companies to seek debt waivers and repair Lily's credit report. Redfern Legal Centre also assisted her to make complaints to the banks for failing to take appropriate action despite being notified of the domestic violence. Redfern Legal Centre obtained refunds and compensation of over \$30,000 for Lily, which allowed her to get back on her feet.

**Name changed for confidentiality.*

Lily's story demonstrates the importance of frontline legal services in assisting victim-survivors of financial abuse and addressing, or avoiding, poverty as a result of domestic and family violence. If the right to recognition and equality before the law existed, this would ensure victim survivors have access to adequate legal services to support them, including social supports and mental health supports. It could also include a specialist court which is trauma informed and supports victim-survivors of financial abuse and domestic violence. Lily's story also demonstrates the importance of a right to an adequate standard of living.

Clients who receive the necessary assistance to obtain compensation or debt waivers are financially empowered and financially independent. They are better able to obtain housing and employment, and in turn are less likely to rely on income support or Centrelink benefits and other government services. Work related rights would have also been beneficial here as Lily's workplace would have had better protections for people experiencing domestic violence and financial abuse and could have better supported her to remain connected to the workforce.

4.2.3 The rights of people with disability

The Disability Royal Commission has highlighted the importance of adopting a human rights approach which articulates core values and standards by which people with disability must be treated.⁴¹ This reflects important values, such as autonomy, fairness, safety, and dignity for all. The Disability Royal Commission has foreshadowed that international human rights frameworks will inform their recommendations. This underscores the importance of incorporating these human rights standards into a comprehensive national Human Rights Act.⁴²

The priority clients of the Southern Communities Advocacy Legal and Education Service Inc. (SCALES), include people with disabilities and people who experience mental health issues. SCALES has recently had several clients with disabilities (who are NDIS participants) seeking advice about the terms of their tenancy agreements. These agreements contain an additional clause which states that, to be eligible for 'subsidised rent', the tenant must engage a particular support provider (or choose from one of several nominated support providers affiliated with the lessor), as their 'primary' support provider. The lessor further dictates that this support provider is to provide the tenant with a minimum number of hours of paid support services per week. The support provider is paid by the NDIS for services provided to the tenant with funding that comes from the tenant's 'core supports fund'. The support provider then pays the lessor either a specified weekly amount, or an unspecified 'share' of the profits obtained from services provided to the tenant, to 'top up' the rent paid by the tenant. The additional clause also states the lessor can terminate the tenancy agreement in the event this arrangement stops, or the profit to the lessor is 'insufficient'.

Several of these tenants told SCALES of their experiences of inadequate, neglectful, or abusive service provision, and, as a result, feeling forced to choose between their dignity, safety and wellbeing, or the termination of their tenancy agreement.

The potential implications of this additional clause are multifaceted. At a minimum, it presents a conflict between a person's rights as a tenant, and their rights as a person with a

41 Commonwealth of Australia, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Interim Report, October 2020, p.10.

42 Ibid.

disability. This issue highlights the shortcomings of existing legislative frameworks in providing:

- Accessible, meaningful, or adequate remedies for the often-complex and cross-jurisdictional issues specifically facing tenants with a disabilities
- Accessible, meaningful, or adequate mechanisms to resolve or redress conflicts between a person's rights within differing contexts (i.e., human rights and consumer rights)
- Accessible, meaningful, or adequate legislative protections designed to uphold and reinforce the rights of tenants with disabilities (and the rights of people with disabilities, more broadly)
- Adequate safeguards against discriminatory practices and the mistreatment, abuse, and exploitation of tenants with disabilities (and people with disabilities, more broadly)
- Adequate third-party oversight and complaints management processes in the disability sector.

4.2.4 The rights of elderly people

The Royal Commission into Aged Care Quality and Safety (the Aged Care Royal Commission) highlighted neglect and mistreatment of elderly people in aged care facilities. This included assaults on elderly people in residential aged care (potentially as high as 13-18%), overuse of physical and chemical restraints, and the normalisation of substandard care.⁴³ Commissioner Briggs found that 1 in 3 elderly people in residential care and home care services experienced substandard care.⁴⁴

The lack of enforceable human rights to shape government decisions led to systemic issues persisting for years without adequate recourse.⁴⁵ The Royal Commission recommended that new legislation should be introduced, which enshrines core rights for elderly people, including rights to high quality care, to be free from mistreatment, neglect, and harm, to enjoy rights of social participation afforded to the community generally, and equity of access to aged care.⁴⁶

4.2.5 The right to a healthy environment

Any Human Rights Act should include the right to a healthy environment, which is now universally recognised as a human right that is important for the enjoyment of other human rights.⁴⁷ The Special Rapporteur on human rights and the environment has identified 16

43 Commonwealth of Australia, Royal Commission into Aged Care Quality and Safety, Summary and Recommendations, *Final Report: Care, Dignity and Respect (volume 1)*, 2021, p.72.

44 Ibid.

45 Daney Faddoul, Charter of Rights – a Human Rights Charter benefits everyone – Charter of Rights campaign coalition submission to the Inquiry into Australia's Human Rights Framework (pre-inquiry version), July 2023, p.9.

46 Commonwealth of Australia, Royal Commission into Aged Care Quality and Safety, Summary and Recommendations, *Final Report: Care, Dignity and Respect (volume 1)*, 2021, p.205.

47 In a landmark resolution on 28 July 2022, the UN General Assembly reaffirmed recognition of the human right to a clean, healthy and sustainable environment,¹¹ after this right was explicitly recognised by the UN Human Rights Council in October 2021.¹² The resolution passed with an overwhelming majority, with Australia voting in favour along with another 160 UN Member States.

Framework Principles on Human Rights and the Environment (Framework Principles),⁴⁸ which are basic obligations of States under international human rights law as they relate to the enjoyment of a clean, healthy and sustainable environment. The Framework Principles do not establish new legal obligations. Rather, they are derived from obligations that States already have under international human rights treaties and other sources of international law.⁴⁹

Framework Principles 3, 14, and 15 are particularly important with respect to First Nations people in Australia (see pp. 27 to 29 of the Environmental Defender's Office's submission for further discussion of these principles). The specific rights of First Nations Peoples in relation to a healthy environment are outlined in Framework Principle 15, which sets out States obligations to indigenous peoples and members of traditional communities, including to:⁵⁰

- Recognise and protect their rights to the lands, territories, and resources that they have traditionally owned, occupied or used
- Consult with them and obtain their free, prior, and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories, or resources
- Respect and protect their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories, and resources
- Ensure that they fairly and equitably share the benefits from activities relating to their lands, territories, or resources.

The obligations in Framework Principle 15 arise out of international human rights sources including United Nations Declaration on the Rights of Indigenous Persons and article 27 of the ICCPR.⁵¹

The right to a healthy environment intersects with various other human rights, including, for example, the right to housing. Kimberley Community Legal Services provide crisis responses to remote parts of the Kimberley for acute housing needs whether that be termination of a tenancy, homelessness, or dealing with inadequate housing. Due to the increasing risks of climate change, the challenges of the economy and a historical and current crisis in the delivery of affordable and social housing in First Nations communities, people in regions like the Kimberley are incredibly vulnerable to breach of their rights to habitable housing.

There are real and ongoing concerns about the protection of First Nations people in remote areas from the current and future impacts of climate change. Increases in extreme heat and weather events already have an impact on people in the Kimberley region. Residents often struggle to live through hot conditions in overcrowded and uninhabitable housing or are displaced from their traditional country by flooding.

⁴⁸ John H Knox, Special Rapporteur on Human Rights and the Environment, *Framework principles on human rights and the environment*, UN Doc. A/HRC/37/59 (24 January 2018).

⁴⁹ Ibid, 3 [8]. See also, Selected sources for framework principles on human rights and the environment (February 2018): <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/ListSourcesFrameworkPrinciples.pdf>.

⁵⁰ Ibid. Principle 15, pp 18-20.

⁵¹ Selected Sources for Framework Principles on Human Rights and the Environment, Principle 15, pp 30-32.

The Department of Communities manages both Public Housing tenants and regional government employee housing in the Kimberley region. Public Housing tenants in the north-west of WA are not provided with air conditioners, whereas regional employees are provided with air conditioners and a subsidy in recognition of the health and financial costs associated with living in hot parts of the state. While this is an example of a state policy, there remains a clear example of a rights discrepancy between what two groups of tenants are provided by the same government department.

Kimberley Community Legal Service expanded on this rights discrepancy in its recent publication, *Stuck in the Heat: Lived Experiences of Public Housing Tenants in the Kimberley*, which found that public housing tenants are living in conditions that threaten their rights to habitable housing and protection from climate risks. Tenants reported experiencing distress and difficulty managing extreme temperatures in their housing, leading to energy poverty, financial stress, health, and wellbeing impacts, increases in antisocial behaviour and reliance on emergency relief services. The report recommends changes to the delivery of houses, including reducing overcrowding and improving the liveability of housing in the Kimberley region.

4.2.6 The rights of children

A national Human Rights Act that acknowledges and upholds the protection of children and families could ensure a fairer child protection system for children and young people. Firstly, a legislated human rights framework that establishes responsibilities for government to provide supports for children and families could improve access to services for families and support more families to remain together. Currently the often-unattainable standards and care plans made by the NSW Department of Communities and Justice (DCJ) imposed upon families are onerous. Even though parents try to meet all requirements to end child protection intervention, there are few to no supports and services provided to families to ensure that they are addressing concerns and improving their situation so that DCJ no longer needs to be involved.

Secondly, rights to equality before the law and freedom from discrimination could establish standards and protections for families within the child protection system. Currently, due to the significant power imbalance between DCJ and families, families can be significantly disadvantaged and discriminated against within the process with few avenues of redress or recourse. A human rights framework could establish these processes, shifting the power imbalances so protections for families and children are in fact effective.

Emily* had 4 of her children removed and placed on long term care orders until they were 18. 2 years ago, she had made significant progress with her drug use and was engaged with several community services. She had successfully addressed many of the protective concerns that were initially an issue for DCJ now had capacity and ability to care for her children. She made an s90 application for leave to the court to revoke the long-term care orders with the hope of the children being returned to her care. DCJ did not support her application and the court refused to grant leave and hear the application. Emily tried to self-advocate for, at minimum, regular contact with her children but DCJ did not facilitate this. All her children were residing in regional towns whilst she was in Sydney. Her oldest child, now a teen, was getting into lots of trouble and involved in the Juvenile Justice system. He had expressed that he wanted to return to his mother's care and that his behaviour would improve if he was just at home again.

**Name changed for confidentiality.*

Ben*, a 56-year-old Aboriginal man, had his five grandchildren subject to child protection proceedings. The children were removed from their mother's care due concerns about her substance use. The children were split up and placed in several different foster homes. The current Children's Court proceedings do not allow any person or family members who are not parties to the proceedings to be privy to essential information about the placement of the children. Ben had deep concerns that the children would be placed back in the care of their father, who had a history of serious violence and substance use. As the children's grandparent, he wanted the ability to express this the court, but was unable to as he was not a party to the Children's Court proceedings. This significantly hindered Ben's ability to contribute to decisions made about his grandchildren and their best interests.

**Name changed for confidentiality.*

4.2.7 Civil and political rights

Access to a fair trial is fundamental to the justice system and should be protected under a human rights act in Australia. It is people who experience deep and persistent disadvantage who are least likely to access the justice system on a fair footing, including due to lack of access to legal assistance services.

Access to justice in regional, rural, and remote locations

Approximately 28 percent of the Australian population live in rural and remote areas.⁵² Yet in 2016 just 10.5% of solicitors in Australia were practising in a rural area.⁵³ The true cost of delivering services to people living in remote and very remote communities is rarely covered by regional and remote loadings. This impacts on participation and access to justice. Remotely delivered services cannot fully replace face to face services, particularly for people experiencing multiple and intersecting vulnerabilities.

⁵² Australian Institute of Health and Welfare, 'Rural and remote health', 7 July 2022: <https://www.aihw.gov.au/reports/rural-remote-australians/rural-and-remote-health>.

⁵³ Law Society of NSW (2017), 'National Profile of Solicitors 2016 Report', 24 August 2017: <https://www.lawsociety.com.au/sites/default/files/2018-04/NATIONAL%20PROFILE%20OF%20SOLICITORS%202016.compressed.pdf>

Geographical challenges of accessing legal assistance

In areas like the Kimberley region of WA, towns and communities are remote, geographically sparse, and difficult to access, particularly during periods of extreme weather and rain. In remote areas, lawyers and social workers travel long hours by car, sometimes on dirt roads, to service communities with legal advice and support. This occurs every one to two months, and during other times, communities only have access to legal support over the phone. This presents challenges to clients in accessing legal and social support and advice.

For example, a woman who is seeking to obtain a Family Violence Restraining Order in a remote community has a range of barriers to keep herself safe, secure an order, and then enforce it successfully if she needs to. This includes, accessing a court safely, seeking assistance drafting an affidavit, appearing in court over the phone, and dealing with understaffed and at times culturally inappropriate police stations to enforce an order. In these circumstances access to legal assistance is crucial to ensuring women can navigate a complicated and overly bureaucratic system.

Further, to successfully leave the relationship and family domicile, the fleeing partner must have somewhere to go. In some communities there are no women's refuges or emergency accommodation, presenting risk and danger to women and children facing family violence. As well as emergency accommodation, adequate alternative housing options are required. Regional and remote locations, suffer an acute shortage of crisis, transitional and long-term housing. The average wait time on the priority waitlist is one year in WA, but many clients wait more than 2 years on the priority list in the Kimberley. Tenants can expect to wait up to 10 years on the general list.

Interpreters in remote Western Australia

A significant barrier to equitable access to justice is inadequate funding for and access to interpreting services. Community legal services in Western Australia report that funding for the use of interpreters, and access to interpreters, varies significantly. As a result, accessing interpreting services for clients can be difficult and costly, impacting on access to justice.

Some government-funded programs include specific allocations for interpreting services or provide access to government-funded interpreting services. Other funding streams do not. As a result, clients may receive different levels of service depending on the program they are accessing as well as their citizenship or visa status. Furthermore, it can be particularly difficult to access interpreting services for less common languages. Government funding plays a crucial role, however, demand for interpreting services often exceeds the available resources, leading to challenges in access and availability.

A legislated Human Rights Act could serve as an important mechanism to ensure all people who require interpreters to access legal assistance are able to have this right met including through ensuring all government-funded programs include adequate provision for this cost.

The geographical vastness of Western Australia presents another hurdle in accessing interpreting services. Remote and regional areas often lack the infrastructure and resources needed to provide interpreters on-site or through videoconferencing platforms. This issue is compounded by the limited availability of reliable internet connections in some areas, hindering the provision of remote interpreting services. Consequently, individuals residing in these regions are at a significant disadvantage when it comes to accessing accurate and

timely interpretation, exacerbating their isolation, and limiting their ability to communicate effectively with service providers.

4.2.8 Rights of refugees

Ensuring people from migrant and refugee communities are treated equally and with dignity

There are limited human rights protections for people from migrant and refugee backgrounds in Australia. Community legal services working with these communities have highlighted grave infringements of their clients' human rights. As the case studies below illustrate, this has led to severe hardships and denied people their most basic human rights. This underscores the importance of a national Human Rights Act, which not only benefits Australians, but also sections of our community who experience high levels of marginalisation.

Right to liberty, security of person and protection of family and children – Australia's detention regimes

Australia's offshore detention regime has subjected people seeking protection from persecution to severe human rights violations. However, there has been no adequate processes to address these clear breaches of human rights. The case studies below illustrate the personal toll arising from human rights violations experienced by people seeking protection, their families and children and underscore the important of a national Human Rights Act.

Mohammad is a Hazara man from Afghanistan who has been held in offshore detention in Papua New Guinea for over 9 years, despite having been recognised as a refugee. Mohammad has suffered in offshore detention and has a multitude of untreated health conditions which makes it difficult for him to eat. He also experiences depression. His doctor suggests he exercises, but Mohammad does not want to leave his house for fear of his safety. He is also under severe mental stress because he is worried about his family in Afghanistan who are living under Taliban rule.

Without a national Human Rights Act, there have been no clear avenues for challenging Mohammad's indefinite offshore detention.

Joseph fled Iran in 2013 and sought asylum in Australia. In 2016, his bridging visa was cancelled due to a criminal charge, which was later withdrawn. He was transferred to immigration detention in 2017 and has remained there since this time.

Joseph has been seeking asylum for over a decade and has been detained for 6 years, with no certainty regarding when he will be released from detention while the judicial review process is underway.

Without a national Human Rights Act, there have been limited avenues to challenge Joseph's detention and prevent him from being indefinitely detained.

Said is a refugee who spent over 9 years in offshore detention in Nauru. His brother is an Australian citizen. In 2021, several of Said's family members were evacuated to Australia, including his wife and three children. However, Said remained in Nauru. Said was only permitted to be transferred to Australia in December 2022 and was then reunited with his wife and children.

Without a national Human Rights Act there was no way to challenge the government's decision to separate Said from his family for years.

The Australian government's treatment of the Murugappan family (also known as the Biloela family) demonstrates the devastating consequences to children's health who are held in immigration detention. The parents fled Sri Lanka and sought asylum in Australia where their daughters were born.

The family were placed in immigration detention in Melbourne and later Christmas Island (where they were the sole occupants), following the expiry of the mother's bridging visa. The family continued to be detained at Christmas Island while court proceedings were underway, despite the COVID-19 pandemic and concerns over exposure to COVID-19 from guards.

The family's prolonged detention in an isolated location had a devastating impact on them, particularly their young children. The family did not have access to sufficient sunlight in detention leading to vitamin D deficiency, infections, and other health issues. The family's 2-year-old daughter's nutritional needs were not being met in detention and her teeth started to rot, resulting in surgery to remove her teeth. When she was 4 years old, she had to be evacuated from Christmas Island following a blood infection.

This underscores the importance of a national Human Rights Act to challenge the ongoing detention of children suffering serious medical conditions.

Access to core services for people from migrant and refugee backgrounds

People from migrant and refugee backgrounds who arrive in Australia often have limited access to work, Medicare, and housing. This can lead to significant hardships and the denial of core rights. The case studies below illustrate the grave ramifications where such rights are denied for groups experiencing systemic disadvantage. This highlights the importance of a national Human Rights Act to guide policy and government decision-making, ensure it is compatible with human rights, and to challenge inhumane decisions.

Benjamin arrived in Australia on a student visa after fleeing his country of origin due to facing serious harm because of his sexuality. He was unaware that he could apply for a protection visa on these grounds in Australia.

Benjamin's mental health declined due to past experiences of trauma and ongoing threats he received from his ethnic community in Australia. He was unable to meet his student visa requirements and it was cancelled.

Benjamin experienced homelessness and ill-health and was unable to seek legal assistance. He was taken into detention. While in detention, he was referred to the Asylum Seeker Resource Centre who advised him about his legal rights.

Benjamin applied for a protection visa and was released from detention and granted a bridging visa with no work rights while he awaited the outcome. He applied for work rights several times, however the Department of Home Affairs refused to grant him work rights.

Benjamin waited over 5 years for his protection visa to be granted and was prohibited from working during this time. Benjamin was ready and willing to work and could have financially supported himself during his protection visa application process and avoided homelessness.

Ahmed fled his country of origin and sought asylum in Australia by sea in 2012. He has been seeking asylum for over a decade. While he awaited an outcome for his protection visa application, the Department of Home Affairs granted him a temporary bridging visa without work rights. This means that Ahmed cannot access Medicare despite his serious health conditions including PTSD and diabetes.

Due to his inability to access Medicare, Ahmed was not aware he could attend a public hospital for a medical emergency, and he became very unwell. He relies on charities to assist with his medical needs however they cannot provide the required treatment.

A national Human Rights Act would assist Ahmed to advocate for access to basic healthcare through Medicare.

Maryam is a single woman from Bangladesh. When she first arrived in Australia, she sought asylum alongside her husband. However, after years of experiencing family violence, Maryam separated from her husband before their application for asylum was finalised. She urgently needed access to crisis accommodation. However, the accommodation provider would not admit Maryam because she only held a temporary bridging visa without work rights.

A national Human Rights Act would ensure that women on temporary visas who are experiencing family violence have access to crisis accommodation to keep them safe.

4.2.9 Rights of transgender and gender-diverse people

We note and endorse the submissions made by the Public Interest Advocacy Centre (PIAC) and the Inner-City Legal Centre (ICLC) in relation to the rights of transgender and gender-diverse (trans) people.

Trans people experience a range of human rights violations in Australia and around the world. According to the United Nations Independent Expert on sexual orientation and gender identity:⁵⁴

Gender-diverse and trans people around the world are subjected to levels of violence and discrimination that offend the human conscience:

- *they are caught in a spiral of exclusion and marginalisation: often bullied at school, rejected by their family, pushed out onto the streets, and denied access to employment*
- *when they are persons of colour, belong to ethnic minorities or are migrants, living with HIV, or sex workers, they are particularly at risk of violence, including of killing, beatings, mutilation, rape and other forms of abuse and maltreatment*
- *to practice their right to recognition before the law, gender-diverse and trans persons are often victim to violence in health-care settings such as forced psychiatric evaluations, unwanted surgeries, sterilization or other coercive medical procedures, often justified by discriminatory medical classifications.*

The Independent Expert's assessment of the deep and widespread rights violations of trans people applies in the Australian context.

Trans people, health, and bodily autonomy

In some Australian jurisdictions, trans people are forced to undergo expensive (and sometimes unwanted) medical procedures before they are permitted to change their legal gender marker to match their identity.⁵⁵ This is an unacceptable violation of trans people's bodily autonomy.

Trans people experience significantly worse mental health outcomes than the general population. According to the Australian Government's March 2023 *Gender Diverse, including LGBTIQ+* paper:⁵⁶

- 73 per cent of trans people report lifetime diagnosis of depression
- 67 per cent report lifetime diagnosis of anxiety
- 63 per cent report previous self-harm
- 43 per cent report they have attempted suicide.

The Medical Council of NSW acknowledges that transgender patients may hesitate to access health services if they believe they may face discrimination, and that as a result many trans people delay or avoid seeking necessary healthcare because of past negative

⁵⁴ Independent Expert on sexual orientation and gender identity, The struggle of trans and gender-diverse persons: <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/struggle-trans-and-gender-diverse-persons>.

⁵⁵ Justice Connect, "How to change your gender status on formal documents in NSW". See also similar pages for all other Australian jurisdictions: <https://justiceconnect.org.au/resources/how-to-update-your-gender-on-formal-documents-nsw/>.

⁵⁶ Department of the Prime Minister and Cabinet, Gender Diverse, including LGBTIQ+, Phase One Consultation: National Strategy to Achieve Gender Equality, March 2023: https://www.pmc.gov.au/sites/default/files/2023-03/Roundtable-Discussion-Paper_Gender-Diverse.docx.

experiences in medical settings.⁵⁷ This reticence to seek care can further undermine trans people's physical and mental health.

Trans people, discrimination, employment, and housing

The *Sex Discrimination Act* makes it unlawful to treat a person less favourably than another person in a similar situation because of gender-related identity, appearance, mannerisms, or other gender-related characteristics of the person.⁵⁸ Discrimination against trans and gender diverse people is also unlawful in many areas of public life in Australia, including employment, education, using services, or accessing housing. In practice, however, discrimination against trans people is rampant. Findings from *Trans Pathways*, the largest study on trans youth mental health ever conducted in Australia, include that 69 per cent of trans young people have experienced discrimination, and 74 per cent have experienced bullying.⁵⁹

One example of this discrimination and its impact on trans people's wellbeing is in relation to rental housing. In most Australian jurisdictions it is unlawful for real estate agents and landlords to discriminate during the rental application process on the grounds of gender identity. Renters who believe their rental application has been rejected due to their trans or gender diverse status can make a complaint. However, in practice, rental laws that heavily favour agents and landlords over renters mean that trans renters who feel they have been discriminated against have little to no recourse.⁶⁰

According to the 2017 *Trans Pathways* study, 22% of trans people surveyed experienced accommodations issues including homelessness, unstable accommodation and couchsurfing.⁶¹ Many participants attributed these problems to discrimination based on their gender identity or expression. This includes instances where trans people are rejected from sharehouses based on their trans status or are forced to leave the family home before they are financially able to do so because of transphobic family members.

Transgender women face particularly prohibitive structural barriers: according to the Australian Government's *Gender Diverse, including LGBTIQ+* paper, 42% of transgender women report earning less than \$400 a week (below the Australian poverty line) and 32% of transgender women have experienced homelessness, compared to 13.4% of the general population.⁶²

Rising anti-trans rhetoric and violence

Trans people experience higher levels of violence and abuse than the general population. According to *Trans Pathways*:⁶³

57 Medical Council of New South Wales, Transgender medicine update, 15 December 2022: <https://www.mcnsw.org.au/transgender-medicine-update>.

58 Australian Human Rights Commission, Transgender: <https://humanrights.gov.au/quick-guide/12104>.

59 Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Summary of results. Telethon Kids Institute, Perth, Australia. p45.

60 Brooke, R., 'Renting & transphobia: NSW renting laws that need to change to support transgender renters', Tenants' Union of NSW, 28 May 2023: <https://www.tenants.org.au/blog/renting-transphobia-nsw-renting-laws-need-change-support-transgender-renters>.

61 Strauss, P. et al, pp57-58.

62 Department of Prime Minister & Cabinet, 'Gender Diverse, including LGBTIQ+', National Strategy to Achieve Gender Equality, March 2023 https://www.pmc.gov.au/sites/default/files/2023-03/Roundtable-Discussion-Paper_Gender-Diverse.docx.

63 Strauss, P. et al, p45

- 24.3 per cent have experienced sexual abuse outside of the family
- 24.8 per cent have experienced physical abuse within the family
- 16.2 per cent have experienced physical abuse outside of the family
- 30.9 per cent have experienced abuse within an intimate partner relationship.

Individual incidents of violence against trans people do not happen in a vacuum. Transphobic violence reinforces and is reinforced by more subtle forms of discrimination and marginalisation. The normalisation of anti-trans rhetoric drives anti-trans legislation (or a lack of legal protections for trans people), which in turn drives discrimination, abuse and violence towards trans people – which contribute to the normalisation of anti-trans rhetoric and policies.

We note PIAC's comments relating to the rise in transphobic rhetoric and violence in Australia throughout 2023, in their submission to this inquiry:

The first half of 2023 saw several disturbing developments involving vilification of LGBTIQ people around Australia. This included the March 2023 rally against trans rights during which neo-Nazis rallied on the steps of Victorian Parliament, and the March 2023 incident in Belfield, Sydney, where a mob engaged in violence against LGBTIQ protestors and police. There have also been a number of LGBTIQ community events which have had to be cancelled following threats of public violence.⁶⁴

We support the PIAC's recommendations to prohibit vilification on the basis of sexual orientation, gender identity and sex characteristics, and to create a Sexual Orientation, Gender Identity and Sex Characteristics Discrimination Commissioner at the Australian Human Rights Commission.

⁶⁴ Public Interest Advocacy Centre, Submission to the Inquiry into Australia's Human Rights Framework, Submission 212.

5. Effectiveness of state and territory human rights legislation

The community legal sector has seen the benefits delivered by human rights legislation in state and territories that have introduced human rights acts or charters (i.e., Victoria, Queensland, and the ACT). We recognise that certain aspects of these acts and charters could be strengthened. However, these legislative implements have still had a positive impact in promoting a human rights discourse in policy and government decision-making in the relevant jurisdictions and ensuring that decisions are human rights compliant.

The Human Rights Law Centre's *101 Cases: How Charters of Human Rights makes our lives better* resource documents the benefits of human rights legislation at the state and territory level across a wide range of areas. In addition to these examples, we have set out some further case studies from community legal services, which illustrate the benefit of human rights legislation for individuals, families, and public systems. We note that here we have examined the impact of human rights legislation in relation to housing, but acknowledge the benefits are far broader.

5.1 Safe and secure housing in the ACT

In the community legal sector's experience, the *Human Rights Act 2004 (ACT)* (the ACT Human Rights Act) has been a powerful tool to enable people to assert their rights through the legal process. The ACT Human Rights Act provides protection for a range of human rights. It includes rights which relate to housing, such as rights to protection of the family and children,⁶⁵ to privacy and reputation,⁶⁶ and to liberty and security.⁶⁷ It also protects the cultural and other rights of Aboriginal and Torres Strait Islander peoples, in recognition of the special significance of rights protection to first peoples.⁶⁸

Human rights protected by the Act are subject only to reasonable limits set by laws that can be 'demonstrably justified in a free and democratic society'.⁶⁹ The ACT Human Rights Act provides criteria by which the reasonableness of any limitation to be placed on a human right must be assessed. It requires all ACT government policies and legislation to be interpreted and applied in accordance with human rights principles. In addition to a right of action in the Supreme Court against public authorities that breach human rights,⁷⁰ individuals may also rely on their human rights in other legal proceedings in ACT courts and tribunals.⁷¹

65 Human Rights Act 2004 (ACT) s 11.

66 Human Rights Act 2004 (ACT) s 12.

67 Human Rights Act 2004 (ACT) s 18.

68 Human Rights Act 2004 (ACT) s 27.

69 Human Rights Act 2004 (ACT) s 28.

70 Human Rights Act 2004 (ACT) s 40C(2)(a).

71 Human Rights Act 2004 (ACT) s 40C(2)(b).

In the community legal sector's experience, the ACT Human Rights Act has been instrumental in preventing people from being evicted from social housing and ensuring people are housed in safe and appropriate properties. It has also been critical in protecting related rights, including access to education, cultural and kinship rights, access to disability support and rights in custody. The case studies below demonstrate how the ACT Human Rights Act has been successfully used to give effect to an Aboriginal Elder's cultural and kinship rights and ensure she can provide stability and support to her family, and to prevent a young person with complex mental and physical health issues from being made homeless.

Mary is a 65-year-old Ngunnawal woman who was living in a one-bedroom public housing flat in the ACT. Her youngest daughter was incarcerated, and her three grandkids were placed into foster care. Mary provided regular respite care so they could maintain connection to family and culture. Mary also has a niece who has an intellectual disability and is currently homeless and often couch surfs at Mary's place. As an Elder in her family, Mary has an important role in both passing along her cultural knowledge and in supporting her family with whatever means she has.

Mary needed to move to a bigger house so that she could continue to support her niece and take on more responsibility for her grandchildren. Mary applied for a transfer to a bigger home with the social housing landlord, but her application was refused as there were no formal arrangements in place for the care of her daughter's children and other family members she supports.

Dhurrawang Aboriginal Human Rights Program (Dhurrawang) at Canberra Community Law helped Mary put her case to the social housing landlord, which centred on having her human rights respected. Dhurrawang raised Mary's cultural obligations as an Aboriginal Elder to support her family and ensure that their cultural heritage and knowledge is sustained. Dhurrawang successfully used the ACT Human Rights Act to show that Mary and her family's cultural and human rights had been denied by the social housing lessor's decision. They demonstrated that a suitable property was critical in helping Mary to raise her grandchildren and maintain the family's kinship ties by ensuring that her home was a place that her family could congregate and stay when they needed her support.

The social housing lessor approved Mary's application for a four-bedroom home on the priority housing list and she moved into a new home within 2 months.

ACAT did not evict Jocelyn and she was released on parole 2 months after her hearing date. ACAT recognised the need to consider the complexity of Jocelyn's circumstances, including her human rights.

5.2 Upholding rights to social housing in Victoria

In Victoria, the application of the *Charter of Human Rights and Responsibilities Act 2006* (VIC) (the Victorian Charter) has made tenancies more secure and prevented people being evicted into homelessness. For example, at the four-year review into the Victorian Charter,

a community legal centre found that the Victorian Charter had prevented 42 people in their recent case load alone, from being evicted into homelessness.⁷²

The Victorian Charter protects a number of fundamental human rights.⁷³ Under the Victorian Charter, it is unlawful for a public authority to fail to properly consider those human rights when making decisions, or act in a way that is incompatible with relevant human rights.⁷⁴ The Victorian Charter contains specific rights concerning housing and family, including the protection of families and children in line with their best interests and the right against unlawful interference with privacy, family or home.⁷⁵

The examples below, including case law developments, illustrate the benefit of the Victorian Charter in upholding people's fundamental rights and ensuring they are not made homeless by government decisions.

Ms Burgess had a history of trauma and substance use and had recently spent 10 months in prison for drug trafficking. When she came out of prison she was recovering and had stopped using drugs. She was getting her life back on track when she was issued with an eviction notice. A condition of her parole was that she had regular and intensive screening for drug use and that she had a home with a fixed address. She was living with her teenage son. The Director of Housing sought to evict Ms Burgess on the grounds that illegal activity had taken place at her home (the trafficking that she had been in prison for).

Having a home was essential for Ms Burgess' recovery and parole. Without a home, she would not have met her parole requirements and would have to return to jail. She would likely be homeless upon release making relapse more likely. Without a secure home, she would not be able to care for her son.

The Court found the decisions of the Director of Housing to issue an eviction notice engaged Ms. Burgess and her family's human rights under the Victorian Charter. By failing to properly consider Ms Burgess' human rights, the Director's decisions were found to be unlawful, and the Court quashed the Director's decision to purchase a warrant.

The Director needed to consider the full context of Ms Burgess' situation, including her current recovery from drug use and care of her son. This led to a better outcome not only for Ms Burgess and her family, but also decreased downstream pressure on the health, justice, and welfare systems if Ms Burgess had been evicted and returned to jail.

The decision had broader positive impacts on housing policies and procedures which were updated to ensure their compatibility with the Victorian Charter obligations.

The Victorian Charter has helped people exercise their rights at an early stage without recourse to court. The Victorian Charter also allows community lawyers to raise potential

72 PILCH – Homeless Person's Legal Clinic, *Charting the Right Course – Submission to the Inquiry into the Charter of Human Rights and Responsibilities* (June 2011) 1.

73 *Charter of Human Rights and Responsibilities Act 2006* (Vic).

74 *Ibid*, s 38.

75 *Ibid*, ss13, 17.

breaches of the Victorian Charter with social housing providers to help resolve the matter before proceeding to court, thereby preventing unnecessary evictions. For example, a community legal centre had examples of 14 people, including 9 children, who were not evicted into homelessness due to negotiations prior to court which raised Victorian Charter concerns.⁷⁶

Brent suffered an acquired brain injury in a work accident when he was 16. He became homeless at that time and remained so for 30 years. His psychosocial development was greatly limited by these life events, and he experienced a severe impulse control disorder.

After being placed in a stable ongoing housing, Brent was able to work with a disability care team to improve his health and wellbeing. However, problems began to arise with Brent's neighbours, who took issue with his propensity to have loud verbal outbursts in his home and backyard. His community housing provider obtained a possession order from the Victorian Civil and Administrative Tribunal (VCAT) in February 2020.

Inner Melbourne Community Legal negotiated with the community housing provider, highlighting the Victorian Charter obligations it owed to Brent as a social housing landlord. The community housing provider did not continue with the eviction.

Similar problems arose again in February 2021, and again the community housing provider was successful in obtaining a possession order from VCAT for nuisance. Inner Melbourne Community Legal negotiated with the rental provider on the basis that Brent's rights under the Victorian Charter should not be interfered with unless it was absolutely necessary to do so. The provider showed restraint in declining to purchase a warrant and allowed Brent further opportunity to show behavioural improvements through his work with his care team.

The tenancy continues today and is the longest period that Brent has ever enjoyed in stable home since he first became homeless as a child. Were it not for Brent's community housing provider agreeing that they were bound by the Victorian Charter, and that their decisions ought to be made consistently with it insofar as that was possible, Brent would have either been made homeless, or forced to pursue these arguments in the Supreme Court of Victoria.

⁷⁶ Justice Connect Homeless Law, Submission 79 to the Scrutiny of Acts and Regulation Committee, Parliament of Victoria, 2015 Review of the Human Rights and Responsibility Act, 'Charting a Stronger Course: Submission to the Eight Year Charter Review', June 2015, Annexure, 33: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Charting-a-Stronger-Course-June-2015.pdf>.

6. Other key recommendations

6.1 Improving awareness of human rights across Australia

Alongside the implementation of a national Human Rights Act, the government should develop widespread education campaigns for government bodies and the community to ensure understanding of human rights and effective implementation of human rights legislation. It is critical that there is greater awareness of human rights across the community to enable and empower people to understand and enforce their rights and hold government bodies accountable.⁷⁷ It is also important for government bodies and public officials to ensure that decision-making is informed by human rights and that they “adopt human rights-based approaches in policy design and implementation”.⁷⁸

6.2 Robust human rights organisations

In conjunction with the implementation of a national Human Rights Act, it is important there are robust organisations to advance and protect human rights.⁷⁹ This includes sustainable resourcing for the community legal sector to promote the fundamental principle of access to justice – an integral part of human rights legislation.

In the Free and Equal report, the AHRC proposed a “complementary ‘equal access to justice duty’ for public authorities.”⁸⁰ This duty involves public authorities having a positive duty to realise principles of access to justice and requires proactive measures to be taken to ensure a functioning justice system.⁸¹ The AHRC highlighted that this would specifically require public authorities to provide adequate access to “legal assistance, interpreters and disability support to individuals navigating the justice system”.⁸²

Giving effect to access to justice principles involves the government ensuring the community legal sector receives sustainable resourcing so people have access to legal assistance where their human rights have been infringed.

6.3 Monitoring and evaluation of human rights progress

We recommend the government implements effective monitoring to measure progress and impact of a national Human Rights Act and to ensure key human rights priorities are being met. The AHRC recommends the government commit to the development of a national human rights indicator index which can meet several objectives.⁸³ These include

77 Australian Human Rights Commission, *Submission to the Inquiry into Australia’s Human Rights Framework*, May 2023, p.21.

78 Australian Human Rights Commission, *Submission to the Inquiry into Australia’s Human Rights Framework*, May 2023, p.21.

79 Australian Human Rights Commission, May 2023, p.22.

80 Australian Human Rights Commission Summary report: Free and equal, a human rights law for Australia, 2022: <https://humanrights.gov.au/human-rights-act-for-australia>.

81 Ibid.

82 Ibid.

83 Australian Human Rights Commission, May 2023, p.19.

measuring human rights overtime, ensuring transparency and independent monitoring to analyse the progress of human rights issues, and ensuring community engagement in policy and program design.⁸⁴

6.4 Application of the Charter to private actors

As outlined by the Environmental Defenders Office (EDO), under international law, States' obligations to protect human rights includes an obligation to protect against harmful interference with human rights by businesses and other private actors.⁸⁵ Individuals must be able to access effective remedies against private actors as well as government authorities.

Climate change and the raft of challenges it brings constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. As such, the UN Human Rights Committee has declared that to fulfil their obligation to respect and ensure the right to life, States must preserve the environment and protect it against harm, pollution and climate change caused by both public and private actors.⁸⁶

We support the EDO's recommendation that an Australian Human Rights Act should explicitly state that, consistent with international law, the positive duty on public authorities extends to a duty to ensure that private actors act consistently with the human rights contained in the Act. The Act should also impose a duty on businesses and other private actors to act consistently with human rights and should include accessible remedies for harmful interference with human rights by private actors.

⁸⁴ Ibid, p.20.

⁸⁵ John Knox, Framework Principles on Human Rights and the Environment, UN Doc A/HRC/37/59 (24 January 2018) [5], pp 7-8.

⁸⁶ UN Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life , UN Doc CCPR/C/GC/36 (3 September 2019) [62] p 13.