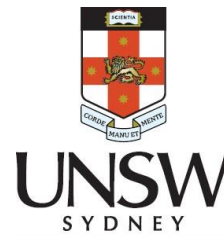


30 June 2023

Committee Secretariat
Parliamentary Joint Committee on Human Rights
Email: human.rights@aph.gov.au



Submission on Inquiry into Australia's Human Rights Framework

Kingsford Legal Centre (KLC) welcomes the opportunity to make this submission on the Inquiry into Australia's Human Rights Framework. We consent to this submission being published. In any case studies in this submission, names and identifying information have been changed to protect client confidentiality.

About Kingsford Legal Centre

KLC is a community legal centre providing free legal advice, casework, and community legal education to people in south-east Sydney. We have been providing free legal advice and assistance to people in our area since 1981, including across areas such domestic violence, credit and debt, victims compensation, criminal law, employment and discrimination law (occurring anywhere within NSW), motor vehicle accidents, consumer matters, and tenancy disputes.

KLC also has a specialist Employment Rights Legal Service (ERLS)¹ and Sexual Harassment & Discrimination Legal Service (SHLS). These clinics provide free legal help and assistance to people experiencing social and economic disadvantage and barriers to justice. In 2022, we gave 189 discrimination advices, and provided intensive assistance, including representation, with 60 discrimination matters. We provide advice and representation in all discrimination jurisdictions, including the Fair Work Commission, Australian Human Rights Commission, Federal Court, Federal Circuit Court, Anti-Discrimination NSW and the NSW Civil and Administrative Tribunal. KLC has also been involved in monitoring Australia's compliance with human rights mechanisms and has worked with other organisations to provide shadow reports to United Nations Committees on the attainment of human rights in Australia. KLC does this through identifying areas where their clients have experienced human rights breaches and monitoring the operation of laws and policies in Australia.

KLC is part of the UNSW Sydney Faculty of Law & Justice and provides clinical legal education to over 500 students each year. KLC also provides community legal education to our local community and broader NSW on specialist areas, including on discrimination and sexual harassment law. KLC is therefore in the unique position of understanding the importance of a federal Human Rights Act for not just assisting our clients in matters, but for guiding tertiary and community education on human rights in Australia.

Overview

At the outset, KLC recognises and supports the significant work of organisations like the Australian Human Rights Commission, the Human Rights Law Centre and Australian Lawyers for Human Rights

¹ ERLS is a collaborative partnership between KLC, Inner City Legal Centre and Redfern Legal Centre.

in advocating for a federal Human Rights Act. This submission echoes and endorses this important work with examples specific to KLC's experience.

Overall, KLC makes the following recommendations:

1. **The Australian Parliament should enact a federal Human Rights Act.**
2. **The federal Human Rights Act should cover civil and political rights as well as economic, social, and cultural rights.**
3. **The federal Human Rights Act should be directly enforceable and offer accessible and effective remedies.**
4. **The Australian Parliament should consolidate federal discrimination laws, to operate alongside the federal Human Rights Act.**

1. The Australian Parliament should enact a federal Human Rights Act

a) Ensuring that human rights are fully and equally enjoyed by all people in Australia

Human rights are not fully and equally enjoyed by all people in Australia. Australia needs a federal Human Rights Act to ensure that internationally recognised human rights, such as those under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are respected at every level of society, including by police, government decision-makers, courts and tribunals, institutions, and organisations. This is also vital to ensure that all laws and policies are made and enforced according to established rights and core human rights principles, including the principles of equality and non-discrimination, universality, interdependence, indivisibility,² and proportionality.³

For over 40 years, KLC has been advising and representing clients who face barriers to accessing justice. In 2022, we provided legal assistance to 1,063 clients.⁴ Of these, 62% experienced financial disadvantage, 30% lived with a disability or mental illness, 28% were culturally and linguistically diverse, 14% lived in public or social housing and 6% identified as Aboriginal and/or Torres Strait Islander. In this work we frequently see clients not having their human rights respected or being unable to access critical support, resources and facilities to enable them to have their basic rights recognised. Some recent examples include:

- **Marginalised groups at risk of losing the right to vote.** We advocated for the Electoral Legislation Amendment (Voter Integrity) Bill 2021 to be abandoned because of concerns that requiring people to have proof of identity documents in order to vote would disenfranchise many disadvantaged people, including people experiencing homelessness, people with multiple names, Aboriginal and Torres Strait Islander people, people in prison, elderly people, and people with a disability.⁵
- **Inadequate housing infringing rights of socio-economically disadvantaged people to health and safety.** We have written to relevant NSW Government Ministers about how a lack of healthy housing for people living with chronic illness on low incomes is undermining their rights to

² See Universal Declaration of Human Rights 1984 (General Assembly Resolution 217A).

³ See UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4 (1985) Annex.

⁴ Kingsford Legal Centre, Annual Report 2022, 26-27.

⁵ Kingsford Legal Centre, Letter to Hon Ben Morton MP on Electoral Legislation Amendment (Voter Integrity) Bill 2021 (19 November 2021).

health and safety.⁶ We have urged both state and federal governments to work to increase the supply of safe and affordable public housing.

- **Inadequate social support for migrant workers, infringing on the right to social security.** We have made numerous submissions over the years about the inadequate social support for migrant workers, including in the context of the COVID-19 pandemic⁷ and generally in terms of the need for improved work security, pay and conditions.⁸
- **Federal legislation infringing on the rights of students and staff to non-discrimination in education and work on the basis of their sexual orientation, gender identity, marital or relationship status or pregnancy.** In numerous submissions, we have advocated for *the Sex Discrimination Act 1984* (Cth) to be revised to ensure that children and staff in religious educational institutions cannot be discriminated against on the basis of any protected attribute, including because of their sexual orientation, gender identity, marital or relationship status or pregnancy.⁹
- **Religious Discrimination Bill drafts infringing on the rights of women to privacy and healthcare.** Without a federal Human Rights Act, Australia has failed to understand how to effectively balance competing rights. In 2019, we argued that the federal government’s Religious Freedom Bills provided broad conscientious objection provisions to reproductive services such as abortion and failed to adequately recognise the rights of women to privacy and health care.¹⁰

Our submission also draws on the perspectives of our local community. In response to the National Human Rights Consultation in 2009, KLC undertook extensive consultations with local community groups about the need for human rights protections. Staff from KLC attended youth agencies and knitting groups, placed displays in local libraries, spent time with the local Aboriginal community and discussed human rights at events such as barbecues and morning teas. We sought views from young people, Indigenous people, migrants, people living with disability and older people.¹¹ Our community reported that human rights were important and should be better protected and recognised. Many respondents expressed views that economic, social and cultural rights were equally as important as civil and political rights. Some of the case studies in this submission are drawn from this community consultation process.

b) Ensuring compliance with international human rights obligations

KLC has been advocating for many years for a federal Human Rights Act. In particular, we advocated for a Human Rights Act in Australia’s Joint NGO Submission for the 2020 United Nations Universal Periodic Review. As part of this submission, the NGO Coalition argued that Australia continues to fail to fully incorporate its international human rights obligations into domestic law and that a national

⁶ Kingsford Legal Centre, Letter to Hon Mark Speakman, Inadequate Housing and Poor Health Outcomes: Our Health Justice Partnership Experience (29 June 2021).

⁷ Joint Submission by Kingsford Legal Centre, Redfern Legal Centre International Student Service NSW and Migrant Employment Legal Service, Submission to the Senate Select Committee Inquiry into Temporary Migration (30 July 2020).

⁸ See our endorsement of WEstjustice Community Legal Centre, South-East Monash Legal Service, JobWatch Inc and Melbourne University Student Union legal Service, Employment White Paper (1 December 2022).

⁹ See e.g., Kingsford Legal Centre, ALRC Submission on the Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper (2023) (24 February 2023).

¹⁰ Kingsford Legal Centre, Submission to the Religious Freedom Bills – Second Exposure Drafts (31 January 2020) 5.

¹¹ The organisations KLC attended to speak about the National Human Rights Consultation included The Shack (youth organisation), Yabun (annual Aboriginal and Torres Strait Islander festival), the Indigenous community at La Perouse, a local knitting group, The Deli Women and Children’s Centre, Russian community fair, the Bowen Library (Maroubra Junction), and Windgap (services for people with an intellectual disability), and Kooloora Community Centre.

Human Rights Act is needed to help ensure that government decisions and actions meet human rights obligations and are guided by values like fairness, equality, and dignity.¹²

Australia must not continue to lag behind other countries in its human rights record. Australia must enact a federal Human Rights Act that fully incorporates all its international human rights obligations into domestic law.¹³ In doing this, we also call upon the federal government to encourage similar legislation to be introduced into all states and territories. At the moment, Queensland, the Australian Capital Territory and Victoria are the only jurisdictions with specific human rights legislation. This is not acceptable in modern Australia.

c) Ensuring better decision-making through human rights principles

Apart from enabling human rights to be directly enforced, a federal Human Rights Act is also needed to better guide government decision-making across federal, state, and local levels. Specifically, a federal Human Rights Act could have an important role in the way that local decision-makers apply laws and policies. The below example highlights this potential.

A Human Rights Act to influence upstream decision-making

Rachid* lived independently in social housing. He did not have any family in Sydney. He had experienced episodic mental illness in the past before becoming acutely unwell and being diagnosed with a schizo-affective disorder. This required him to be admitted as an in-patient for over six months. At this point, he was transferred to a rehabilitation unit that initially involved him transitioning into living in his own home for 1-2 days per week. Unfortunately, his social housing provider issued Rachid with a termination notice, as he had been absent from his home for more than 6 months - something that was provided for in their policies. KLC assisted Rachid to make an urgent disability discrimination complaint against his social housing landlord. We argued that the policy indirectly discriminated against people with disabilities like Rachid, who sometimes needed to be absent from their home for health reasons. Making Rachid homeless at this time would also have impacted on his ability to rehabilitate and once again regain his independence in the community.

**Name changed for confidentiality*

KLC was able to help Rachid negotiate a return to social housing, however the process took many months and was stressful for our client at a sensitive point in his recovery. This situation could have been avoided if Rachid's social housing provider had developed its policies in line with Rachid's right to housing, right to health care, and right to live independently as a person with a disability. This is one of many examples where a federal Human Rights Act could have an upstream impact on human rights, helping decision-makers to not only respect rights but make decisions in accordance with them.

d) Providing greater education on human rights and promoting fairness, respect, and dignity

Lastly, KLC endorses a federal Human Rights Act to provide people in Australia with greater understanding about human rights and the importance of human rights principles such as fairness, respect, and dignity. In our experience human rights are poorly understood. This includes rights under discrimination and employment legislation, and in relation to reviewing government decisions. We strongly support the creation of a federal Human Rights Act to clearly set out the

¹² Joint NGO Submission on Behalf of the Australian NGO Coalition (April 2020) 3

<<https://www.hrlc.org.au/news/2020/7/20/australias-human-rights-scorecard-australias-2020-united-nations-upr-ngo-coalition-report>>.

¹³ Ibid.

human rights and freedoms that people in Australia can enjoy and to assist people and communities to understand and enforce their rights. Our Centre is well positioned to speak to the importance of this given our experience with educating tertiary students and local communities.

Moreover, we echo the critical point made by the Australian Human Rights Commission that a Human Rights Act has a key role to play in preventing human rights violations, including addressing non-compliant behaviour early¹⁴ and creating more transparent and accountable decision-makers. A Human Rights Act has the potential to not only provide redress to individuals who experience human rights violations but to set the standard for human rights across all levels of Australian society and government.

2. The federal Human Rights Act should cover civil and political rights and economic, social, and cultural rights

KLC strongly supports the inclusion of civil and political rights as well as economic, social, and cultural rights under a federal Human Rights Act.¹⁵ Australia will not fully incorporate its international human rights obligations into domestic law until it does this. This will involve fully implementing the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights into the Act, as well as other international human rights instruments.

a) Indivisibility and interconnectedness of all human rights

KLC recognises that human rights are interdependent and indivisible. Legislating civil and political rights without economic, social, and cultural rights would fail to recognise how connected human rights are and the importance of any one human right in ensuring that other human rights are properly enjoyed. For example, the below case study highlights the need to recognise the rights of Donna's family to safety,¹⁶ adequate housing¹⁷ and health,¹⁸ and the interconnectedness of these rights.

Need for rights to safety, adequate housing, and health

Donna* came to KLC 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

¹⁴ Australian Human Rights Commission, *Free and Equal: Position Paper: A Human Rights Act for Australia* (2020) 141.

¹⁵ Ibid 110.

¹⁶ ICCPR, article 23.

¹⁷ ICESCR, article 11(1).

¹⁸ ICESCR, article 12(1).

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.

Need for the right to freedom from disability discrimination, rights in criminal proceedings, and right to healthcare

Mark* is a long-term KLC client who lives with epilepsy, mental illness, and cognitive impairments. One day at the bank he was 'behaving erratically' and was asked to leave the premises. When Mark refused, the bank called the police. Mark repeatedly explained to the police that he was having an epileptic fit and required medical assistance. Despite this, Mark was arrested and charged.

With KLC's assistance, Mark's charges were dismissed on mental health grounds, with the condition that he engage in ongoing treatment.

**Name and some details changed for confidentiality*

Mark's experience shows how an unmet need for healthcare can escalate into a criminal justice issue. Instead of being offered appropriate medical treatment, Mark was discriminated against and arrested.

Need for the right to freedom of movement and the right to freedom from discrimination

Tommy*, a Pacific Islander man, was approached by police in Maroubra. They formed a suspicion he was going to assault two women who were in the street nearby. The police approached Tommy and he told them he was just looking at a bus timetable and that they should leave him alone. The police asked Tommy for his name and address, which he gave them. Tommy then became agitated at the presence of three police officers and was told he was being placed under arrest for offensive language and intimidating a police officer. The police eventually used capsicum spray on Tommy to subdue him. The charges against Tommy were later dismissed by a magistrate, who was highly critical of the conduct of the police.

Multiple human rights breaches often occur within a single incident. In the above case study, Tommy's freedom of movement was impinged upon because of racial discrimination. Australia requires an overarching human rights framework that recognises the interconnectedness of human rights.

b) Economic, social, and cultural rights are just as important as civil and political rights

Beyond the interconnectedness of all human rights, our client experience shows how economic, social, and cultural rights are just as important as civil and political rights for clients living dignified, safe and meaningful lives. In particular, as Australians face cost of living crises and global challenges such as the COVID-19 pandemic, climate change, and growing inequalities, the protection of economic, social, and cultural rights is vital.¹⁹ KLC has countless examples of the importance of economic, social, and cultural rights to our clients and how a failure for these rights to be recognised in law and policy has led to adverse outcomes.

¹⁹ Australian Lawyers for Human Rights, Experts Call on Australia to Advance Economic, Social and Cultural Rights (5 May 2023) < <https://alhr.org.au/experts-call-australia-advance-economic-social-cultural-rights/>>.

Need to recognise rights to freedom of religion and education

Ali* is a young Muslim man in prison. He was given external leave to undertake studies at an educational institution. At the educational institution, Ali regularly prayed in outdoor areas. He was told he was not allowed to pray there. When he continued to pray, Ali's education leave was cancelled, and he was not allowed to continue his studies. This caused significant distress to Ali and his family.

Ali came to KLC for advice. Unfortunately, KLC had to advise him that the *Anti-Discrimination Act 1977* (NSW) and Commonwealth anti-discrimination laws do not protect a person from discrimination on the basis of their religion in these circumstances.

**Name changed for confidentiality*

Ali's story highlights the significant importance of the social and cultural rights of religion and education being recognised under Australian law. There are many other examples of this. Ali was also fortunate in the sense of being able to access education while in prison in the first instance. This is not currently a human right for people in prison in NSW.

Need to recognise a right to social security

Jenny* is a young Aboriginal woman, and is the sole parent to 5 children. She came to KLC for assistance with a matter in the Local Court. KLC helped her to make an application to the Court. However, very close to the Court hearing her social security payments were stopped by Centrelink based on incorrect information provided by a third party. Jenny realised she had no money and was in fact overdrawn in her account by many hundreds of dollars. She couldn't attend KLC to prepare for her case and explained to her solicitor that because of the Centrelink error she had to put everything else in her life "on hold" while her payments were cut. As a result she couldn't deal with her Local Court case.

**Name changed for confidentiality*

This example highlights how economic, social and cultural rights assume paramount importance in people's lives. Without basics such as income or housing many people like our client Jenny cannot consider enforcing other rights.

The right to education for people with a disability

Toula* enrolled her 5-year-old son Jimmy into the local childcare centre. Toula did not tell the centre that Jimmy had ADHD (attention deficient hyperactivity disorder) and the centre subsequently complained that Jimmy was violent to some of the teachers. The childcare workers asked Jimmy to leave the centre. Toula told the centre about Jimmy's ADHD and asked that he be re-enrolled and if required placed under the supervision of a teacher trained in dealing with his disability. The centre refused Jimmy's enrolment saying that unless a special teacher could be paid for through government funding they could not accommodate him. As Toula had no way of compelling anyone to provide this funding Jimmy could not return. As a result, he could not attend childcare.

**Name changed for confidentiality*

Education was a common theme in KLC's 2009 consultations with our community about human rights. Like Jimmy, many of our clients reported being unable to access education, including affordable childcare services.

The right to an adequate standard of living, the right to adequate housing, protection of families

David* is an Aboriginal man who, since the break-up of his marriage has been homeless. He has a disabled son who he would like to share the parenting of with his ex-wife. He attempted to apply for public housing and was told that he could not ask for the extra bedroom or the special requirements his son needs until a parenting arrangement was confirmed by a parenting order. David and his ex-wife had not commenced any proceedings in the Family Court. David did not apply for housing as he couldn't show through an order that he would be sharing the parenting of his son. David remained homeless and tried to obtain a parenting order without luck, as he could not show that he had appropriate housing for his son- this was despite the fact that David's wife faced difficulty caring for their son on her own.

**Name changed for confidentiality*

David came to KLC as he was desperate to obtain housing so he could re-commence regular parenting of his son. This case highlights that decision-making which adopts a "one size fits all approach" and that does not consider cases on an individual basis can result in human rights breaches. A Human Rights Act could have required the decision maker in this case to consider the right of David to adequate housing and an adequate standard of living, the right of David and his son to a family life, and the right of David's son to adequate care.

Need to meet minimum core obligations with progressive rights realisation

In advocating for economic, social, and cultural rights, we recognise that many of these rights will need to be progressively realised over time.²⁰ However, we encourage the Federal Government to fully implement commentary of the Committee on Economic, Social and Cultural Rights on the need for States to meet minimum core obligations for satisfying minimum essential levels of each right.²¹ In this way, we submit that many economic, social, and cultural rights should be and can be recognised immediately, with the aim of more progressively realising these rights over time.

3. Australia's federal Human Rights Act should be directly enforceable and offer accessible and effective remedies

Any Human Rights Act will be ineffective without the ability for victims of a breach of human rights to litigate matters. We acknowledge that the need to piggy-back human rights causes of actions onto existing claims has been a key barrier for Victoria's Charter of Rights and Responsibilities 2006. Given this, we support any unlawful actions under a federal Human Rights Act to give rise to a cause of action. We endorse the approach of the Australian Human Rights Commission in encouraging an independent cause of action for every right in a federal Human Rights Act for the reasons that this will provide clarity and consistency and enable enforcement of human rights in Australia.²²

²⁰ ICESCR, article 2.1.

²¹ CESCR Committee, General Comment No 3: The Nature of States Parties Obligations, 5th sess, UN Doc E/1991/23 (December 1990) [10].

²² Australian Human Rights Commission, above n 14, 268.

Further, like the Australian Human Rights Commission, we submit that any federal Human Rights Act must include protections against adverse costs orders.²³ This is vital to ensure that any remedies under the Act are accessible to those who need them most. KLC has written about this issue extensively in the context of costs orders in federal discrimination law cases. We refer to our submission where we have argued that an equal access costs model for legal costs in these matters is vital to encourage applicants to enforce their rights while enabling them to claim legal costs against respondents when they succeed in matters.²⁴ This approach has been endorsed by community legal centres across Australia.²⁵ The government should consider this model for the federal human rights jurisdiction for consistency and to better ensure access to justice.

Lastly, we stress the need for effective remedies under the Act. At a minimum, this should include the ability of affected individuals to access injunctions, orders requiring action, declaratory relief, compensation, and administrative law remedies (such as requiring a decision-maker to review a decision). However, we also recommend that the Act include provision for interested groups and organisations to bring complaints about human rights violations on behalf of impacted individuals or potentially impacted individuals. In these circumstances, parties to litigation should be able to seek remedies on behalf of impacted individuals. The Australian Human Rights Commission and free legal assistance services, including community legal centres, should be adequately resourced to assist individuals and groups to access their rights.

4. The Australian Parliament should consolidate federal discrimination laws, to operate alongside the Human Rights Act

While this submission has focused on advocating for a federal Human Rights Act, we also note the importance of this Act being developed alongside broader federal discrimination law reform. We note that the Australian Human Rights Commission proposes to incorporate the meaning of “discrimination” as used in federal discrimination legislation and the *Fair Work Act 2009* (Cth).²⁶ We recommend that any Human Rights Act does not erode existing rights under federal discrimination legislation and the *Fair Work Act 2009* (Cth), but rather the Act is developed in conjunction with a broader reform agenda for federal discrimination laws. For many years we have argued that Australia’s federal discrimination laws need to be consolidated and modernised to ensure that they are as relevant, inclusive, and accessible as possible.²⁷ We look forward to separately consulting on this issue further in the future.

²³ Ibid 286.

²⁴ Kingsford Legal Centre, Submission on Consultation Paper Review into an Appropriate Cost Model for Commonwealth Anti-Discrimination Laws (2023).

²⁵ Ibid.

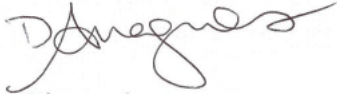
²⁶ Ibid 110.

²⁷ E.g., see The National Association of Community Legal Centres’ Response to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (September 2011); Kingsford Legal Centre, ALRC Submission on the Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper (2023) (24 February 2023).

Please let us know if you have any questions about this submission. You can reach us at legal@unsw.edu.au.

Yours faithfully,

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