



**Australian  
Human Rights  
Commission**

# Inquiry into Australia's response to the priorities of Pacific Island countries and the Pacific region

Submission of the Australian Human Rights Commission

June 2024

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## 1. Introduction and summary of recommendations

The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Australia's response to the priorities of Pacific Island Countries (PICs) and the Pacific region. Human rights are a priority in the Pacific. In particular, the Commission notes that human rights and climate change, the rights of women and girls, First Nations rights, rights of people with disability and the rights of children are of significant concern to the Pacific region.

The Commission welcomes that these thematic priorities are included in the Australian Governments International Development Policy (the Development Policy). In this submission, the Commission makes recommendations on some key modalities the Australian Government should employ in order to respond adequately to these priorities and support PICs to establish long term holistic solutions for the realisation and implementation of their international human rights obligations. The Commission further notes that it has consulted with a number of our counterparts and stakeholders in the Pacific in making this submission.

The recommendations made by the Commission in this submission, are summarised below:

### Recommendation 1

The Australian Government adopt a Pacific regionalism approach in its engagement within the Pacific.

### Recommendation 2

The Australian Government adopt a human rights-based approach in its response to the priorities of Pacific Island Countries.

### **Recommendation 3**

The Australian Government focus on supporting the establishment of National Human Rights Institutions (NHRIs) in the region and supports the increased capability of those already established NHRIs, through funding for partnership and technical cooperations support.

### **Recommendation 4**

The Australian Government develop human rights programs which are long-term, multi-year programs, focused on human rights capacity building and foster cross-sector partnerships, in both the development and execution phase.

## **2. About the Australian Human Rights Commission**

The Commission is an independent statutory agency with the role of promoting and protecting human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act), which defines human rights as the rights and freedoms recognised under international instruments scheduled to or declared under the AHRC Act.

The Commission's purpose is to promote and protect the human rights of everyone in Australia:

- through advising all arms of government and a range of public and private institutions
- contributing to stronger law, policy and practice
- delivering an accessible and effective investigation and conciliation service
- engaging inclusively with civil society, communities and the private sector
- raising human rights awareness and providing human rights education
- working with partners to build a stronger culture of respect for human rights.

### **2.1. The Commission's International Engagement**

In addition to its domestic functions, the Commission has a role to play in engaging in bilateral and multilateral human rights fora. Writing to the Commission's President in 2022, the Minister for Foreign Affairs, Senator the Hon Penny Wong, in a letter emphasised Australia's support to the advancement of human rights through the Pacific Community and bilateral programs with individual Pacific countries, recommending that the Commission explore opportunities for further engagement, particularly in support of strengthening emerging NHRIs.

The Commission is Australia's NHRI and is accredited as an 'A Status' institution under the United Nations 'Paris Principles'. 'A Status' indicates the NHRI has legitimacy and credibility within its country and on the international stage. 'A Status' NHRIs are able to participate independently of their state with the United Nations Human Rights Council and various human rights treaty bodies. Under the Paris Principles, the Commission is also obligated to cooperate with the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.<sup>1</sup>

The Commission has substantial engagement with PICs and NHRIs in our region with a strong focus on knowledge sharing and collaboration. The Commission's most recent engagements are described in **Appendix A** of this submission.

In addition to the above, the Commission – in agreement and with financial support from the Department of Foreign Affairs and Trade (DFAT) – currently manages human rights technical cooperation projects (HRTCPs) with the governments of Vietnam and Lao PDR. It also has an ongoing human rights project with the ASEAN Intergovernmental Commission on Human Rights (AICHR).

The Commission's engagement with these HRTCPs aims to assist foreign governments, businesses and organisations, civil society and other NHRIs to engage with the international human rights framework, to implement their international human rights obligations through legislation, policy and practice and to share Australia's experience and expertise on human rights to enhance collaboration and cooperation between States.

The Commission's HRTCPs are guided by the following principles of:

- using a human rights-based approach
- support for universality, indivisibility and intersectionality of human rights
- locally led and contextualised programs.

### **3. Human rights priorities in the Pacific**

In relation to human rights, there have been recent promising developments in the Pacific, including a demonstration of commitment to human rights through increased ratification of international human rights treaties. For example, 65 human rights treaties and optional protocols have been acceded to or ratified by 10 PICs in 2016, to 73 by 13 in 2020.<sup>2</sup> All nations in the region have additionally committed to the realisation of the 2030 Sustainable Development Goals which are predicated on the realisation of a wide range of human rights. This commitment has also been explicitly stated in the 2050 Strategy for the Blue Pacific Continent (2050 Strategy), which commits to the promotion of human rights for all peoples and develops strategic pathways for the realisation of human rights.

In addition to the developments above, a number of thematic areas have been explicitly prioritised in the Pacific, these include:

### **3.1. Human rights and climate change**

PICs are at the frontline of both climate ambition and the ongoing effects of the climate crisis. They have made it clear in the 2050 Strategy, that mitigating the impacts of climate change on their human rights is a clear priority.<sup>3</sup> Climate change has a profound impact on all human rights, including the right to a healthy environment, life, health, water, food and shelter.<sup>4</sup>

Additionally, and specifically in the context of the Pacific, climate disasters and rising sea levels will and already have caused human displacement internally and across state borders. Cross-border displacement can interfere with the fulfilment and protection of human rights and also acts to exacerbate pre-existing forms of discrimination. For First Nations peoples, the effect of displacement can have a catastrophic impact on their rights recognised under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which acknowledges the unique connection to the natural environment for First Nations peoples and affords them rights to manage, conserve and use their land. It also acknowledges the ways in which the natural environment interacts with indigenous expression of identity, culture, language and self-determination.

### **3.2. Human rights of First Nations peoples**

PICs have demonstrated a strong connection and interest to engage with the First Nations peoples of Australia.<sup>5</sup> In the 2050 Strategy, First Nations people are recognised for their indigenous knowledge, practices and philosophies.<sup>6</sup> This recognition has been identified as a strategic pathway forward for person-centred development. Indigenous peoples have also been prioritised in the context of resource and economic development, within the strategy recognising the lack of consideration for 'traditional knowledge and indigeneity in scientific and other research agendas'.<sup>7</sup>

### **3.3. Human rights of women and girls**

Pacific leaders have committed to empowering 'women to be active participants in economic, political and social life',<sup>8</sup> and have prioritised the rights of women and girls in the context of climate change and economic empowerment in the 2050 Strategy. Thirteen out of the 14 PICs have ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which is a clear signal of commitment. However, in the Pacific, the realisation of the rights of women and girls still remains a challenge, with the region having some of the highest per capita rates of gender inequality in the world.<sup>9</sup> Women in the Pacific also experience high levels of physical and sexual violence, with at least 30-60% of women experiencing this in the last 12 months.<sup>10</sup>

### **3.4. Human rights of people with disability**

Most PICs have ratified the Convention on the Rights of Persons with Disabilities. Some have translated this into national legislation, have national disability policies and many governments are increasingly engaging people with disability in policy decisions. Despite these actions, the realisation of rights of people with disability in all spheres of life

remains a challenge.<sup>11</sup> There is a commitment by PIC leaders in the 2050 Strategy to address the issues of exclusion and inequality of marginalised groups. There are also regional frameworks, such as the 'Pacific Framework for the Rights of Persons with Disabilities',<sup>12</sup> which are being used to guide government responses.

### **3.5. Human rights of children and young people**

In the 2050 strategy, commitments to equality for all and a focus on securing enhanced provision of education, health and other services for all people in the Pacific are made. From a structural perspective, there have also been attempts at the national level to implement comprehensive policies relating to children. Many countries also have a Ministry or Department with the responsibility of youth development<sup>13</sup>. Despite these commitments and structural attempts at improving the situation, children in the Pacific are facing significant challenges relating to education, health, access to clean water, and sexual abuse<sup>14</sup>.

When looking to adequately address the above human rights priorities, there are some key modalities for the Australian Government to employ when engaging in the region.

## **4. Modality for responding to Pacific priorities**

### **4.1. Adopting the approach of Pacific regionalism**

**The Commission recommends that the Australian Government adopt a Pacific regionalism approach in its engagement within the Pacific.**

Pacific regionalism is cooperation on the geographic, strategic and cultural space of the Pacific. It is built on the platform of a common history and interactions of people and culture, and a recognition of the mutual issues that concern the region.

Pacific regionalism materialises in the ways sovereign states and territories in the Pacific work together – and with other key partners – to address shared challenges and capitalise on shared opportunities to drive national and regional benefit. It is how collective priorities are developed, agreed and delivered. One example of where Pacific regionalism can be applied is through setting priorities which align to the achievement of the Sustainable Development Goals, to which both Australia and the PICs have committed.

There is a clear two-way benefit for advancing shared goals through increased institutional connections and mutually respectful relationships. Pacific regionalism involves an acknowledgement that Australia can learn from its Pacific partners and that the Australian Government should be looking at these engagements from the perspective of long-term cooperation, where institutions walk alongside each other with a whole of government approach to achieve greater outcomes for the region. The Commission therefore welcomes that the Development Policy takes the approach of 'genuine partnerships based on respect, listening, and learning from each other'<sup>15</sup> and encourages that this be applied in all aspects of engagement with the Pacific.

## **4.2. Human rights-based approach**

Despite human rights being a priority in the 2050 Strategy,<sup>16</sup> the Development Policy does not directly mention a human rights-based approach, although specific thematic rights are addressed in the Development Policy, such as a focus on gender equality, disability rights, the impact of climate change on poverty reduction, the rights of women, children and education.

### **The Commission recommends that the Australian Government adopt a human rights-based approach in its response to the priorities of Pacific Island Countries.**

A human rights-based approach emphasises mutual respect, self-determination and good governance and is guided by the principles of participation, accountability, non-discrimination, equality and empowerment. A human rights-based approach informs not only what is done but how it is achieved and should be applied in all aspects of Australia's engagement with the Pacific.

Adopting a human rights-based approach would assist the Australian Government in fulfilling the objectives prescribed in the Development Policy of 'peaceful, stable, and prosperous' <sup>17</sup> region. The benefits to adopting a human rights-based approach in the context of the Pacific are listed below:

- The universality of human rights creates common ground and essential standards on which to foster cooperation.
- A focus on human rights expands the areas of potential cooperation while enhancing the quality of existing partnerships. For example, focusing on human rights issues such as climate change, women and girls and First Nations rights could produce new initiatives on disability inclusion or the rights of Pacific Islanders of diverse sexual orientations, gender identities, gender expressions and sexual characteristics (SOGIESC).
- A human rights-based approach would ensure any action taken by Australia to support its Pacific neighbours is determined by genuine respect, participatory decision-making and a commitment to support good governance and increased capacity for the realisation of human rights within these communities.
- A human rights-based approach enhances Australia's understanding of, and respect for, cultural values and social, economic and political differences between and among Australia and its Pacific neighbours.
- A human rights-based approach emphasises grassroots decision-making and individual and community empowerment. Utilising these principles in Australia's engagement with countries in the Pacific region would support the Australian Government's stated desire to encourage people-people linkages.

- The norms that underpin universal human rights, gender equality and the rule of law are fundamental to the international rules-based order, vital to Australia's interests and prosperity.

Adopting a human rights-based approach would also mean going beyond addressing key thematic priorities and taking a holistic approach to the promotion and protection of human rights in the region. One example of this would be supporting activities which focus on the rights of SOGIESC people and the rights of people with disability which have not been explicitly recognised as key thematic priorities in the 2050 strategy.

#### **4.3. Institutional establishment and strengthening**

By following a human rights-based approach, the Australian Government would naturally be focused on supporting PICs to establish long term, structural change which achieves their human rights priorities. Pacific Governments have made clear their commitments to human rights through their increase in ratification of international human rights instruments and explicit reference of human rights in the 2050 strategy. However, human rights infrastructure in the Pacific remains weak and infringements of human rights persist in many PICs. One of the key issues in the Pacific is the lack of human rights institutions which can lead the way in the implementation of these international obligations.

NHRIs are independent bodies with the responsibility to protect, monitor and promote human rights. As the Minister for Foreign Affairs, Senator the Hon Penny Wong stated in a letter to the Commission in 2022, *'NHRIs empower individuals to understand and exercise their human rights and play a vital role in ensuring transparency and the development of democratic societies'*. Although NHRIs play a critical role, they are underrepresented in the Pacific. Only Fiji and Samoa currently have a functioning NHRI. While Samoa has A-status accreditation, it is currently facing significant resourcing challenges, which is limiting the impact and reach of its work. Fiji is currently working towards getting A status accreditation after 13 years of no status due to the lack of independence against the Paris Principles standards. With resource constraints, the Fijian Commission is finding it challenging to implement the work effectively. Tuvalu has recently made some progress towards the establishment of an NHRI through its Ombudsman office, however, has not sought accreditation through GANHRI and is not currently operational due to no defined budget.<sup>18</sup>

The Commission has also seen increasing interest and commitment among PICs to establish NHRIs – for example the Commission has recently engaged with representatives from Papua New Guinea's Department of Justice and Attorney General to support its revitalised commitment to the establishment of a human rights institution. This broader Pacific commitment was also expressed at the 2023 Pacific Regional Forum on National Human Rights Institutions, where forum delegations produced an outcomes document, agreeing on the importance and value of six actions, including developing accessible country-level pathways to establishing and strengthening NHRIs.<sup>19</sup>

The Commission welcomes the Development Policy's commitment to 'support all people to fulfill their potential, including through new international strategies for gender equality, and disability equity and rights'.<sup>20</sup> One of the best ways that Australia can fulfil

these commitments is by supporting the establishment of NHRIs and strengthening the capability of NHRIs already established in the region, through:

- supporting greater connection and linkages of PICs with regional human rights focused organisations, such as the Asia Pacific Forum (APF) to support NHRI establishment in the region.
- Fostering greater institutional connection between PICs and the Commission, with the intention to strengthen the capacity of existing human rights institutions – e.g. through greater capacity building support and knowledge exchanges.
- Supporting NHRIs and civil society organisations to hold domestic, regional or international events to recognise and promote human rights defenders, using inspiration from Australia's Human Rights Awards.
- Financially supporting NHRIs and civil society organisations in the Pacific to engage in international human rights treaty body mechanisms and fora. For example, this could be through funding Pacific NHRIs to properly engage with treaty body shadow reporting and attend sessional meetings.

As one of the largest institutions in the Pacific, the Commission would be well placed to support the Australian Government to facilitate institutional partnerships and technical cooperation to advance human rights in the Pacific. The Commission has already received requests from NHRIs globally for support, and regularly hosts study visits from NHRIs across the globe. For example, within the Pacific, the Fijian NHRI has sought capacity building support from the Commission to establish better governance mechanisms and establish a complaint handling mechanisms in their institution. While there is currently no funding available for this work, this would be an excellent opportunity to support Fiji in meeting its human rights obligations and priorities.

**The Commission recommends that the Australian Government focus on supporting the establishment of NHRIs in the region and supports the increased capability of those already established NHRIs, through funding for partnership and technical cooperations support.**

#### **4.4. Best practice development approach**

In addition to the above modalities, the Australian government should be ensuring that its development programs are following a best practice approach. Well-designed development programs are an effective way to strengthen people-to-people links and partnerships that advance the shared commitment to human rights shared between Australia and the Pacific. The Commission welcomes the Development Policy's commitment to taking a whole-of-government approach, investing in people and is looking to elevate the perspectives of First Nations peoples.<sup>21</sup> Based on the Commission's experience in delivering HRTCPs, the following factors are critical to the

effectiveness of development programs and would assist Australia to fulfil the commitments made in the Development Policy:

- Multiyear projects that are designed with sufficient flexibility to adapt to emergent opportunities and evolving priorities of partner governments.
- Capacity building support for governments to monitor and report on human rights treaties, and to engage in the international human rights system (for example, the Human Rights Council, the Universal Period Review). This offers a valuable means of building understanding of human rights and skills related to UN reporting. This awareness can, in turn, strengthen supportive attitudes towards human rights norms within and between government departments. It is also a positive opportunity for Government-to-Government partnerships between Australia and the Pacific.
- Fostering cross-sector partnerships for human rights, by bringing together governments, civil society organisations, NHRIs and the private sector around shared objectives. For example, the Commission's projects in Southeast Asia have strengthened the engagement of civil society organisations in Treaty Body reporting processes and helped contribute to increased engagement between governments and civil society in partner countries. The Commission has also worked with Chambers of Commerce or Industry to provide training on business and human rights.
- Opportunities for exposure and awareness to the ways that other countries respond to human rights challenges. For example, study visits to Australia have enabled delegations of senior officials to understand Australia's efforts to promote the rights of SOGIESC+ people.
- Dedicated resourcing for civil society and community groups to support them in realising a human-rights based approach to development.

When addressing PICs priorities, **the Commission recommends that the Australian Government develop human rights programs which are long-term, multi-year programs, focused on human rights capacity building and foster cross-sector partnerships, in both the development and execution phase.**

## **Appendix A: The Commission's current engagement in the Pacific**

Recently, the Commission has engaged in the Pacific in the following ways:

### **1. Participation in Pacific Human Rights Coordination Meetings – quarterly**

The Commission participates in quarterly meetings which bring together human rights actors in the region, as a forum to share initiatives and events, build relationships, and develop opportunities for collaboration.

### **2. Pacific collaboration to strengthen NHRIs – February 2023**

The Commission participated in the 2023 Pacific Regional Forum on NHRIs campaigning from The Pacific Community (SPC) and Office of the United Nations High Commissioner for Human Rights (OHCHR). It was the first-time representatives from 14 of the 16 Member States comprising the Pacific Island Forum met to discuss the formation and operation of NHRIs in the region. NHRI Commissioners, Ombudspersons, Ministers and senior officials from Ministries of Justice explored the progress the Pacific region has made, shared experiences, and identified strategies for establishing and maintaining the independence of NHRIs.

### **3. Supporting an NHRI side event at the Pacific Islands Forum (PIF) – November 2023**

The Commission participated in a PIF Leaders Forum Peace & Prosperity panel discussion: 'The Universal Declaration of Human Rights at 75 and the 2050 Strategy for a Blue Pacific Continent', which focused on people-centred development, gender equality and children's rights with a focus on NHRIs. Opportunity to bring existing and emerging NHRIs in the region together to pursue awareness raising, collaboration and political support for NHRIs in the advancement of human rights.

### **4. Inviting Pacific NHRIs to Australian human rights initiatives – December 2023**

Following on from recent engagement and the expressed desire of Pacific NHRIs for more support, the Commission recently hosted Pacific representatives from the Fiji Human Rights and Anti-Discrimination Commission, the New Zealand Human Rights Commission, and the Cook Islands Office of the Ombudsman. These representatives held meetings with staff across the Commission on ways to promote and protect human rights as an NHRI, including through hosting Human Rights Awards.

### **5. Engaging in regional human rights forums – April 2024**

The Commission participated in the 3rd Pacific Human Rights Conference on Sexual Orientation, Gender Identity, And Expression and Sex Characteristics (SOGIESC), held in Fiji. The conference brought together prominent advocates, local and international civil society organisations and government representatives. The conference worked to foster collaboration and insights to advance justice, equality, human rights, and social inclusion for Pacific Islanders of diverse SOGIESC+.

## 6. Hosting knowledge sharing opportunities – April 2024

At the request of representatives from Papua New Guinea's (PNG) Department of Justice and Attorney General, the Commission hosted an all-day meeting with a delegation from PNG. The delegation was studying the varying models of NHRIs in the region as they are seeking to establish their own Institution. The Commission shared its knowledge, experience and challenges faced in promoting and protecting human rights within the Australian context. The Commission additionally engages closely with other established NHRIs in the Pacific region, sharing knowledge and collaborating when capacity allows.

## 7. Bilateral activities between the Commission and countries in the Pacific

The Commission regularly meets with the New Zealand Human Rights Commission on issues relating to First Nations peoples. These meetings often involve discussion on comparative progress in relation to the UNDRIP. These meetings can eventuate into greater collaboration opportunities. For example, in 2021, the New Zealand, Canadian and Australian human rights Commissions, co-hosted a side event during the 14<sup>th</sup> session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). This event had a thematic focus on projects of the 3 Institutions relating to rights of First Nations peoples.

The Commission additionally meets regularly with the Fijian Human Rights and Anti-Discrimination Commission to discuss its capacity building support needs, as well as knowledge sharing.

## Endnotes

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- <sup>2</sup> Heike Alefsen and Miles Young, 'Human Rights Situational Analysis Report 2016-2020 (HRSA Report 2020) Pacific Community' (web page) <<https://www.spc.int/updates/blog/partners/2021/08/human-rights-in-the-pacific-milestones-challenges-and-the-way-forward>>
- <sup>3</sup> Pacific Islands Forum, 2050 Strategy for the Blue Pacific Continent (2022) 1.
- <sup>4</sup> Michael Burger & Maria Antonia Tigre, 'Global Climate Litigation Report: 2023 Status Review' (Sabin Center for Climate Change Law, Columbia Law School & United Nations Environment Programme, Status Review, (27 June 2023) 27.  
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- <sup>5</sup> Dr Tess Newton Cain, James Cox, Dr Geir Henning Presterudstuen, *Pacific Perspectives on the World, (research project February 2022 Whitlam Institute)* 25, 28, 32.  
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- <sup>6</sup> Pacific Islands Forum, 2050 Strategy for the Blue Pacific Continent (2022) 19.
- <sup>7</sup> Ibid 23.
- <sup>8</sup> Ibid 6.
- <sup>9</sup> World Economic Forum 'Global Gender Gap Report 2023' (web page) <  
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<https://asiapacific.unfpa.org/en/knownwawdata#:~:text=Globally%2C%20addressing%20violence%20against%20women,hands%20of%20an%20intimate%20partner>>.
- <sup>11</sup> Dr. 'Atu Emberson-Bain, Inequality, Discrimination and Exclusion: Assessing CRPD Compliance in Pacific Island Legislation (research report October 2021 United Nations Economic Social Commission for the Asia Pacific) 23. <file:///C:/Users/nora.bakalla/Downloads/ESCAP-2021-RP-Inequality-discrimination-exclusion%20(1).pdf >
- <sup>12</sup> Pacific Islands Forum, 'Pacific Framework for the Rights of Persons with Disabilities' (A regional framework to support national government actions on inclusive development for the rights of persons with disabilities 2016-2025) <<https://forumsec.org/sites/default/files/2023-12/PFRPD.pdf>>
- <sup>13</sup> Coram International, 'Situation Analysis of Children 2021 A regional overview on the situation analysis of children in 14 Pacific Island countries' (Report by UNICEF 2021) 155.
- <sup>14</sup> Ibid 4-8.
- <sup>15</sup> Australian Government Department of Foreign Affairs and Trade 'Australia's International Development Policy' (August 2023) 3.
- <sup>16</sup> Pacific Islands Forum, 2050 Strategy for the Blue Pacific Continent (2022) 10.
- <sup>17</sup> Australian Government Department of Foreign Affairs and Trade 'Australia's International Development Policy' (August 2023) 7.
- <sup>18</sup> United Nations, *Tuvalu Country Implementation Plan* (2023-2024) 6.  
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- <sup>21</sup> Ibid 25.