

Submission into the Inquiry into Australia's Human Rights Framework

1. Who is the Justice and Peace Office?

The Justice and Peace Office of the Archdiocese of Sydney welcomes the opportunity to make a submission into the Inquiry into Australia's Human Rights Framework. The Justice and Peace Office is an agency of the Catholic Archdiocese of Sydney which promotes justice, peace, ecology and development through advocacy and activities based on the social teachings of the Catholic Church. We believe our role is to be alive to the Spirit, the moment in which we live and alive to the possibilities of creating a more humane, compassionate and inclusive world. This demands we advocate for those without voice or political power, that we imagine how we can do things better, and that we work in coalition with people and communities of goodwill to build the common good.

In our submission we shall be addressing a number of the matters that have been highlighted by the Joint Committee. They are the scope and effectiveness of Australia's 2010 [Human Rights Framework](#) and the [National Human Rights Action Plan](#); whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission's recent [Position Paper](#)); and whether existing mechanisms to protect human rights in the federal context are adequate and if improvements should be made, including:

- to the remit of the Parliamentary Joint Committee on Human Rights;
- the role of the Australian Human Rights Commission;
- the process of how federal institutions engage with human rights, including requirements for statements of compatibility;

However, we begin with a brief statement concerning the current state of human rights and the impact of this parlous state on the Australian community more broadly.

2. What is the current state of human rights within Australia?

Over the last two decades we have witnessed a constant and corrosive reduction of both assumed human rights and a decline in an expectation of human rights protection more broadly in Australia.

The result is that across Australia trust in our democracy has declined. In 2018 the Museum of Australian Democracy produced research, [Trust and Democracy in Australia](#), (2018) showing that in 2018 satisfaction in democracy has more than halved in a decade and trust in key institutions and social leaders was being eroded with dangerous portents for the future of democracy in Australia.

Fundamental to this collapse of both trust and belief in democracy have been egregious breaches of the human rights of people that include the suspension of the Racial Discrimination Act 1975 (Cth) in order to implement the Northern Territory response, better known simply as the

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Intervention; the lengthy and potentially indefinite detention of innocent men, women and babies seeking Australia's protection, and the extraordinary increase in the powers of the state under the new national security laws. (National Human Rights Consultation Outcomes. 2009)

The more recent abuses entailed in the Robodebt scandal, the treatment of Bernard Collaery and Witness K; the refusal to allow Australian citizens to return home, and finally, the inability to have an informed critique of whether the various lock-downs were compliant with the human rights of all Australians during the Covid pandemic, highlight the impoverished state of human rights in Australia and the lack of institutional scaffolding that would make informed critique possible.

This loss of trust is beginning to manifest in an array of phenomena including the scenes of protest marches throughout the pandemic, the emergence of extreme groups and the rise of the "sovereign citizen" – clearly there is a great deal of confusion about what rights and responsibilities are available to Australian citizens. Without a strong collective trust in our democracy we cannot hope to act in concert on complex issues such as climate change, rising inequality, energy transitions, or other long-term challenges.

It is time to remedy this legal, political and social impoverishment through the creation of a Human Rights Act that will allow Australians to join democracies across the world in the protection of our human rights.

3. Review the scope and effectiveness of Australia's 2010 [Human Rights Framework](#) and the [National Human Rights Action Plan](#)

Two thousand years ago it was suggested that the value of a thing could be determined by the fruit that it bore. The "fruit" of the 2010 Human Rights Framework and the National Human Rights Action Plan can be seen in the creation of the destructive robodebt crisis – a government strategy that has led to untold suffering and hundreds of suicides – this appalling human cost is paralleled by the extraordinary cost of \$1.8 billion in compensation owed by the Commonwealth through the robodebt class action. As observed by Australian Human Rights Commission President, Rosalind Croucher, "a Human Rights Act would have meant public servants had a legal duty to consider the human rights impacts of the scheme".¹

Likewise the government response to the Covid pandemic prevented thousands of Australians from returning home, leaving Australian citizens in dangerous situations overseas and hundreds of people homeless across the world.

As Croucher noted, the "inequities" in the vaccine rollout, with vulnerable groups including First Nations people, people with a disability and prisoners left behind; increased police enforcement powers selectively deployed; and use of regulations "without legislative oversight or

¹ <https://humanrights.gov.au/about/news/media-releases/commission-launches-model-australian-human-rights-act>

review”² all highlight the need for such an Act. Indeed the report by the Australian Human Rights Commission has argued a Human Rights Act could have provided “a check on executive power by drawing lines that should not be crossed – such as locking vulnerable citizens out of their own country”.

It would also have helped prevent “emergency measures from becoming the ‘new normal’”, “the most vulnerable from falling through the cracks” and “arbitrary decisions and blanket rules” like refusing to allow “a person to cross a border to bury a family member, or an elderly person to receive a visitor”. In her forward to the Commission’s position paper, *Free + Equal: An Australian conversation of human rights*, Croucher argued that the fact “indefinite administrative detention is not unlawful under our existing laws suggests why our current protections ... are just not enough”.

A Human Rights Act could not only provide clear directions on what does and does not constitute a human right within Australia to law makers and the Executive, it would also provide a vitally needed sense of entitlement to human rights. This sense of entitlement has been degraded over the last few decades as assumed rights have disappeared without protest. It appears there is no longer even the memory of why human rights matter in Australia. As evidenced in 2015 when a United Nations report, by the UN's special rapporteur on torture, found Australia had violated the rights of asylum seekers on multiple fronts under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Special rapporteur on torture, Juan Mendez, found the detention of children, escalating violence in offshore processing centres, and the detention and proposed deportation of two groups of Sri Lankan and Tamil asylum seekers were in breach of Australia's international obligations. Rather than shame or concern for those abused, the then- Prime Minister Tony Abbott said, “Australians are sick of being lectured to by the United Nations”. And that was the end of the national conversation.

Finally, Australia’s ongoing abuse of children and contravention of the Rights of the Child is writ large in gross rate of imprisonment rate of children. In 2020, [499 children aged between 10 and 13 were imprisoned](#)³. At least 65% of them are Aboriginal or Torres Strait Islander children. 68% of all children in detention were on remand, meaning they were yet to be convicted of any crime.

Thirteen years after the introduction of the 2010 Human Rights Framework and the National Human Rights Action Plan it is clear the human rights of all Australians remain unprotected, unrealized and unstated. This must change.

² Australia has implemented a number of restrictions in response to the COVID-19 pandemic including significant restrictions on freedom of assembly and freedom of movement, often accompanied by increased police enforcement powers. Many measures and restrictions have been introduced through delegated legislation which has not been subject to oversight of Parliament. At the federal level, this has included changes to visa arrangements and restricting travel overseas. See, e.g., *Migration (LIN 20/122: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020 (Cth)* and *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020 (Cth)*.

³ Australian Institute of Health and Welfare. Youth Justice in Australia report 2019-2020 Accessed online <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2019-20/data>

4. Should the Australian Parliament enact a federal Human Rights Act, and if so, what elements should it include (including by reference to the Australian Human Rights Commission's recent [Position Paper](#));

Clearly the Australian government should enact a federal Human Rights Act because Australians deserve the same protections and support provided by such an Act as is enjoyed in every other western democracy and because we have witnessed the abuses meted out to so many people as a result of not having a Human Rights Act.

This is the work of nation building and it is unfinished business. When established on a permanent footing in 1986, the Commission was intended to have a complaint handling jurisdiction for human rights complaints through an Australian Bill of Rights Act. Thirty-seven years later it remains a position vacant. Australia has a patchwork legal framework of human rights protection. The rights that are protected are located in scattered pieces of legislation, the Constitution and the common law. It is incomplete and piecemeal. (Free + Equal A Human Rights Act for Australia. p, 352)

The Australian Constitution offers only limited protection for a small number of discrete human rights. This includes the implied right to freedom of political communication; and a prohibition on making federal laws that establish a religion, impose a religious observance or prohibit the free exercise of any religion. The High Court has rejected suggestions that other basic rights, like the right to equality, are implied by the text of the Constitution.

Common law recognises a number of rights and freedoms. The common law protects human rights indirectly through statutory interpretation principles such as the 'principle of legality', which presumes that Parliament 'does not intend to interfere with common law rights and freedoms except by clear and unequivocal language'. However, Parliament routinely passes laws that are not human rights compliant.

A Human Rights Act would not only serve to protect human rights anchored in Australian values, it would also begin to create a sense of entitlement and expectation within the Australian community that we will be accorded human rights in our dealings with government, executive, policing and public servants.

In conclusion the cost of having no Human Rights Act at a federal has been so overwhelming and destructive of public trust and cohesion, we believe the question needs to be reversed and should be: explain why Australians have no entitlement to the same protections and support every other western democracy has incorporated into a Human Rights Act.

5. What rights should be included?

A comprehensive Human Rights Act needs to include the following rights:

1. Recognition and equality before the law; and freedom from discrimination
2. Right to live
3. Protection from torture and cruel, inhumane or degrading treatment
4. Protection of children
5. Protection of families
6. Privacy and reputation
7. Freedom of movement
8. Freedom of thought, conscience, religion and belief
9. Right to peaceful assembly and freedom of association
10. Freedom of expression

11. Right to take part in life
 12. Right to liberty and security of person
 13. Right to humane treatment when deprived of liberty.
 14. Protections for children in the criminal process
 15. Right to fair hearing in an open court
 16. Rights in criminal proceedings
 17. Right to compensation for wrongful conviction
 18. Right not to be tried or punished more than once
 19. Protection against retrospective criminal laws
 20. Freedom from forced work
 21. Cultural rights
 22. Cultural rights for First Nations people
 23. Right to education
 24. Right to health
 25. Right to an adequate standard of living
 26. Right to healthy environment
 27. Right to work and other work-related rights
 28. Right to social security
6. Are existing mechanisms to protect human rights in the federal context adequate and should improvements be made, including:
- a. to the remit of the Parliamentary Joint Committee on Human Rights;
 - b. the role of the Australian Human Rights Commission.
 - c. the process of how federal institutions engage with human rights, including requirements for statements of compatibility; and

In light of the above it is clear existing mechanisms have failed to protect the human rights of Australians. We have no view on the remit of the Parliamentary Joint Committee on Human Rights except to be grateful the committee was able to push for this Inquiry.

On the question of the role of the Australian Human Rights Commissioner, we believe there is a need to ensure the Commissioner has the necessary power to enforce such a Human Rights Act in relation to ensuring each piece of legislation is measured and held to account to such a Human Rights Act; to have sufficient power to direct abuses of human rights to the relevant court or authority to prevent those abuses, and the Commission itself needs to take a lead role – and be funded to do so – in educating Australians about our human rights. Finally, the funding for the Human Rights Commission needs to be adequate to the task and independent

Benedict Anderson (1983), an Anglo-Irish political scientist and historian, defined the nation as an 'imagined political community',

imagined because the members of the smallest nation will never know most of their fellow-members, meet them or even hear of them, yet in the minds of each lives the image of their communion. A nation exists when a significant number of people in a community consider themselves (or, in other words imagine themselves) as to form a nation or behave as if they formed one. (p. 6)

Imagine what Australia could be like for her people and for the example she could bring to the world with a Human Rights Act. A humble and courageous nation that recognised we have

legislation to protect ourselves from our worst selves and provide the scaffolding to build a nation based on our best selves. We could be a nation of people that have deep respect for each other, our diversity and our democracy. A nation where we are all engaged in re-building trust and respect for each other and this ancient land we all call home. It is time to imagine this new Australia and bring her into being through a Human Rights Act.

In conclusion, it is clear that when a nation is routinely imprisoning young children, is holding innocent toddlers, old women and men in detention for years at a time, when government departments are illegally pursuing people to their death for fraudulent debts and when the nation is in breach of the international treaty obligations such as the Refugee Convention, the Convention against Torture, the Rights of the Child, it is time to put the scaffolding of human rights in place and begin the enormous task of rebuilding a nation that respects human rights, that protects human rights and clearly states what those human rights are today.

We commend our submission to you.

References

Anderson, B. (1983). *Imagined communities: Reflections on the origin and spread of nationalism*. Verso Books.

Stoker, G. Evans, M. Halupka, M. (2018) *Trust and Democracy in Australia*. Report No. 1. Democracy 2025. Accessed online
<https://www.democracy2025.gov.au/documents/Democracy2025-report1.pdf>

Australian Human Rights Commission (2009) Human Rights Consultation Outcomes. Accessed online: <https://humanrights.gov.au/about/news/speeches/president-speech-national-human-rights-consultation-outcomes>