

The Parliament of the
Commonwealth of Australia

Presented and read a first time

Illustrative Human Rights Bill 2024

No. , 2024

**A Bill for an Act to respect, protect and promote
human rights, and for related purposes**

PJCHR: Illustrative purposes only

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A Bill for an Act to respect, protect and promote human rights, and for related purposes

Preamble

In enacting this Act, the Parliament of Australia recognises:

- (a) human rights apply from the time a person is born, and are universal, indivisible and interdependent, and interrelated; and
- (b) human rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality and freedom; and
- (c) human rights belong to all people without discrimination, and the diversity of the people of Australia enhances our community; and
- (d) human rights should be limited only after careful consideration, and any limitation must only be done in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law; and
- (e) the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and pursue their economic, social and cultural development. The right to self-determination has a particular significance for Indigenous peoples, as Australia's first peoples, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, water, coastal seas and other resources with which they have a connection.

The Parliament of Australia therefore enacts:

Note: This preamble is an amalgamation of the preambles in the Charter of Human Rights and Responsibilities Act 2006 (Vic); Human Rights Act 2019 (Qld) and Human Rights Act 2004 (ACT), with the inclusion of specific wording as recommended by the Australian Human Rights Commission (AHRC) (see Free and Equal: A Human Rights Act for Australia (referred to as 'AHRC report') pp. 107, 133, 192–193) in relation to paragraph (a), and the reference to the right to self-determination in paragraph (e).

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1 **Part 1—Preliminary**

2 **Division 1—Introduction**

3 **1 Short title**

4 This Act is the *Human Rights Act 2024*.

5 **2 Commencement**

6 (1) Each provision of this Act specified in column 1 of the table
7 commences, or is taken to have commenced, in accordance with
8 column 2 of the table. Any other statement in column 2 has effect
9 according to its terms.

10

Commencement information

Column 1**Column 2****Column 3**

Provisions**Commencement****Date/Details**

1. The whole of this Act	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

17 **3 Objects of Act**

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The objects of this Act are to:

- (a) respect, protect and promote human rights; and
- (b) help build a culture whereby public authorities respect, protect and promote human rights; and
- (c) help promote a dialogue about the nature, meaning and scope of human rights; and

- 1 (d) ensure that a statutory provision, whenever enacted, is
2 interpreted so far as is reasonably possible, in a manner that
3 is compatible with human rights; and
4 (e) in conjunction with other laws, give effect to Australia's
5 obligations under international human rights law.

6 **4 Application**

7 *Note: consideration would need to be given to the geographical extent of*
8 *the Act and who the Act applies to (note section 10 below clarifies that*
9 *only humans have human rights, but consideration needs to be given*
10 *to how exactly the Act would bind public authorities; courts; and the*
11 *Parliament (to a limited extent), within our constitutional structure*
12 *(for example, see s 6 of the Victorian Charter; s 5 of the Queensland*
13 *HRA).*

14 **5 Concurrent operation of State and Territory laws**

15 This Act is not intended to exclude or limit the operation of a law
16 of a State or Territory that furthers the objects of human rights and
17 is capable of operating concurrently with this Act.

18 *Note: This is based on s 6A of the Racial Discrimination Act 1975*
19 *(without reference to complaints or offences), see AHRC report*
20 *p. 243. Further consideration would need to be given to whether this*
21 *is sufficient.*

22

1 Division 2—Interpretation

2 6 Definitions

3 *child* means a person aged under 18 years.

4 *Commission* means the Australian Human Rights Commission.

5 *compatible with human rights* has the meaning set out in
6 section 7.

7 *guardian* has the same meaning as in the *Family Law Act 1975*.

8 *human rights* means the rights and freedoms stated in Division 2
9 of Part 2.

10 *Indigenous peoples* means a group of people who are:

- 11 (a) members of the Aboriginal race of Australia; or
12 (b) descendants of Indigenous inhabitants of the Torres Strait
13 Islands.

14 *international human rights law* includes the obligations and
15 principles expressed in:

- 16 (a) the Convention on the Prevention and Punishment of the
17 Crime of Genocide done at Paris on 9 December 1948
18 ([1951] ATS 2), as amended and in force for Australia from
19 time to time; and
20 (b) the Convention relating to the Status of Refugees done at
21 Geneva on 28 July 1951 ([1954] ATS 5), as amended by the
22 Protocol relating to the Status of Refugees done at New York
23 on 31 January 1967 ([1973] ATS 37), and as otherwise
24 amended and in force for Australia from time to time; and
25 (c) the International Convention on the Elimination of All Forms
26 of Racial Discrimination done at New York on
27 21 December 1965 ([1975] ATS 40), as amended and in
28 force for Australia from time to time; and
29 (d) the International Covenant on Economic, Social and Cultural
30 Rights done at New York on 16 December 1966 ([1976]
31 ATS 5), as amended and in force for Australia from time to
32 time; and

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- 1 (e) the International Covenant on Civil and Political Rights done
2 at New York on 16 December 1966 ([1980] ATS 23), as
3 amended and in force for Australia from time to time; and
4 (f) the Convention on the Elimination of All Forms of
5 Discrimination Against Women done at New York on
6 18 December 1979 ([1983] ATS 9), as amended and in force
7 for Australia from time to time; and
8 (g) the Convention Against Torture and Other Cruel, Inhuman or
9 Degrading Treatment or Punishment done at New York on
10 10 December 1984 ([1989] ATS 21), as amended and in
11 force for Australia from time to time; and
12 (h) the Convention on the Rights of the Child done at New York
13 on 20 November 1989 ([1991] ATS 4), as amended and in
14 force for Australia from time to time; and
15 (i) the Convention on the Rights of Persons with Disabilities
16 done at New York on 13 December 2006 ([2008] ATS 12),
17 as amended and in force for Australia from time to time; and
18 (j) the Declaration on the Rights of Indigenous Peoples adopted
19 by the General Assembly of the United Nations as General
20 Assembly Resolution 61/295 on 13 September 2007.

21 Note: The text of a Convention or Covenant could in 2024 be viewed in the
22 Australian Treaties Library on the AustLII website
23 (<http://www.austlii.edu.au>). The text of United Nations General
24 Assembly resolutions could in 2024 be accessed through the United
25 Nations' website (<https://www.un.org>).

26 ***parents*** includes a guardian of a child.

27 ***person*** means an individual.

28 ***public authority*** has the meaning set out in section 8.

29 ***slavery*** includes modern slavery within the meaning of section 4 of
30 the *Modern Slavery Act 2018*.

31 ***statutory provision*** means:

- 32 (a) an Act of the Commonwealth; or
33 (b) a provision of an Act of the Commonwealth; or
34 (c) a legislative instrument; or
35 (d) a provision of a legislative instrument.

1 **7 Meaning of compatible with human rights**

2 An act, decision or statutory provision is compatible with human
3 rights if the act, decision or statutory provision:

- 4 (a) does not limit a human right; or
5 (b) limits a human right only in accordance with section 12.

6 **8 Meaning of public authority**

7 *Note: The AHRC has suggested the following entities should be listed as*
8 *a public authority. Consideration would need to be given to how best*
9 *to draft this provision to capture this intention (see AHRC report*
10 *pp. 149–150):*

11 (1) *Each of the following is a public authority:*

- 12 • *a public body with powers or functions under Commonwealth*
13 *law, including:*
14 ○ *government agencies, departments, offices;*
15 ○ *regulatory and administrative bodies, Commissions and*
16 ○ *Ombudsmen, statutory corporations;*
17 ○ *federal police and national security agencies;*
18 ○ *Commonwealth Ministers;*
19 ○ *Tribunals;*
20 ○ *courts when acting in an administrative capacity, and*
21 ○ *where the Act applies to the court's own procedures.*
22 • *State public authorities when exercising Commonwealth*
23 *functions;*
24 • *a private entity whose functions are, or include, functions of a*
25 *public nature when it is performing functions of a public nature*
26 *(whether under contract or otherwise);*
27 • *an individual employed or appointed by or to any these bodies*
28 *when exercising powers or functions under a Commonwealth*
29 *law or performing functions of a public nature;*
30 • *an entity declared by the regulations to be a public authority.*

31 (2) *Each of the following is not a public authority:*

- 32 • *the Parliament of Australia, except when acting in an*
33 *administrative capacity;*

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- 1 • *the courts, except when acting in an administrative capacity,*
2 *and where the Act applies to the court's own procedures*
3 • *an entity declared by the regulations not to be a public*
4 *authority.*

5 *Note: Further consideration should be given to whether courts could be*
6 *included as public authorities, see the committee's recommendation 3.*

7 **9 When function is of a public nature**

8 *Note: The AHRC has suggested the following definition as to when a*
9 *function is of a public nature (see AHRC report, p.150).*
10 *Consideration would need to be given to how best to draft*
11 *this provision to capture this intention.*

12 (1) *In deciding whether a function of an entity is of a public nature for*
13 *the purposes of this Act, any of the following matters may be*
14 *considered:*

- 15 • *whether the function is conferred on the entity under a statutory*
16 *provision;*
17 • *whether the function is connected to or generally identified with*
18 *functions of government;*
19 • *whether the function is of a regulatory nature;*
20 • *whether the entity is publicly funded to perform the function;*
21 • *whether the entity is a government owned corporation.*

22 (2) *Subsection (1) does not limit the matters that may be considered in*
23 *deciding whether a function is of a public nature.*

24 (3) *Without limiting subsections (1) or (2), the following functions are*
25 *of a public nature:*

- 26 • *the operation of prisons and other places of detention or*
27 *correctional facilities under control of the Australian*
28 *Government [in accordance with definitions under the Optional*
29 *Protocol to the Convention against Torture];*
30 • *the provision of federal:*
31 ○ *public health services [for example, Medicare funded*
32 *services];*

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- 1 ○ *public disability services [for example, National*
- 2 *Disability Insurance Scheme services];*
- 3 ○ *public education, including public tertiary education and*
- 4 *public vocational education [for example, government*
- 5 *schools and public universities];*
- 6 ○ *emergency services [for example, Home Affairs*
- 7 *emergency management programs];*
- 8 ○ *public housing services [for example, remote Aboriginal*
- 9 *and Torres Strait Islander housing programs];*
- 10 ○ *aged care services [for example, Aged Care Quality and*
- 11 *Safety Commission accredited services].*
- 12

1 **Part 2—Human rights**

2 **Division 1—Preliminary**

3 **10 Who has human rights**

4 Only individuals have human rights.

5 Note: Bodies corporate and bodies politic do not have human rights.

6 **11 Human rights are in addition to other rights and freedoms**

7 A right or freedom not included, or only partly included, in this Act that
8 arises or is recognised under another law must not be taken to be
9 abrogated or limited only because the right or freedom is not included
10 in this Act or is only partly included.

11 **12 Limitations on rights**

12 (1) A human right may be subject under law only to such limits that
13 are reasonable and can be demonstrably justified in a free and
14 democratic society based on human dignity, equality and freedom.

15 (2) In deciding whether a limit on human rights is reasonable and
16 justified, the following considerations are relevant:

17 (a) the nature of the right;

18 (b) whether the limitation is aimed at achieving a legitimate
19 objective;

20 (c) the relationship between the limitation and its objective,
21 including whether the limitation will be effective to achieve
22 the objective;

23 (d) whether the limitation is proportionate to the objective sought
24 to be achieved, including consideration of the following:

25 (i) the extent of the interference with the human right;

26 (ii) whether there are effective safeguards or controls over
27 the means adopted to achieve the objective;

28 (iii) whether the means adopted are sufficiently
29 circumscribed;

30 (iv) whether there is oversight of the means adopted and
31 access to review;

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- 1 (v) whether there are any less rights restrictive and
- 2 reasonably available means to achieve the objective;
- 3 (vi) whether the means adopted provide sufficient flexibility
- 4 to treat different cases differently;
- 5 (vii) whether any affected groups are particularly vulnerable.

6 Note: A legitimate objective is one that is necessary and addresses a public
7 or social concern that is pressing and substantial enough to warrant
8 limiting the right.

- 9 (3) In considering the nature of the rights in subsection 36(2) and
- 10 sections 37 to 42, a type of limitation includes:
 - 11 (a) the taking of backwards steps, known under international
 - 12 human rights law as retrogressive measures; and
 - 13 (b) not satisfying certain minimum aspects of the rights, known
 - 14 under international human rights law as minimum core
 - 15 obligations; and
 - 16 (c) not ensuring the rights are enjoyed without discrimination.
- 17 (4) Despite subsection (1), the following rights must not be subject to
- 18 limitation:
 - 19 (a) the right to recognition before the law (subsection 15(1));
 - 20 (b) the right to life (section 16) if the deprivation of life
 - 21 constitutes the crime of genocide;
 - 22 (c) the prohibition of torture and cruel, inhuman or degrading
 - 23 treatment or punishment (section 17);
 - 24 (d) the freedom to have or adopt a religion or belief
 - 25 (paragraph 22(1)(a));
 - 26 (e) the right to hold opinions without interference
 - 27 (subsection 24(1));
 - 28 (f) the right not to be imprisoned only because of the inability to
 - 29 fulfil a contractual obligation (subsection 26(9));
 - 30 (g) the prohibition of retrospective criminal laws (section 34);
 - 31 (h) the right not to be held in slavery or servitude
 - 32 (subsection 35(1)).

33 *Note: Subsection (2) seeks to give effect to the AHRC's model, see AHRC*
34 *report, pp. 254–256) and is an amalgam of section 13 of the*
35 *Queensland HRA and, as recommended by the AHRC, the PJCHR's*
36 *Guidance Note 1.*

1 *Further consideration should be given as to whether subsection (4)*
2 *accurately captures all the absolute rights at international human*
3 *rights law (for example, consideration should be given as to whether*
4 *this should also include the right to a competent, independent and*
5 *impartial court or tribunal (an element of subsection 29(2)).*

6 **13 Human rights are protected**

7 Nothing in this Act gives any person or other entity a right to limit
8 to a greater extent than is provided for under this Act a human right
9 of any person.

10 **14 No obligation of progressive realisation**

11 *In relation to subsection 36(2) and sections 37 to 42, the obligation*
12 *of progressive realisation as recognised under international*
13 *human rights law does not apply.*

14 *Note: Further consideration should be given as to how to implement the*
15 *AHRC's model regarding economic, social and cultural rights –*
16 *namely that only the immediately realisable aspects of these rights*
17 *apply and not the obligation of progressive realisation (see AHRC*
18 *report p. 128). See also subsection 12(3) regarding limitations on*
19 *economic, social and cultural rights).*

20

1 **Division 2—Human rights**

2 *Note: The rights set out in this Division are drafted largely in*
3 *accordance with the AHRC’s model (see AHRC report pp. 341–377),*
4 *except where indicated to align the wording of the respective right*
5 *more closely with the text of the relevant international treaty (see*
6 *recommendation 2) or with drafting practices. Further consideration*
7 *should be given to whether the drafting of all of these rights fully*
8 *implements obligations under the relevant international human rights*
9 *law.*

10 *As per recommendation 2, in relation to some rights, legislative notes*
11 *have been included:*

- 12 • *setting out the limitation criteria that applies under the*
13 *international treaties in relation to that right (to help interpret*
14 *what constitutes a legitimate objective for the purposes of the*
15 *limitation clause in section 12); and*
- 16 • *referring to the elaboration of these rights in other UN treaties*
17 *and declarations. These notes are not intended to be exhaustive*
18 *and there are other provisions in international treaties that are*
19 *also relevant. The notes generally reflect those issues that were of*
20 *particular importance to witnesses and submitters. As per*
21 *recommendation 2, detailed guidance notes should be provided to*
22 *assist public authorities in interpreting and applying the law.*

23 **15 Right to recognition and equality before the law and freedom** 24 **from discrimination**

- 25 (1) Every person has the right to recognition as a person before the
26 law.

27 Note: The right to recognition as a person before the law must not be subject
28 to limitation, see subsection 12(4).

- 29 (2) Every person has the right to enjoy human rights without
30 discrimination.

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- 1 (3) Every person is equal before the law and is entitled to the equal
2 protection of the law without discrimination.
- 3 (4) Every person has the right to equal and effective protection against
4 discrimination.
- 5 (5) Measures taken for the purpose of assisting or advancing persons
6 or groups of persons disadvantaged because of discrimination do
7 not constitute discrimination.
- 8 (6) In this section, **discrimination** means discrimination against a
9 person on a ground set out in:
- 10 (a) Part II of the *Racial Discrimination Act 1975*; or
11 (b) Part II of the *Sex Discrimination Act 1984*; or
12 (c) Part 2 of the *Disability Discrimination Act 1992*; or
13 (d) Part 4 of the *Age Discrimination Act 2004*; or
14 (e) section 351 of the *Fair Work Act 2009*; or
15 (f) any other law of the Commonwealth prescribed by the
16 regulations.

17 Note: For the application of this right in relation to people with disability,
18 see articles 5 and 12 of the Convention on the Rights of Persons with
19 Disabilities.

20 *Note: As per the AHRC report p. 341, this right implements articles 2, 3,*
21 *16 and 26 of the International Covenant on Civil and Political Rights*
22 *(ICCPR). Consideration should be given as to whether the right to*
23 *equal recognition before the law (subsection (1)) should be separated*
24 *from the right to equality and non-discrimination (subsections (2) to*
25 *(5)), noting that these rights are separately protected in the ICCPR.*

26 *Further consideration should also be given to the definition of*
27 *'discrimination' to ensure it adequately captures all relevant aspects*
28 *of discrimination (including under international human rights law)*
29 *and whether this definition should apply to the whole Act (noting*
30 *however that the use of the term in other clauses, such as*
31 *paragraph 24(3)(b) or subclause 31(2) may require a broader*
32 *meaning).*

16 Right to life

Every person has the right to life and has the right not to be arbitrarily deprived of life.

Note: If the deprivation of life constitutes the crime of genocide, this right must not be subject to limitation, see subsection 12(4).

17 Prohibition of torture and cruel, inhuman or degrading treatment or punishment

A person must not be:

- (a) subjected to torture or to cruel, inhuman or degrading treatment or punishment;
- (b) subjected to medical or scientific experimentation without the person's free consent.

Note: This right must not be subject to limitation, see subsection 12(4).

Note: This right has been re-drafted from the AHRC drafting (see AHRC report p. 343) to better align it with article 7 of the ICCPR, see Chapter 6 and the committee's recommendation 2.

18 Protection of children

- (1) Every child has the right, without discrimination, to the protection that is needed by the child by reason of being a child.
- (2) In all actions concerning children, the best interests of the child must be a primary consideration.
- (3) Every child must be registered immediately after birth and must have a name.
- (4) Every child has the right to acquire a nationality.

Note 1: A child also has the other human rights set out in this Act.

Note 2: See article 10(3) of International Covenant on Economic, Social and Cultural Rights.

Note: Note 2 above has been included as this was recommended in the AHRC model (see AHRC report p. 343). Further consideration should be given to whether the rights in article 10(3) of the International

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1 *Covenant on Economic, Social and Cultural Rights (ICESCR) need to*
2 *be protected as substantive rights or if it is sufficient to include them*
3 *in a legislative note as set out above.*

4 *Subsection (2) reflects article 3 of the Convention on the Rights of the*
5 *Child (CRC) – it has been redrafted from the AHRC model to more*
6 *closely align it to article 3 of the CRC and to remove reference to*
7 *public authorities as the obligation on public authorities is set out in*
8 *section 47 below.*

9 **19 Protection of families**

10 (1) The family is the fundamental group unit of society and is entitled
11 to protection.

12 (2) Every person of marriageable age has the right to marry and to
13 found a family.

14 (3) Marriage must not be entered into without the free and full consent
15 of the intending spouses.

16 Note: See article 10 of International Covenant on Economic, Social and
17 Cultural Rights.

18 *Note: This legislative drafting note has been included as this was*
19 *recommended in the AHRC model (see AHRC report p. 345). Further*
20 *consideration should be given to whether the rights in article 10 of the*
21 *ICESCR need to be protected as substantive rights or if it is sufficient*
22 *to include them in a legislative note as set out above.*

23 *Subsections (2) and (3) have been split out (as compared to the AHRC’s*
24 *model, p. 345) to better align it with article 23(2) and (3) of the*
25 *ICCPR.*

26 **20 Right to privacy and reputation**

27 A person has the right:

28 (a) not to have the person’s privacy, family, home or
29 correspondence unlawfully or arbitrarily interfered with; and

30 (b) not to have the person’s reputation unlawfully attacked.

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1 Note: The right to privacy includes the collection, processing or retention of
2 personal data through all forms of technology and includes state
3 surveillance measures.

4 **21 Freedom of movement**

5 (1) A person lawfully within Australia has the right to move freely
6 within Australia and to leave it, and has the freedom to choose
7 where to live.

8 (2) A person must not be arbitrarily deprived of the right to enter the
9 person's own country.

10 Note: In determining whether a limit on this right is aimed at achieving a
11 legitimate objective (see paragraph 12(2)(b)), the following limits are
12 recognised under international human rights law as legitimate: those
13 that are necessary to protect national security; public order; public
14 health or morals; or the rights and freedoms of others.

15 **22 Freedom of thought, conscience and religion**

16 (1) Every person has the right to freedom of thought, conscience and
17 religion, which includes:

18 (a) the freedom to have or to adopt a religion or belief of the
19 person's choice; and

20 (b) the freedom, either individually or in community with others
21 and in public or private, to manifest the religion or belief in
22 worship, observance, practice and teaching.

23 Note 1: The freedom to *have or adopt* a religious or other belief or opinion
24 must not be subject to limitation, see subsection 12(4).

25 Note 2: In determining whether a limit on the freedom to *manifest* one's
26 religion or belief is aimed at achieving a legitimate objective (see
27 paragraph 12(2)(b)), the following limits are recognised under
28 international human rights law as legitimate: those that are necessary
29 to protect public safety; public order; public health or morals; or the
30 fundamental rights and freedoms of others.

31 (2) A person must not be subject to coercion which would impair the
32 person's freedom to have or to adopt a religion or belief of the
33 person's choice.

34 (3) A child's parents have the freedom to ensure the religious and
35 moral education of the child in conformity with the parents' own
36 convictions.

1 Note: See also sections 18 and 37 of this Act and article 14 of the
2 Convention on the Rights of the Child.

3 *Note: This right has been re-drafted from the AHRC model (p. 349) to*
4 *better align it with article 18 of the ICCPR, see Chapter 6 and*
5 *recommendation 2.*

6 **23 Right to peaceful assembly and freedom of association**

7 (1) Every person has the right of peaceful assembly.

8 (2) Every person has the right to freedom of association with others,
9 including the right to form and join trade unions.

10 Note 1: In determining whether a limit on these rights are aimed at achieving a
11 legitimate objective (see paragraph 12(2)(b)), the following limits are
12 recognised under international human rights law as legitimate: those
13 that are necessary in a democratic society in the interests of national
14 security or public safety; public order; the protection of public health
15 or morals; or the protection of the rights and freedoms of others.

16 Note 2: See also ILO Convention (No. 87) concerning Freedom of Association
17 and Protection of the Right to Organise done at San Francisco on
18 9 July 1948 ([1974] ATS 3), the text of which could in 2024 be
19 viewed in the Australian Treaty Library on the AustLII website
20 (<http://www.austlii.edu.au>).

21 *Note: Consideration should be given whether the right to form trade*
22 *unions should be recognised in this right; in the right to work*
23 *(section 41); or as a stand-alone right, noting that the right to form*
24 *trade unions has a slightly different limitation criteria than that*
25 *applicable to freedom of association (compare articles 22 of the*
26 *ICCPR and article 8 of ICESCR).*

27 **24 Freedom of opinion and expression**

28 (1) Every person has the right to hold opinions without interference.

29 Note: The freedom to *hold* opinions without interference must not be subject
30 to limitation, see subsection 12(4).

31 (2) Every person has the right to freedom of expression, which
32 includes the freedom to seek, receive and impart information and
33 ideas of all kinds, regardless of borders, whether orally, in writing

1 or in print, by way of art, or in another form or medium of the
2 person's choice.

3 Note: The exercise of the right in subsection (2) carries with it special duties
4 and responsibilities. In determining whether a limit on this right is
5 aimed at achieving a legitimate objective (see paragraph 12(2)(b)), the
6 following limits are recognised under international human rights law
7 as legitimate: those that are necessary for respecting the rights or
8 reputations of others; or necessary for the protection of national
9 security, public order, public health or morals.

10 (3) Despite subsection (2), the following is prohibited:

- 11 (a) any propaganda for war;
12 (b) any advocacy of national, racial or religious hatred that
13 constitutes incitement to discrimination, hostility or violence.

14 *Note: Subsection (3) has been included as per the committee's*
15 *recommendation 2, to incorporate article 20 of the ICCPR.*

16 **25 Right to take part in public life**

17 (1) Every person in Australia has the right and is to have the
18 opportunity, without discrimination, to participate in the conduct of
19 public affairs, directly or through freely chosen representatives.

20 (2) Every eligible person has the right, and is to have the opportunity,
21 without discrimination:

- 22 (a) to vote and be elected at periodic elections that guarantee the
23 free expression of the will of the electors; and
24 (b) to have access, on general terms of equality, to the Australian
25 public service and public office.

26 *Note: This wording is taken from the AHRC report p. 353. Further*
27 *consideration should be given to whether this right needs to be*
28 *redrafted to apply only to 'citizens' as this is the wording used in*
29 *article 25 of the ICCPR. Note that the wording proposed by the AHRC*
30 *as set out above also does not include the requirement for 'universal*
31 *and equal suffrage' and voting held by secret ballot as required by*
32 *article 25 of the ICCPR.*

26 Right to liberty and security of person

- (1) Every person has the right to liberty and security of person.
- (2) A person must not be subjected to arbitrary arrest or detention.
- (3) A person must not be deprived of liberty except on grounds, and in accordance with procedures, established by law.
- (4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
- (5) A person who is arrested or detained on a criminal charge:
 - (a) must be promptly brought before a court; and
 - (b) has the right to be brought to trial without unreasonable delay; and
 - (c) must be released if paragraph (a) or (b) is not complied with.
- (6) A person who is awaiting trial must not be detained in custody as a general rule, but the person's release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.
- (7) A person who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide the lawfulness of the detention and the court must:
 - (a) make a decision without delay; and
 - (b) if the detention is unlawful, order the person's release.
- (8) A person who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.
- (9) A person must not be imprisoned only because of the inability to fulfil a contractual obligation.

Note: The right not to be imprisoned only because of the inability to fulfil a contractual obligation must not be subject to limitation, see subsection 12(4).

1 **27 Right to humane treatment when deprived of liberty**

- 2 (1) Every person deprived of liberty must be treated with humanity
3 and with respect for the inherent dignity of the human person.
- 4 (2) An accused person who is detained, or a person detained without
5 charge, must:
- 6 (a) be segregated from convicted persons except in exceptional
7 circumstances; and
- 8 (b) be treated in a way that is appropriate for a person who has
9 not been convicted.

10 **28 Rights of children in the criminal process**

- 11 (1) A child charged with, or convicted of, a criminal offence must be
12 segregated from adults charged with, or convicted of, a criminal
13 offence.
- 14 (2) A child charged with a criminal offence:
- 15 (a) must be treated in a way that is appropriate for a person of
16 the child's age who has not been convicted; and
- 17 (b) must be brought to trial as quickly as possible; and
- 18 (c) has the right to a procedure that takes account of the child's
19 age and the desirability of promoting the child's
20 rehabilitation.
- 21 (3) A child who has been convicted of an offence must be treated in a
22 way that is appropriate for a person of the child's age.
- 23 (4) A child should only be imprisoned as a last resort and for the
24 shortest necessary period of time.

25 Note: A child also has the other human rights set out in this Act.

26 *Note: With respect to subsection (1), it is noted that Australia has entered*
27 *a reservation to article 37(c) of the CRC, which provides, among*
28 *other things, that every child deprived of liberty shall be separated*
29 *from adults unless it is in the child's best interest not to do so.*
30 *Australia has also entered a reservation with respect to article*
31 *10(2)(b) and (3) of the ICCPR regarding the separation of juvenile*

1 *and adult detainees. Further consideration should be given to how*
2 *these reservations impact the content of this right.*

3 **29 Right to a fair hearing**

4 (1) Every person is equal before the courts and tribunals.

5 (2) A person charged with a criminal offence, or a party to a civil
6 proceeding, has the right to a fair and public hearing by a
7 competent, independent and impartial court or tribunal.

8 (3) Despite subsection (2), a court or tribunal may exclude members of
9 media organisations, other persons or the general public from all or
10 part of a hearing if it considers it is in the public interest or the
11 interests of justice to do so.

12 (4) Each judgment in a criminal or civil proceeding must be made
13 public unless the interests of a child requires that the judgment not
14 be made public.

15 *Note: Subsection (1) is suggested for inclusion as this is in article 14 of*
16 *the ICCPR (and is a broader right than just equality before the law,*
17 *encompassing equality of arms and access to justice), although it is*
18 *not included in the AHRC report, p. 357.*

19 *The remainder of the provision is drafted in line with the AHRC report,*
20 *p. 357. In relation to subsection (2), consideration should be given to*
21 *whether the term ‘a party to a civil proceeding’ adequately captures*
22 *the provision in article 14 of the ICCPR which refers to the*
23 *determination of a person’s ‘rights and obligations in a suit at law’*
24 *(for example, does ‘a party to a civil proceeding’ include parties who*
25 *are not already a party to the proceedings?), cf ACT HRA s 21(1)*
26 *which refers to ‘rights and obligations recognised by law’.*

27 *In relation to subsections (3) and (4), consideration should be given to*
28 *whether this needs to more closely reflect the wording in article 14 of*
29 *the ICCPR which provides further grounds for the exclusion of the*
30 *press and public from trials and for when judgments must be made*
31 *public.*

30 Right not to be expelled without due process

- 1
- 2 (1) A non-citizen lawfully in Australia may only be expelled from
3 Australia pursuant to a decision reached in accordance with law.
- 4 (2) Subject to subsection (3), a non-citizen subject to expulsion has the
5 right:
6 (a) to submit reasons against the expulsion; and
7 (b) to have the case reviewed by a competent authority; and
8 (c) in any such review, to be represented for the purpose of the
9 review.
- 10 (3) Subsection (2) does not apply if compelling reasons of national
11 security require otherwise.

12 Note: Except in relation to section 25, non-citizens within Australia also
13 have the other human rights set out in this Act.

14 *Note: this is intended to reflect article 13 of the ICCPR and is in addition*
15 *to the rights recommended by the AHRC model, see*
16 *recommendation 2.*

31 Rights in criminal proceedings

- 17
- 18 (1) A person charged with a criminal offence has the right to be
19 presumed innocent until proved guilty according to law.
- 20 (2) A person charged with a criminal offence is entitled without
21 discrimination to the following minimum guarantees, in full
22 equality:
23 (a) to be informed promptly and in detail of the nature and
24 reason for the charge in a language or, if necessary, a type of
25 communication the person speaks or understands;
26 (b) to have adequate time and facilities to prepare the person's
27 defence and to communicate with a lawyer or adviser chosen
28 by the person;
29 (c) to be tried without unreasonable delay;
30 (d) to be tried in person, and to defend themselves personally or
31 through legal assistance chosen by the person;
32 (e) to be informed, if the person does not have legal assistance,
33 about the right to legal assistance chosen by the person;

- 1 (f) to have legal assistance provided to the person, if the
2 interests of justice require that the assistance be provided,
3 and to have the legal assistance provided without payment if
4 the person cannot afford to pay for the assistance;
- 5 (g) to examine, or have examined, witnesses against the person;
- 6 (h) to obtain the attendance and examination of witnesses on the
7 person's behalf under the same conditions as witnesses for
8 the prosecution;
- 9 (i) to have the free assistance of an interpreter if the person
10 cannot understand or speak English;
- 11 (j) to have the free assistance of specialised communication
12 tools and technology, and assistants, if the person has
13 communication or speech difficulties that require the
14 assistance;
- 15 (k) not to be compelled to testify against themselves or to confess
16 guilt.
- 17 (3) A person convicted of a criminal offence has the right to have the
18 conviction and any sentence imposed in relation to it reviewed by a
19 higher court in accordance with law.

20 **32 Right to compensation for wrongful conviction**

- 21 (1) Subject to subsection (2), a person has the right to be compensated
22 according to law if:
- 23 (a) a person is convicted by a final decision of a criminal
24 offence; and
- 25 (b) the person suffers punishment because of the conviction; and
- 26 (c) the conviction is reversed, or the person is pardoned, on the
27 ground that a new or newly discovered fact shows
28 conclusively that there has been a miscarriage of justice.
- 29 (2) Subsection (1) does not apply if it is proved that the non-disclosure
30 of the unknown fact in time is completely or partly the person's
31 own doing.

32 *Note: Australia has entered a reservation with respect to article 14(6) of*
33 *the ICCPR, which relates to compensation for miscarriage of justice.*
34 *Consideration should be given to how this reservation impacts this*
35 *right.*

1 **33 Right not to be tried or punished more than once**

2 A person must not be tried or punished more than once for an offence in
3 respect of which the person has already been finally convicted or
4 acquitted in accordance with law.

5 **34 Prohibition of retrospective criminal laws**

6 (1) A person must not be found guilty of a criminal offence because of
7 conduct that was not a criminal offence when it was engaged in.

8 (2) A penalty must not be imposed on any person for a criminal
9 offence that is greater than the penalty that applied to the offence
10 when the offence was committed.

11 (3) If a penalty for an offence is reduced after a person committed the
12 offence but before the person is sentenced for that offence, that
13 person is eligible for the reduced penalty.

14 (4) Nothing in this section affects the trial or punishment of any person
15 for any act or omission which was a criminal offence under
16 international law at the time it was done or omitted to be done.

17 Note: This right must not be subject to limitation, see subsection 12(4).

18 **35 Prohibition of slavery and freedom from forced work**

19 (1) A person must not be held in slavery or servitude.

20 Note: The right not to be held in slavery or servitude must not be subject to
21 limitation, see subsection 12(4).

22 (2) Subject to subsection (3), a person must not be made to perform
23 forced or compulsory labour.

24 (3) For the purposes of subsection (2), forced or compulsory labour
25 does not include:

26 (a) work or service normally required of a person who is under
27 detention because of a lawful court order or who, under a
28 lawful court order, has been conditionally released from
29 detention or ordered to perform work in the community; or

30 (b) work or service required because of an emergency or
31 calamity threatening the life or wellbeing of the community;
32 or

1 (c) work or service that forms part of normal civil obligations.

2 **36 Rights to culture**

3 *Cultural rights—generally*

4 (1) All persons with a particular cultural, religious, racial or linguistic
5 background must not be denied the right, in community with other
6 persons of that background, to enjoy their culture, to declare and
7 practise their religion and to use their language.

8 (2) All persons have the right:

9 (a) to take part in cultural life; and

10 (b) to enjoy the benefits of scientific progress and its
11 applications; and

12 (c) if a person is the author of any scientific, literary or artistic
13 production, to benefit from the protection of any moral and
14 material interests resulting from that production.

15 Note: In determining whether a limit on the right in subsection (2) is aimed
16 at achieving a legitimate objective (see paragraph 12(2)(b)), the
17 objective of promoting general welfare in a democratic society is
18 recognised under international human rights law as legitimate.

19 *Cultural rights—Indigenous peoples*

20 (3) Indigenous peoples hold distinct cultural rights.

21 (4) Indigenous peoples must not be denied the right, with other
22 members of their community:

23 (a) to enjoy, maintain, control, protect and develop their identity
24 and cultural heritage, including traditional knowledge,
25 distinctive spiritual practices, observances, beliefs and
26 teachings; and

27 (b) to enjoy, maintain, control, protect, develop and use their
28 languages, including traditional cultural expressions; and

29 (c) to enjoy, maintain, control, protect and develop their kinship
30 ties; and

31 (d) to maintain and strengthen distinctive spiritual, material and
32 economic relationship with the land, territories, waters,
33 coastal seas and other resources with which Indigenous

1 peoples have a connection under their tradition or custom;
2 and
3 (e) to conserve and protect the environment and productive
4 capacity of their land, territories, waters, coastal seas and
5 other resources.

6 (5) Indigenous peoples have the right not to be subjected to forced
7 assimilation or destruction of culture.

8 Note: In relation to the cultural rights of Indigenous peoples, see the United
9 Nations Declaration of the Rights of Indigenous Peoples, particularly
10 articles 8, 11, 12, 13, 25, 29, 31 and 34.

11 *Note: This reflects the AHRC report, p.364, other than subsection (2)*
12 *which has been added to capture the rights in article 15 of the*
13 *ICESCR, see Chapter 6 and recommendation 2.*

14 *The legislative note under subsection (2) (reflecting article 15 of*
15 *ICESCR) has been included as most economic, social and cultural*
16 *rights are subject to a specific limitation clause (see article 4 of*
17 *ICESCR). Note that the term ‘general welfare’ primarily refers to the*
18 *economic and social well-being of the people and the community.*
19 *Guidance material would need to be developed to explain the*
20 *application of this limitation criteria. This legislative note is mirrored*
21 *below for sections 37, 38, 39, 41(1) and (2) and 42.*

22 *Further consideration should be given to the framing of Indigenous*
23 *peoples’ right to culture, in consultation with Indigenous peoples, to*
24 *ensure it adequately captures all applicable rights under international*
25 *human rights law, see Chapter 6 and recommendation 2.*

26 **37 Right to education**

27 (1) Every child has the right to have access to free primary and
28 secondary education without discrimination.

29 Note: For the application of this right in relation to people with disability,
30 see article 24 of the Convention on the Rights of Persons with
31 Disabilities.

1 (2) Every person has the right to have access, based on the person's
2 abilities, to further vocational education and training that is equally
3 accessible to all.

4 Note: In determining whether a limit on this right is aimed at achieving a
5 legitimate objective (see paragraph 12(2)(b)), the objective of
6 promoting general welfare in a democratic society is recognised under
7 international human rights law as legitimate.

8 *Note: The AHRC report (p.365) suggested including another subsection*
9 *with respect to parents choosing religious education for their*
10 *children. This subsection has been included in the right to freedom of*
11 *religion (section 22), to more closely reflect article 18 of the ICCPR.*
12 *Consideration should be given as to whether a subsection reflecting*
13 *article 13(3) of the ICESCR should be included within this right.*

14 **38 Right to health**

15 (1) Every person has the right to access physical and mental health
16 services, goods and facilities without discrimination.

17 (2) Every person has the right to emergency medical treatment that is
18 immediately necessary.

19 Note: In determining whether a limit on this right is aimed at achieving a
20 legitimate objective (see paragraph 12(2)(b)), the objective of
21 promoting general welfare in a democratic society is recognised under
22 international human rights law as legitimate.

23 *Note: This largely reflects the AHRC's wording in its report (p. 370),*
24 *with the addition of the words 'goods and facilities'. Further*
25 *consideration should be given to whether this adequately covers the*
26 *right in article 12 of the ICESCR. See Chapter 6 and*
27 *recommendation 2.*

28 **39 Right to adequate standard of living**

29 Every person has the right to an adequate standard of living,
30 including adequate food, water, clothing and housing.

31 Note: In determining whether a limit on this right is aimed at achieving a
32 legitimate objective (see paragraph 12(2)(b)), the objective of
33 promoting general welfare in a democratic society is recognised under
34 international human rights law as legitimate.

1 *Note: This has been drafted differently to the AHRC proposal (see AHRC*
2 *report, p. 371) to more closely align it to article 11 of the ICESCR,*
3 *see Chapter 6 and recommendation 2.*

4 **40 Right to a healthy environment**

- 5 (1) Every person has the right to an environment that does not produce
6 adverse health consequences in the following respects:
7 (a) every person has the right not to be subject to unlawful
8 pollution of air, water and soil; and
9 (b) every person has the right to access safe and uncontaminated
10 water, and nutritionally safe food.
- 11 (2) No unjustified retrogressive measures should be taken with regard
12 to this right.
- 13 (3) No person should be subject to discrimination regarding the
14 realisation of this right.

15 Note: The primary sources of this right are the International Covenant on
16 Civil and Political Rights, the International Covenant on Economic,
17 Social and Cultural Rights and the United Nations General Assembly
18 resolution, *The human right to a clean, healthy and sustainable*
19 *environment*, A/RES/76/300 adopted 28 July 2022. The text of a
20 Convention or Covenant could in 2024 be viewed in the Australian
21 Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
22 The text of United Nations General Assembly resolutions could in
23 2024 be accessed through the United Nations' website
24 (<https://www.un.org>).

25 *Note: See the committee's recommendation 2 that further consideration*
26 *be given to the drafting of the right to a healthy environment,*
27 *including consultation with Aboriginal and Torres Strait Islander*
28 *peoples on how best to recognise the relationship between the right to*
29 *a healthy environment and the rights to culture, health and self-*
30 *determination for Aboriginal and Torres Strait Islander peoples. This*
31 *right is articulated in broader terms in international human rights*
32 *law, namely the 'right to a clean, healthy and sustainable*
33 *environment'. Consideration should be given as to whether this right*
34 *should be drafted in broader terms to align more closely with*
35 *international human rights law and whether the substantive and*
36 *procedural elements of the right should be expressly incorporated.*

1 *The elements of the right are detailed in the UN Human Rights*
2 *Council, Report of the Special Rapporteur on the issue of human*
3 *rights obligations relating to the enjoyment of a safe, clean, healthy*
4 *and sustainable environment, A/HRC/43/53 (2019). See Chapter 6.*

5 *The AHRC report (at p. 373) includes subsections (2) and (3), however it*
6 *is unclear if these are necessary to specify in light of the limitation*
7 *clause (at subsection 12(3)), noting that these principles would apply*
8 *to all economic, social and cultural rights.*

9 **41 Right to work and other work-related rights**

- 10 (1) Every person has the right to work, including the right to choose a
11 trade, occupation or profession freely.
- 12 (2) Every person has the right to the enjoyment of just and favourable
13 conditions of work.
- 14 (3) Every person has the right to strike in conformity with the law.

15 Note 1: See also the *Fair Work Act 2009, Work Health and Safety Act 2011,*
16 *Age Discrimination Act 2004, Disability Discrimination Act 1992,*
17 *Racial Discrimination Act 1975 and Sex Discrimination Act 1984,* as
18 well as articles 6, 7 and 8 of the International Covenant on Economic,
19 Social and Cultural Rights.

20 Note 2: In determining whether a limit on the rights in subsections (1) and (2)
21 is aimed at achieving a legitimate objective (see paragraph 12(2)(b)),
22 the objective of promoting general welfare in a democratic society is
23 recognised under international human rights law as legitimate.

24 *Note: Further consideration should be given to whether this adequately*
25 *covers the rights in articles 6, 7 and 8 of the ICESCR, which is*
26 *articulated in broader terms in the treaty.*

27 **42 Right to social security**

28 Every person has the right to have access to social security.

29 Note: In determining whether a limit on this right is aimed at achieving a
30 legitimate objective (see paragraph 12(2)(b)), the objective of
31 promoting general welfare in a democratic society is recognised under
32 international human rights law as legitimate.

33

1 **Part 3—Application of human rights**

2 **Division 1—Interpretation of laws**

3 **43 Interpretation**

- 4 (1) A statutory provision must be interpreted, so far as is reasonably
5 possible, in a manner that is compatible with human rights.
- 6 (2) If a provision cannot be interpreted in a way that is compatible
7 with human rights, the provision must, to the extent possible that is
8 consistent with its purpose, be interpreted in a way that is most
9 compatible with human rights.
- 10 (3) International human rights law and the judgments of domestic,
11 foreign and international courts and tribunals relevant to a human
12 right may be considered in interpreting a statutory provision.

13 Note: International human rights law is defined in section 6.

- 14 (4) This section does not affect the validity of:
- 15 (a) an Act or provision of an Act that is not compatible with
16 human rights; or
- 17 (b) a legislative instrument or a provision of a legislative
18 instrument that is not compatible with human rights and is
19 expressly empowered by the Act under which it is made to
20 not be compatible with human rights.

21 **44 Intervention by Attorney-General**

- 22 (1) The Attorney-General may intervene in, and may be joined as a
23 party to, any proceeding before a court in which:
- 24 (a) a question of law arises that relates to the application of this
25 Act; or
- 26 (b) a question arises in relation to the interpretation of a statutory
27 provision in accordance with this Act.
- 28 (2) If the Attorney-General intervenes in a proceeding under this
29 section, the Attorney-General may be taken to be a party to the
30 proceeding for the purpose of any appeal from an order made in
31 that proceeding.

1 **45 Intervention by Commission**

- 2 (1) The Commission may intervene in, and may be joined as a party to,
3 any proceeding before a court in which:
4 (a) a question of law arises that relates to the application of this
5 Act; or
6 (b) a question arises in relation to the interpretation of a statutory
7 provision in accordance with this Act.
- 8 (2) If the Commission intervenes in a proceeding under this section,
9 the Commission may be taken to be a party to the proceeding for
10 the purpose of any appeal from an order made in that proceeding.

11 **46 Notice to Attorney-General and Commission**

- 12 (1) A party to a proceeding must give notice in the prescribed form to
13 the Attorney-General and the Commission if a question of law
14 arises that relates to the application of this Act or a question arises
15 in relation to the interpretation of a statutory provision in
16 accordance with this Act.
- 17 (2) For the purpose of subsection (1), a notice is not required to be
18 given to:
19 (a) the Attorney-General if the Commonwealth is a party to the
20 relevant proceeding; or
21 (b) the Commission if the Commission is a party to the relevant
22 proceeding.
- 23

1 **Division 2—Public authorities**

2 **47 Obligations on public authorities**

- 3 (1) It is unlawful for a public authority:
4 (a) to act or make a decision in a way that is not compatible with
5 human rights; or
6 (b) in making a decision, to fail to give proper consideration to a
7 human right relevant to the decision.

- 8 (2) Subsection (1) does not apply to a public authority if the authority
9 could not reasonably have acted differently or made a different
10 decision because of a statutory provision, a law of a State or
11 Territory or otherwise under law.

12 Example: Where a public authority is acting to give effect to an Act or
13 legislative instrument that is not compatible with human rights.

- 14 (3) This section does not apply to an act or decision of a private nature.

- 15 (4) For subsection (1)(b), giving proper consideration to a human right
16 in making a decision includes, but is not limited to:

- 17 (a) identifying the human rights that may be affected by the
18 decision; and
19 (b) considering whether the decision would be compatible with
20 human rights; and
21 (c) *ensuring the participation of:*
22 (i) *Indigenous peoples in decisions that directly or*
23 *disproportionately affect Indigenous peoples;*
24 (ii) *children in decisions that directly or disproportionately*
25 *affect children;*
26 (iii) *people with disability in decisions that directly or*
27 *disproportionately affect people with disability; and*
28 (d) *where relevant, realising access to justice principles.*

- 29 (5) To avoid doubt:

- 30 (a) an act or decision of a public authority is not invalid merely
31 because, by doing the act or making the decision, the
32 authority contravenes subsection (1); and

- 1 (b) a person does not commit an offence against this Act or
2 another Act merely because the person acts or makes a
3 decision in contravention of subsection (1).

4 *Note: Further consideration would need to be given to give effect to the*
5 *AHRC's model (see AHRC report Chapter 7) regarding a*
6 *participation duty, to impose a binding obligation on public*
7 *authorities to ensure the participation of Indigenous peoples, children*
8 *and persons with disability in relation to decisions that directly or*
9 *disproportionately affect their rights (drafted above as paragraph*
10 *(4)(c)). Further consideration would also need to be given to how best*
11 *to incorporate the AHRC's proposed equal access to justice duty*
12 *(drafted above as paragraph (4)(d) (see AHRC report Chapter 7), and*
13 *whether it adequately captures the principle of free, prior and*
14 *informed consent, see the committee's recommendation 4.*

15 **48 Legal proceedings**

16 *Note: Further consideration needs to be given to the operation of a*
17 *provision setting out when a claim could be made under the HRA,*
18 *particularly around representative applicants and when a matter*
19 *could be brought to the courts (e.g. allowing cases to go directly to*
20 *the courts in circumstances where conciliation is not appropriate).*

21 *A potential option could look something like an amalgamation of the*
22 *AHRC's model set out in Chapter 11 of the AHRC report, section 40C*
23 *of the ACT Human Rights Act 2004, and Schedule 4 to the Anti-*
24 *Discrimination and Human Rights Legislation Amendment (Respect*
25 *at Work) Act 2022:*

26 (1) *This section applies if:*

27 (a) *a person claims, or 2 or more persons claim, that:*

28 (i) *a public authority has acted (or proposes to act) in a*
29 *way that contravenes section 47; and*

30 (ii) *the person is, or one or more of the persons are, or*
31 *would be, a victim of the contravention; or*

32 (b) *a representative applicant claims that:*

- 1 (i) *a public authority has acted (or proposes to act) in a*
2 *way that contravenes section 47; and*
3 (ii) *one or more persons on whose behalf the application is*
4 *made is, or would be, a victim of the contravention.*

- 5 (2) *The person or representative applicant may:*
6 (a) *lodge a written complaint with the Australian Human Rights*
7 *Commission against the public authority; and*
8 (b) *bring proceedings against the public authority under this Act*
9 *in the Federal Court or the Federal Circuit and Family*
10 *Court of Australia (Division 2); and*
11 (c) *rely on the human rights under this Act in other legal*
12 *proceedings, but only if the person has standing in those*
13 *other proceedings.*

14 *Note:* *The Australian Human Rights Commission may inquire into and*
15 *attempt to conciliate a complaint made under this section, see*
16 *Australian Human Rights Commission Act 1986.*

- 17 (3) *The Federal Court or the Federal Circuit and Family Court of*
18 *Australia may, in a proceeding under paragraph (2)(b), grant the*
19 *relief it considers appropriate.*

- 20 (4) *This section does not affect:*
21 (a) *a right a person has (otherwise than because of this Act) to*
22 *seek relief in relation to an act or decision of a public*
23 *authority; or*
24 (b) *a right a person has to damages.*

25 **49 Costs**

26 *Scope*

- 27 (1) *This section applies to proceedings (including an appeal) in a court*
28 *that relate to an application made by a person or representative*
29 *applicant (the **applicant**) to bring proceedings against a public*
30 *authority under this Act in the Federal Court or the Federal Circuit*
31 *and Family Court of Australia (Division 2).*

PJCHR: Illustrative purposes only

1 *When respondent liable for costs*

- 2 (2) Subject to subsection (4), if the applicant is successful in
3 proceedings on one or more grounds, the court must order each
4 respondent against whom the applicant is successful to pay the
5 applicant's costs.
- 6 (3) The court may order that the costs to be paid by the respondent be
7 assessed on an indemnity basis or otherwise.
- 8 (4) If the court is satisfied that the applicant's unreasonable act or
9 omission caused the applicant to incur costs, the court is not
10 required to order the respondent to pay the costs incurred as a
11 result of that act or omission.

12 *When applicant liable for costs*

- 13 (5) Subject to subsection (6), the applicant must not be ordered by the
14 court to pay costs incurred by another party to the proceedings.
- 15 (6) The applicant may be ordered to pay the costs if:
- 16 (a) the court is satisfied that the applicant instituted the
17 proceedings vexatiously or without reasonable cause; or
- 18 (b) the court is satisfied that the applicant's unreasonable act or
19 omission caused the other party to incur the costs; or
- 20 (c) all of the following apply:
- 21 (i) the other party is a respondent who was successful in
22 the proceedings;
- 23 (ii) the respondent does not have a significant power
24 advantage over the applicant;
- 25 (iii) the respondent does not have significant financial or
26 other resources relative to the applicant.

27 *Representative applications*

- 28 (7) In the case of a representative application, subsection (6) does not
29 authorise the court concerned to award costs against a person on
30 whose behalf the application is made other than the person who
31 made the application.

1 *Note: this is based on the costs protection provision in the Australian*
2 *Human Rights Commission Amendment (Costs Protection) Bill 2023,*
3 *as per the committee's recommendation 2.*

4 **50 Entity may choose to be subject to obligations**

5 (1) An entity may make a request in writing to the Minister to be
6 subject to the obligations of a public authority under this Division.

7 (2) If an entity makes a request under subsection (1), the Minister
8 must, by notifiable instrument, declare that the entity is subject to
9 the obligations of a public authority under this Division.

10 (3) If an entity requests to no longer be subject to these obligations, the
11 Minister must, as soon as reasonably practicable, repeal the
12 declaration.

13

1 **Part 4—Australian Human Rights Commission**

2 *Note: Provisions would need to be drafted setting out the Australian*
3 *Human Rights Commission’s functions under the Act, including its*
4 *role of conciliation of complaints under this Act and the committee’s*
5 *recommendation 15 regarding the AHRC.*

6 **Part 5—General**

7 *Note: Provisions would need to be drafted setting out general matters,*
8 *such as prescribing reporting requirements, reviews of the Act,*
9 *making of regulations etc. See recommendation 2 that the first review*
10 *of the Act should specifically be required to consider whether:*

- 11 • *progressive realisation principles should be incorporated; and*
- 12 • *additional rights relating to specific groups, such as Aboriginal*
13 *and Torres Strait Islander people, people with disability,*
14 *children, older persons and victim-survivors of crime, should be*
15 *included.*