

Submission to *Privacy and Other Legislation
Amendment Bill 2024* Inquiry

11 October 2024 / Daney Faddoul



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Human Rights Act campaign

The Human Rights Act campaign is an alliance of 111 organisations united in the call for an Australian Human Rights Act.

The Human Rights Act campaign acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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Contents

1.	Submission	4
1.1	Protecting a person’s right to privacy in residential care	5
1.2	Person with disability allowed to privately access their own mail	5
1.3	Recommendation.....	6

1. Submission

Thank you for the opportunity to make a submission to this inquiry on the *Privacy and Other Legislation Amendment Bill 2024 (Bill)*.

This submission is from a coalition of 111 civil society organisations (**Coalition**) calling for an *Australian Human Rights Act (Act)*.

This submission does not go into detail on the Bill, but is intended to provide a broad overview of the need for these amendments to be complemented by more general enforceable human rights standards through an Act and the benefits which flow when they are embedded in our laws. An Act which would do this across the whole of federal government and improve the operation of issue specific laws and policies, including those which relate to the Bill. We welcome the opportunity to provide further information for the Committee's consideration.

The Coalition was founded in 2018 to bring together organisations across the breadth of our community united by a call for a Human Rights Act, also known as a "Charter". The Coalition includes organisations across the country as well as parts of our community as diverse as Aboriginal and Torres Strait Islander people, people with disability, women, children, older persons, LGBTIQ+ people, and people from migrant and multicultural backgrounds. It includes social services peak bodies and faith-based organisations, as well as institutes, legal advocates, and community organisations focused on human rights and social justice.

The Bill is designed to implement 23 of 25 recommendations from the Privacy Act Review Report (**Review**) released in February 2023 that were accepted by the Federal Government in their response to the Review that was released in September 2023. The Federal Government has indicated they will deal with in the future whether and how to implement a further 2 recommendations that were accepted, 56 recommendations that were accepted in principle, and 8 recommendations that were noted. The Bill also makes an amendment not covered by the Review and response, specifically to amend the *Criminal Code Act 1995 (Cth)* to create a criminal offence around doxxing.

This submission will not go into the detail of the Bill because there will always be a need for updating the *Privacy Act 1988 (Cth)* to ensure it is up to date in light of the rapid and sometimes dramatic changes to technology, services, communications, media, and more. Rather than go into the detail of the Bill that other submitters will engage in, this submission highlights what will continue to be unchanged even if this Bill is passed unamended, or amended, or even if it implemented every recommendation of the Review. What is missing is a general right to privacy that is at the heart of our laws and sits alongside other human rights so that the right to privacy is considered and when relevant balanced with other relevant rights, such as freedom of expression, right to life, and right to equality. The best way to provide this is through an Act.

Without an Act, the right to privacy is restricted to what is outlined in the Privacy Act and privacy outlined explicitly in other legislation. For example, this Bill amends the *Data Availability and Transparency Act 2022*, *Digital ID Act 2024*, *Identity Verification Services*

Act 2023, Australian Information Commissioner Act 2010, Competition and Consumer Act 2010, Crimes Act 2014, Data-matching Program (Assistance and Tax) Act 1990, and National Health Act 1953 (changes in the Bill to the *Criminal Code Act 1995* related to Doxxing, which was not considered by the Privacy Act Review Report). And there are other pieces of Federal legislation not covered by this Bill that engage the right to privacy and limitations of it for various purposes, such as Part 5 Information Management of the *Social Security (Administration) Act 1999* that is devoted to what information is retained, required, shared, and kept confidential.

A general legislated right to privacy would ensure the right is clearly existing at the Federal level and specifically to the Federal Government and Federal public authorities beyond the limited rights to privacy in the common law like trespass. A general legislated right to privacy would also be adaptable to changes to technology, service delivery, communications, and media. However, a legislated right to privacy requires other human rights alongside it to ensure it can provide its fullest benefit as well as ensure any adverse consequences are resolved through considering the right to privacy with other relevant human rights. That is why the best way to legislate a general right to privacy is through an Act as it will also include all the other human rights. An Act should draw on the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*.

An Act will embed lasting change. An Act would not only help to realise a fairer and more just Australia which benefits everyone in the community. The Parliamentary Joint Committee on Human Rights Final Report into Australia's Human Rights Framework, released on 30 May 2024, provides a strong starting point for what that Act can look like.

There are three Human Rights Acts or Charters operating successfully at the state and territory level: in the Australian Capital Territory (**ACT**) since 2004, Victoria since 2006, and Queensland since 2020. These Acts and Charters have been quietly improving people's lives, in small and big ways. To illustrate what sort of difference a national Act can make, here are some privacy related examples of the ways in which these state and territory Acts have helped to ensure that governments and public agencies treat people with greater fairness, dignity and respect.

1.1 Protecting a person's right to privacy in residential care

A staff member from the Victorian Government observed that a person living in a residential service was not afforded privacy when assisted by their carers to shower. The staff member raised the issue with the carers, referring to the Victorian Charter of Human Rights. The residential service reviewed the person's living environment and made alternations to guarantee their privacy and dignity.

Source: Victorian Equal Opportunity and Human Rights Commission, Submission to the Four Year Review of the Victorian Charter of Human Rights, 2011, p.156

1.2 Person with disability allowed to privately access their own mail

A man with a physical disability living in a shared supported accommodation unit objected to his mail being opened by the workers at the unit. The man was capable of opening his own mail. The rationale behind the unit's policy was to ensure that any accounts needing

payment could be taken care of. The man's advocate invoked his right to privacy under the Victorian Charter of Human Rights. Consequently, the unit's policy was changed and the man was allowed to privately access his own mail.

Source: Disability Justice Advocacy, Submission to the Four Year Review of the Victorian Charter of Human Rights, 2011

The full 101 cases can be viewed at <https://humanrightsact.org.au/101-cases>

It is for these reasons that we make the following recommendation:

1.3 Recommendation

This inquiry recommends that alongside improvements to the Privacy and Other Legislation Amendment Bill 2024 the Federal Government should also implement an Australian Human Rights Act as recommended by the Parliamentary Joint Committee on Human Rights in their Report into Australia's Human Rights Framework released on 30 May 2024.
