



**FEDERATION**  
OF COMMUNITY LEGAL CENTRES VIC

# **A NATIONAL HUMAN RIGHTS FRAMEWORK FOR AUSTRALIA**

Submission to the Parliamentary Joint Committee on Human Rights  
Inquiry into a National Human Rights Framework

## ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 50 years, CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

**WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.**

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online

[fclc.org.au/about](https://fclc.org.au/about)

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# ACKNOWLEDGEMENT OF COUNTRY



The Federation of Community Legal Centres acknowledges the Traditional Custodians of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nations.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

# SECTION 1: SUMMARY OF RECOMMENDATIONS

We support the Committee making the following recommendations to the Federal Government:

- **Recommendation 1:** The Australian Government establish a National Human Rights Act based on the Australian Human Rights Commission's proposed Free and Equal model. At minimum, a draft exposure bill should include:
  - the protection of civil and political, social and economic and environmental rights;
  - standalone causes of action that include remedies for breaches of human rights, enforceable through the courts; and
  - a positive duty on public authorities to:
    - consider human rights in decision making;
    - ensure meaningful participation of First Nations peoples, children and people with a disability in decisions that directly or disproportionately impact their rights; and
    - adhere to key principles of access to justice in decision making.
- **Recommendation 2:** The Australian Government fund the development of a National Human Rights Education program in addition to establishing a National Human Rights Act. At minimum, the education program should be:
  - centred on promoting the key features of the National Human Rights Act, including the rights protected and duties held by decision makers;
  - tailored and made accessible for public authorities, government departments, communities (including those in remote and rural locations, marginalised communities experiencing vulnerability and/or disadvantage), schools and workplaces; and
  - reviewed for continuous improvement.
- **Recommendation 3:** The Australian Government establish a transparent monitoring and evaluation framework to regularly measure progress on human rights.
- **Recommendation 4:** The Australian Government ensure sustainable resourcing and funding is provided to human rights organisations, including Community Legal Centres to promote human rights principles and provide legal advice and assistances to individuals experiencing breaches of human rights.

## SECTION 2: INTRODUCTION

We welcome the opportunity to contribute to the Parliamentary Joint Committee on Human Rights (Committee) Inquiry into a National Human Rights Framework (Inquiry). We commend the Committee for undertaking this Inquiry and endeavouring to reimagine a National Human Rights Framework for Australia. Human Rights are the bedrock from which Community Legal Centres operate. Across Victoria, Community Legal Centres play an important role in advancing human rights for individuals and the communities they serve, often elevating their clients' experiences to inform decision making and public discourse to ensure greater fairness and human rights compliance.

Community Legal Centres engage with a broad range of legal and social problems, spanning housing, family violence, social security, migration, coronial inquests, access to justice, disability and more. Given the breadth of issues that Community Legal Centres engage with, they are well placed to identify reform opportunities to advance and protect human rights. This submission draws on input provided by Victorian Community Legal Centres, including examples of how the *Charter of Human Rights and Responsibilities Act 2006 Victoria* (Vic) (Charter) has been used to ensure beneficial outcomes for individuals and ensure government and decision makers proactively consider human rights.

The community legal sector recognises the wide sweeping impacts of protecting and advancing human rights— both for individuals, communities and the wider public, that benefit from systems such courts, law enforcement, health, housing, education, and justice being more human rights focused. 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.*<sup>1</sup>

Community Legal Centres strongly support establishing a National Human Rights Act or legislated charter as a foundational step towards strengthening human rights in Australia. The use of the term 'charter' or 'legislated Act' may be used interchangeably across the submissions provided by members from the community legal sector; however, the key ask remains the same – that is, ensuring a legislative basis for human rights on a national level.

In Victoria, there are many examples of how the Charter has played a critical role in advancing human rights outcomes for individuals and ensuring governments make decisions according to principles and standards of fairness, access to justice and equality. This submission highlights examples of how the Charter and other state-based human rights acts have been used to drive impactful and beneficial outcomes for individuals and the broader communities in which they live.

In addition, we also spotlight examples of human rights problems that would benefit from a National Human Rights Act to strengthen the protection, prevention, and ability to remedy breaches of human rights. These examples are useful in informing how a National Human Rights Framework might be modelled to strengthen and build upon state legislation.

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<sup>1</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948), art 2.

Broadly, we support the proposed model for a National Human Rights Act outlined in the Australian Human Rights Commission's Free and Equal Position Paper.<sup>2</sup> We emphasise the need to establish a national legislative basis that 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 also enshrine effective standalone pathways to achieve remedies for breaches of human rights enforceable through the courts and establish a positive enabling framework for public authorities to ensure the implementation of meaningful, non-discriminatory participation and principles of equal access to justice in decision-making processes.

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<sup>2</sup> Australian Human Rights Commission, *Free & Equal: A Human Right Act for Australia* (Position Paper, December 2022).

## SECTION 3: THE NEED FOR A LEGISLATED NATIONAL HUMAN RIGHTS ACT

Australia is one of the only liberal democracies without a national Human Rights Act, charter, or similar law.<sup>3</sup> Our national human rights framework, initially established in 2010, failed to establish a framework of human rights standards that covers political and civil rights, economic and social rights and the right to a healthy environment.

There is currently no overarching national framework that incorporates human rights standards and principles (including those within international treaties that Australia is a signatory to) into domestic law, policy, and practice. Consequentially, international treaties to which Australia is a signatory, including the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic Social and Cultural Rights 1976 are not enforceable under Australian law. Approaches to decision making and law and policy development across a range of important federal and state issues such as family violence, migration, child protection or access to health care are often developed in silos and lack a human rights-based approach.<sup>4</sup>

While the current framework offers protection across certain human rights in the Commonwealth Constitution and Federal Anti-Discrimination law, the rights protected are limited and not adequate to cultivate a positive culture of human rights across different levels of decision making. The Commonwealth Constitution includes an extremely limited number of human rights protections. This includes: the right to vote (section 41); the protection against acquisition of property on just terms (section 51); the right to trial by jury (section 80); freedom of religion (section 116); and the prohibition of discrimination on the basis of State of residency (section 117).<sup>5</sup> Obtaining a remedy for human rights breaches under the Commonwealth Constitution involves pursuing legal action through to the Federal and High Courts, limiting access to these remedies for to the majority of individuals, including those from marginalised communities, that Community Legal Centres represent.

The current federal anti-discrimination law framework ensures the right to be treated equally regardless of race, gender, disability, sexual orientation, or age. While our federal anti-discrimination law ensures causes of action for conduct that amounts to discrimination, it does not cover the full ambit of human

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<sup>3</sup> Emeritus Professor Gillian Triggs, 'Why an Australian charter of rights is a matter of national urgency' *The Conversation*, (online, 13 August 2019).

<sup>4</sup> *A human rights-based approach requires the recognition of human rights as legally enforceable entitlements, giving people greater opportunities to participate in shaping the decisions that impact on their human rights. It also means increasing the ability of those with responsibility for fulfilling rights to recognise and know how to respect those rights, and make sure they can be held to account.* Scottish Human Rights Commission 'What is a human rights-based approach?' (Web Page) <<https://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html>>.

<sup>5</sup> *Commonwealth of Australia Constitution Act 1900* (Cth).



rights protections included in international covenants to which Australia is a signatory. It also does not establish a positive duty on government to safeguard and consider human rights.

Under the existing framework for human rights, approaches to protecting, remedying, and preventing breaches of human rights remain fragmented, inconsistent, and often non-compliant or at risk of being non-compliant with international human rights standards. This, together with an absence of any legislative mechanisms for ensuring accountability in applying human rights principles and standards across government decision making, results in a confusing and unfair system of law. The current system of human rights protections in Australia is piecemeal and inadequate.

Establishing a national legislative basis for protecting, respecting, and remedying human rights is the first step required towards creating an overarching framework to guide and influence uniformity in human rights compliance across state and federal decision making, public programs and systems. Community Legal Centres support establishing a National Human Rights Act as a key mechanism for advancing the rights of the marginalised communities that they serve, who are often 'left behind' or poorly represented within government and public service bodies. Ensuring these communities' rights are understood, protected and integrated into decision making is a key indicator of sustainable development leading to greater benefits for everyone and a more equal society.<sup>6</sup> A National Human Rights Act will ensure a legislative basis for interpreting human rights that will align decision making processes and, when accompanied by a supportive and accessible educational framework, will be instrumental in promoting a constructive and positive culture of human rights that realises benefits across all levels of the community.

## Examples of positive impacts from state-based human rights legislation

Community Legal Centres are at the forefront of numerous systemic social justice issues and engage with people experiencing disadvantage, such as financial hardship, family violence, homelessness, and discrimination. In Victoria, the Charter provides a strong legislative basis to direct decision makers to protecting human rights and ensuring compatibility with human rights principles such as non-discrimination and access to justice. The Charter applies to public authorities and establishes a positive duty to 'act compatibly' with human rights, in addition to making it unlawful for a public authority to act in a way that is incompatible with a human right or fail to give proper consideration to a relevant human right.<sup>7</sup>

The examples outlined below highlight the positive impact of the Charter on individuals, public systems and in informing public discourse across key issues with which Community Legal Centres are engaged.

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<sup>6</sup> United Nations Development Group 'Leave No One Behind, Principle Two' (Web Page) <<https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>>.

<sup>7</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s38(1).

## Preventing homelessness and eviction from social housing

Access to suitable housing and the prevention of homelessness are significant issues that impact many of the clients that Community Legal Centres assist. Given the current crisis into rental and housing affordability, now more than ever, there is a need for decision makers to be proactive in applying principles of human rights in decision making. The Charter provides a legal basis for ensuring decision makers give proper regard to human rights and act compatibly with human rights when making decisions, particularly regarding applications for social housing and evictions.

The importance of securing adequate housing is significant for individuals from marginalised or disadvantaged backgrounds, including First Nations peoples, migrants and refugees, women experiencing family violence, young people, people experiencing disability and mental health challenges and other at-risk groups.

The case examples below from Community Legal Centres highlight how the Charter has advanced human rights and ensured wide-sweeping and long-term benefits that will impact the greater community in addition to the individuals themselves. It is likely that there would have been different decision outcomes in these cases if the Charter was not in place, including eviction, homelessness, breakdown of families and missed opportunities to continue working with care providers to improve psychosocial behavioural development.

### Preventing the eviction of siblings from a refugee background

*“MetroWest, a housing provider, tried to evict two siblings who had recently arrived in Australia as refugees, for no specified reason. The Director of Footscray Housing Services, after hearing what was happening, engaged PILCH [now Justice Connect] to challenge the eviction. MetroWest eventually agreed that they were bound by the obligations in the Charter and withdrew the application for eviction”.<sup>8</sup>*

### Securing a stable home ensures improvements in psychosocial development

*Brent suffered an acquired brain injury in a work accident when he was 16, became homeless at that time, and remained so for 30 years. His psychosocial development was greatly limited by these life events, and he experiences 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. Brent’s neighbours 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 Administrative Tribunal in February 2020.*

*Inner Melbourne Community Legal negotiated with the community housing provider, highlighting the Charter obligations that it considered to be owed to Brent as a social landlord. The community housing provider decided not to continue with the eviction.*

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<sup>8</sup> Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better, Here are 101 cases showing how*, (Report, November 2022), case 54 p 42.

*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 Charter should not be interfered with unless it was absolutely necessary to do so.*

*Brent's tenancy continues today and is the longest period that Brent has ever enjoyed in stable home, enabling him to realise significant behavioural improvements through his work with his care team.*

## Coronial inquests into deaths in custody

In Victoria, the Charter directly applies to the Coroners Court when the court is investigating a reportable death.<sup>9</sup> In these instances, the court is required to act compatibly with human rights and give proper consideration to relevant human rights when making administrative decisions.<sup>10</sup> In the examples below, from cases involving Community Legal Centre advocacy and representation, the Charter played a fundamental role in establishing the framework of human rights that the Coroner investigated, grounding the investigation in clear human rights standards that could be assessed and reported on.

### **The role of systemic racism included in the Coronial investigation on the death in police custody of Aunty Tanya Day**

*Proud Yorta Yorta woman Aunty Tanya Day died in December 2017 after being arrested for being drunk in a public place after she fell asleep on a train. The Coroner investigating Aunty Tanya Day's death accepted submissions by the Human Rights Law Centre and the Victorian Equal Opportunity and Human Rights Commission that the Coroners Court of Victoria is bound to act compatibly with human rights and to consider human rights when making decisions – including the right to life. The Coroner accepted that this meant that their inquiry needed to scrutinise not only the immediate causes of Aunty Tanya Day's death but also the role systemic racism played in her death. This included allowing witnesses to be questioned as to whether "racism played a part of their decision making, including Ms Day's treatment, options considered, their motivations and potential unintended effects of their decision-making."*

*The Coroner ultimately found that Aunty Tanya Day's death was preventable had she not been taken into police custody; that the V/Line train conductor's decision making was influenced by her Aboriginality and unconscious bias; that the police officer's checks while Aunty Tanya Day was in the cell were inadequate; and that she was "not treated with humanity and respect for the inherent dignity of a human person as required by the Charter".*

*The Coroner also recommended that V/Line and Victoria Police request the Victorian Equal Opportunity and Human Rights Commission to conduct a review of the compatibility of its training materials with the Charter.<sup>11</sup>*

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<sup>9</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic) s38(1).

<sup>10</sup> Ibid.

<sup>11</sup> Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better, Here are 101 cases showing how*, (Report, November 2022), case 21, p 25.

### Coronial Inquest into the death of Veronica Nelson

*Veronica Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, passed away in the State's custody on 2 January 2020, while on remand for minor non-violent offences.*

*As required under the Charter, the Coroner included an investigation of breaches of human rights that may have caused or contributed to the death of Veronica Nelson. The Coroner identified several human rights under the Charter that were relevant to the death of Veronica Nelson, including, the right to equality, right to life, cultural rights, right to liberty, right to humane treatment when deprived of liberty, protection from torture, and cruel, inhumane and degrading treatment; and made findings on the breach of these rights.*

*The Charter also ensured that the conduct of Victoria Police, Forensicare, Correct Care Australasia, G4S and other public bodies involved were also investigated for breaches of human rights as public bodies with a positive duty to ensure compatibility with human rights under the Charter.<sup>12</sup>*

## Cultural rights

The Charter has also been used to advance cultural rights for First Nations people—ensuring meaningful connection to kinship, family, and cultural values.

### Meaningful access to Aboriginal culture in out of home care

*Victoria's Commission for Children and Young People relied on the cultural rights obligations in the Charter to support its recommendations for government and community service organisations to better identify and record Aboriginal and Torres Strait Islander status in the child protection system and to make sure that Aboriginal and Torres Strait Islander children in out-of-home care have meaningful access to their culture.<sup>13</sup>*

## Access to Justice

Community Legal Centres experience firsthand the transformative outcomes realised by the provision of legal assistance, interpreters, disability support and the upholding of principles of fairness and equality across law enforcement and the courts. The Charter upholds access to justice across various key rights, including: the right to a fair hearing; rights in criminal law proceedings; and the right to

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<sup>12</sup> Coroner's Court of Victoria, Inquest into the Passing of Veronica Nelson, 30 January 2023, para 75 and 80.

<sup>13</sup> Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better, Here are 101 cases showing how*, (Report, November 2022), case 26, p29.

recognition and equality before the law.<sup>14</sup> This provides a necessary legislative basis for ensuring these rights are considered by courts, administrative, statutory bodies, and governments.

In Victoria, there is ongoing work required towards ensuring that public, civil, and criminal legal systems are organised and operate in a way that adequately respects and responds to the varied and complex barriers experienced by people engaging with them. Community Legal Centres have contributed to key reviews on strengthening access to justice in Victoria and continue to advocate across a range of issues to ensure a fairer Victoria.<sup>15</sup> The sector recognises the integral role that the Charter plays in supporting this work.

#### **Fitzroy Legal Service assists to ensure procedural fairness, protecting a disabled man from eviction**

*A Victorian Department attempted to evict a man who used a wheelchair from his home. In addition to his physical disability, the man had a mental illness and spoke limited English. The Department sought to evict him based on information gathered from police as to a drug-related allegation against the man. However, police had not charged the man with any offence. Fitzroy Legal Service assisted the man to argue that his rights under the Charter were not being properly considered and in particular that the Department was acting contrary to the presumption of innocence and without procedural fairness. The arguments led to a successful settlement of the matter; the man was relocated to alternative accommodation.<sup>16</sup>*

#### **Right to equality and fair hearing for self-represented litigants with learning disabilities**

*Betty and Maria Matsoukatidou (mother and daughter, respectively) were charged by Yarra Ranges Council for failing to secure and demolish their home after an arson attack. They each received fines from the Magistrates Court of Victoria. After their appeals to the County Court were struck out for non-attendance, they applied for orders reinstating them and represented themselves at the hearing.*

*Maria had a learning disability and Betty was her carer. Betty's first language is not English. They struggled to present their case and the judge dismissed their applications without adequately explaining the relevant procedure or applicable legal test. Maria and Betty consequently sought judicial review of the orders in the Supreme Court.*

*The Supreme Court found that Betty and Maria were not able to participate effectively in their hearing, in part due to Maria's learning disabilities, and that they were not given a fair opportunity to put forward their case. The Supreme Court ruled that the County Court judge was obliged to make reasonable adjustments to compensate for Maria's disability and ensure her effective participation in the proceeding.*

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<sup>14</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic) s7-27.

<sup>15</sup> Victorian State Government, Department of Justice and Regulation, *Access to Justice Review*, (Report, August 2016).

<sup>16</sup> Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better, Here are 101 cases showing how*, (Report, November 2022), case 53, p42.

*The Supreme Court ruled that their rights to equality and fair hearing under the Charter had been breached. The Supreme Court's decision enabled Betty and Maria to challenge the decision of the Magistrates' Court to fine them. They did that with legal representation and won.<sup>17</sup>*

## Disability

In Victoria, the Charter has played a critical role in ensuring access to disability support, ensuring public systems and decision makers appropriately identify, consider, and respond to the needs of people with disabilities.

### ***Student with a disability avoids being expelled***

*A child with a learning disability was threatened with expulsion by his school due to some behavioural issues. The child's advocate raised the child's human rights with the school and the Department of Education. As a result of the communication, the child was provided with the support he needed, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.<sup>18</sup>*

## Human Rights problems that would benefit from a National Human Rights Act

Community Legal Centres provide legal advice and assistance on a range of federal issues, often advising or advocating on complex problems that would benefit from a National Human Rights Act. This submission includes a small sample of problems to consider across social security, migration, and climate justice. The complexity of these problems spotlights a real need for a National Human Rights Act— to provide a legal basis for rights holders to pursue remedies and support decision makers to protect rights and prevent breaches from occurring. We welcome the opportunity to provide further examples and perspectives from the work carried out by Community Legal Centres should this be useful in informing the work undertaken by the Committee as part of the Inquiry.

## Migration

There are many human rights issues in migration law and policy in Australia. Some key examples include: indefinite detention; families being split up; mandatory character cancellation provisions adversely impacting individuals who have completed criminal sentences but remain in immigration detention; and victim survivors of family violence on temporary visas having limited access to health care, social security and housing.<sup>19</sup>

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<sup>17</sup> Ibid, case 39, p35

<sup>18</sup> Ibid, case 60, p44.

<sup>19</sup> National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Blueprint for Reform: Removing barriers to safety for victim/survivors of domestic and family violence who are on temporary visas*, (Report, October 2022), Anita's case study p 13 <[Blueprint-for-reform-vJUN2023.pdf \(awava.org.au\)](#)>.

A consequence of experiencing these issues on a prolonged basis is the deteriorating mental health of migrants and refugees and the broader impacts this has on public systems. A National Human Rights Act would ensure law making processes accurately identify, understand and prevent human rights risks from occurring and would guide decision makers to do the same when making decisions on individual matters. This would result in greater compliance with principles enshrined in the *Convention relating to the Status of Refugees 1951*, to which Australia is a signatory – strengthening Australia's profile as an international actor.

### **Australian Government's treatment of the Biloela family breaches international human rights of a child**

*Children have been held in immigration detention with devastating consequences to their health. Nadesalingam (known as Nades) and Priya fled Sri Lanka and sought asylum in Australia. They met here and had two daughters, Kopika (born in 2015) and Tharnicaa (born in 2017). In March 2018, Australian Border Force officials – accompanied by police and Serco private security guards – arrived at the family's home in Biloela, Queensland and removed them due to Priya's bridging visa expiring. They were moved to a Melbourne detention centre, and later Christmas Island. Their family was the sole occupants of the detention centre on Christmas Island.*

*The family's prolonged detention in an isolated location had a devastating impact on them, particularly the children. The lack of sunlight due to their closed detention led to a vitamin D deficiency, which caused infections and other medical problems. Tharnicaa's nutritional needs were not met and her teeth started to rot. At age two, she had surgery to have teeth removed.*

*In 2021, Tharnicaa (aged 4 at the time) had to be evacuated from Christmas Island for medical treatment following a blood infection.<sup>20</sup>*

### **The right to work while claiming protection**

*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 his student visa was cancelled.*

*Benjamin experienced homelessness, was extremely unwell and unable to seek legal assistance. He was taken into detention and at this time he was connected with the Asylum Seeker Resource Centre who advised him about his legal rights.*

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<sup>20</sup> Jessica Bahr, 'From Sri Lanka to Biloela, to Perth and back: A timeline of the Nadesalingam family's journey', *SBS News* (online, 10 June 2022) < <https://www.sbs.com.au/news/article/from-sri-lanka-to-biloela-to-perth-and-back-a-timeline-of-the-nadesalingam-familys-journey/jfmofat70>>.



*Benjamin applied for a protection visa and while awaiting the outcome of his protection visa application, he was granted a bridging visa with no work rights. 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 experiencing homelessness if he had been provided with work rights.*

## Social security

Australia's social security system is not grounded in human rights. A key impact of this is that administrative decisions are often not human rights compliant. Additionally, policies, programs, and services under the *Social Security Act 1991* (Cth) are often designed without a proactive consideration of the rights, needs, and supports of individuals who access social security— many of which experience significant and complex challenges including poverty, disadvantage, and experiences of physical and mental health.

### The Royal Commission into Robodebt

*The Royal Commission into Robodebt spotlighted significant and tragic consequences of a public authority consistently failing to uphold human rights standards. The scheme was in place from 2017-2019 during which time thousands of welfare recipients were sent inaccurate Centrelink debt notices by the Department of Human Services that were subsequently found to be unlawful under the Social Security Act.<sup>21</sup>*

### Welfare Rights Centre assists with Administrative Appeals Tribunal (AAT) appeal to set aside unlawfully calculated debt

*Brianna was 28 years old, recently diagnosed with Post Traumatic Stress Disorder, highly distressed and suicidal when she was first contacted by Centrelink as part of an Online Compliance Intervention review. Centrelink sent Brianna several debt notices totalling approximately \$10,000. Each notice informed her that she was required to repay the debt immediately. Brianna firmly believed that the debt was not right and made multiple attempts to appeal Centrelink's decision.*

*Centrelink conducted a review by an Authorised Review Officer. The review did not correct the unlawful calculation of Brianna's debt, even though the review officer had evidence to show the debt calculation was incorrect. An interest charge was later applied to Brianna's debt. Centrelink*

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<sup>21</sup> 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>>.



*subsequently garnisheed Brianna's tax return and Brianna was only notified of the garnishee after this had occurred.*

*Brianna sought assistance from the Welfare Rights Centre, who represented her in an appeal to the AAT. The AAT set aside the debt on the basis that it was based on false assumptions about her earnings. This was over eight years after Centrelink had first contacted Brianna as a result of the compliance review which led to the raising of the debt.*

## The right to a healthy environment

Despite the increasing challenges of climate change disasters experienced across the country, the right to a healthy environment is not currently enshrined in Australian domestic law.<sup>22</sup> As a result, public authorities do not need to proactively consider the human rights impacts of projects, including how they might impact the right to a healthy environment.

Community Legal Centres play an important role in providing legal advice and assistance to communities impacted by disaster. The sector is also actively involved in advocating for the protection of the right to a healthy environment, often conveying the experiences of impacted communities, including First Nations peoples, to compel decision making on environmental matters to be more human rights focused. The case study below highlights the need for a legislated National Human Rights Act to protect the right to a healthy environment in decision making.

### **Queensland Land Court enforces the need to consider the right to a healthy environment regarding decision to establish a coal mine**

*In the case of Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors, the Queensland Land Court found a connection between the enjoyment of human rights and the health of the environment.*<sup>23</sup>

*Environmental Defenders Office argued on behalf of its clients that the proposed coal mine in the Galilee Basin would adversely impact the rights of First Nations people due to the impacts it would have on climate justice. The coal mine was ultimately rejected after the decision makers accepted the Court's recommendation.*

*While this decision is an example of rights being upheld, the decision by the Court was not binding on mining regulators or environmental authorities and did not create a positive duty to consider human rights. It highlights the need for stronger human rights legislation to ensure regulators and public authorities proactively consider human rights, including the right to a healthy environment, in decision making, such as whether to establish a coal mine in a particular location.*

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<sup>22</sup> Environmental Defenders Office, *A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia*, (Report 2022) <<https://www.edo.org.au/publication/the-right-to-a-healthy-environment/#:~:text=All%20human%20rights%20ultimately%20depend,environment%20of%20basic%20human%20rights>>.

<sup>23</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21.

## Key features of a National Human Rights Act

The proposed model for a National Human Rights Act outlined in the Australian Human Rights Commission's Free and Equal position paper (Model) provides a strong basis from which to develop a National Human Rights Act.<sup>24</sup> Broadly, we support the strengthening of parliamentary scrutiny and encourage the Committee to assess the mechanisms outlined under the Model including annual statements to parliament and statements of compatibility.<sup>25</sup>

We recommend that the Committee recommend that the Australian Government share a draft exposure bill that includes the key features from the Model. In particular, the following features are paramount in ensuring a National Human Rights Act serves in protecting, remedying, and preventing human rights breaches in Australia.

- ***Protecting civil and political, social and economic and environmental rights***

The Commission's Model for a National Human Rights Act includes a comprehensive range of civil, political, social, economic and environmental rights.<sup>26</sup> We particularly support the inclusion the right to a healthy environment in the Model, that will strengthen and support the work of Community Legal Centres, many of which are important actors involved in advocating across a range of issues on climate justice that impact rural and marginalised communities.<sup>27</sup>

- ***Standalone causes of action***

The provision of standalone causes of action for breaches of human rights is integral for ensuring impacted individuals can pursue remedies without needing to 'piggyback' on another cause of action or complaint. We are supportive of the proposed Model and the need to ensure individuals can pursue financial and non-financial remedies for instances of human rights breaches that are enforceable through the courts.

- ***Positive duty***

A positive duty on public authorities will ensure the consideration of human rights in decision making and inspire a positive culture in decision making towards upholding and protecting human rights.<sup>28</sup>

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<sup>24</sup> Australian Human Rights Commission, *Free & Equal: A Human Right Act for Australia* (Position Paper, December 2022).

<sup>25</sup> Ibid, p 295.

<sup>26</sup> Ibid, p 17.

<sup>27</sup> Federation of Community Legal Centres Vic, *Annual Report* (Report, 2021-2022) p29 <[https://assets.nationbuilder.com/fclc/pages/705/attachments/original/1667429538/2021-2022\\_Federation\\_annual\\_report.pdf?1667429538](https://assets.nationbuilder.com/fclc/pages/705/attachments/original/1667429538/2021-2022_Federation_annual_report.pdf?1667429538)>.

<sup>28</sup> Australian Human Rights Commission, *Free & Equal: A Human Right Act for Australia* (Position Paper, December 2022).p 20-22.

- ***Participation duty***

A participation duty will ensure meaningful participation from First Nations communities, children, and people with a disability in decisions that directly or disproportionately impact their rights. We strongly support the principle of ‘nothing about us, without us’ and support the proposed Model’s inclusion of this duty and the setting of clear standards and guidelines on what comprises meaningful participation.<sup>29</sup>

- ***Equal access to justice duty***

We support the Model including an equal access to justice duty to ensure public authorities uphold minimum requirements, such as access to legal advice, interpreters, and disability support to ensure fair hearings and equality before the law.<sup>30</sup>

## RECOMMENDATION 1

The Australian Government establish a National Human Rights Act based on the Australian Human Rights Commission’s proposed Free and Equal model. At minimum, a draft exposure bill should include:

- the protection of civil and political, social and economic and environmental rights;
- standalone causes of action that includes remedies for breaches of human rights, enforceable through the courts; and
- a positive duty on public authorities to;
  - consider human rights in decision making;
  - ensure meaningful participation of first nations, children and people with a disability in decisions that directly or disproportionately impact their rights; and
  - adhere to key principles of access to justice in decision making.

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

## SECTION 4: – EDUCATION PROGRAM

The full benefits of a National Human Rights Act can only be realised if supported by an accessible and dynamic education program that promotes its utilisation. To achieve a culture of human rights, education programs need to be tailored to meet the needs of workplaces, public authorities, government departments, schools and ideally private sector organisations, who may not be bound by a positive duty under the Act, but who may opt in to ensuring rights are upheld in a manner consistent with that under the Act. In Victoria, the promotion of human rights education has contributed towards a strong culture of human rights.<sup>31</sup>

Community Legal Centres are actively involved in the design and implementation of community legal education across a range of issues including family violence, consumer law, infringements, youth justice, employment law, family law and child protection, migration. The sector recognises the value of education in making human rights real for communities experiencing disadvantage and/or marginalisation. Community Legal Centres often work closely with partners in the community (including universities, schools, local health, social services and courts) to design educational material that empowers individuals to understand their rights and the options available to advancing them. Education is delivered across workshops, capacity building initiatives, longer term programs, clinics, information, and drop-in sessions. The sector knows the importance of tailoring educational material and ensuring it is fit for purpose, particularly as the complexity of problems are experienced differently across the diverse communities served. If useful, the Federation would be pleased to work with the Committee to provide further support and guidance from the sector on the development of a human rights education program that supports a National Human Rights Act.

### RECOMMENDATION 2

The Australian Government fund the development of a National Human Rights Education program in addition to establishing a National Human Rights Act. At minimum, the education program should be;

- centred on promoting the key features of the National Human Rights Act including the rights protected and duties held by decision makers;
- tailored and made accessible for public authorities, government departments, communities (including those in remote and rural locations, marginalised communities experiencing vulnerability and/or disadvantage), schools and workplaces; and
- reviewed for continuous improvement.

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<sup>31</sup> Victorian Equal Opportunity and Human Rights Commission, *Annual Report, 2021-2022*, p5 <  
[https://www.humanrights.vic.gov.au/static/442ca937630f7d8734091e1399b7686e/Resource\\_Annual\\_Report-2021-22.pdf](https://www.humanrights.vic.gov.au/static/442ca937630f7d8734091e1399b7686e/Resource_Annual_Report-2021-22.pdf)>.

## SECTION 5: MONITORING AND EVALUATION OF HUMAN RIGHTS PROGRESS

Establishing a monitoring and evaluation framework is a critical step in practically measuring progress on human rights implementation across all levels of decision making. An effective monitoring and evaluation framework must consolidate and strengthen existing monitoring and evaluative frameworks on human rights issues (such as including example) towards a unified set of targets and indicators centred on human rights.

The example provided by the Australian Human Rights Commission on a national human rights indicator index provides a strong starting point for the Australian Government to consider.<sup>32</sup> An effective framework for monitoring and evaluating human rights must be transparent to ensure public scrutiny and should enable an independent evaluation to best enable continuous improvement. The complexity and variance of human rights problems in Australia, together with the often-intersecting nature of human rights makes it imperative to ensure regular monitoring and evaluation on human rights. This is needed to ensure a National Human Rights Act and its key features remain alive to changes in the community and advances in rights protection on an international basis.

### RECOMMENDATION 3

The Australian Government establish a transparent monitoring and evaluation framework to regularly measure progress on human rights.

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<sup>32</sup> Australian Human Rights Commission, *Free & Equal: A Human Right Act for Australia* (Position Paper, December 2022).p 19.

## SECTION 6: ROBUST HUMAN RIGHTS ORGANISATIONS

As outlined in the examples above, Community Legal Centres play an important role in educating and promoting human rights principles. This occurs through the daily case work that Community Legal Centres are involved in, representation in judicial and non-judicial proceedings and contributions made to law reform processes, including independent inquiries and investigations. Community Legal Centres provide rich examples of systemic human rights issues and how they impact the communities they serve.

In addition to establishing a National Human Rights Act, there is a need to ensure sustainable resourcing is provided to Community Legal Centres to continue promoting human rights principles. Importantly, sustainable resourcing must be provided to ensure Community Legal Centres can provide legal advice and assistance to individuals experiencing breaches of human rights. This is necessary towards ensuring the rights protected under a National Human Rights Act are realised by all members of the community, including those experiencing disadvantage that engage with Community Legal Centres.

### RECOMMENDATION 4

The Australian Government ensure sustainable resourcing and funding is provided to human rights organisations, including Community Legal Centres to promote human rights principles and provide legal advice and assistance to individuals experiencing breaches of human rights.

## SECTION 7: CONCLUSION

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The examples of human rights challenges outlined in this submission highlight the complexity of human rights issues, the barriers experienced in accessing rights and obtaining remedies, and the lack of consistency in approaches to addressing these problems. On a national level, the current framework of human rights protections is disjointed, piecemeal and not grounded in clear standards or principles on human rights. While there are action plans, independent reviews, investigations, and royal commissions that successfully seek to identify, prevent, and remedy human rights problems, the lack of an overarching legislative framework results in many of the findings from these reviews being left unspoken for—with no real pathway to remedy human rights that have been breached or ensure future prevention of enduring rights violation.

Perhaps most importantly, is the absence of a positive human rights culture to guide and support decision makers better understand and implement human rights for the betterment of individuals, communities and the broader public.

Establishing a National Human Rights Act is a critical step towards establishing human rights standards that will guide and ground decision making in a human rights approach and foster a proactive culture on human rights. The nature of human rights problems is ever changing—the increasing use of technology and artificial intelligence, climate justice and public health challenges such as the COVID-19 pandemic provide a strong reason to establish a clear legislative basis for human rights on a national level, now more than ever. Together with an educational program, strong monitoring and evaluation frameworks and a sustainably resourced community legal sector, the benefits of a National Human Rights Act will be realised by all Australians and future generations to come.