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Mr Josh Burns MP
Chair
Parliamentary Joint Committee on Human Rights
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Parliament House
Canberra ACT 2600
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Dear Mr Burns

Thank you for the opportunity to address the Parliamentary Joint Committee on Human Rights Review of the national human rights framework. CLA appreciated both the chairing of, and the questions from, the Committee.

We know time was limited at the inquiry, so we would like to provide answers to two questions that were routinely asked of witnesses, but not of us or of the Law Council:

- ☐ The effect on states and territories of a Federal right to housing (Attachment A): and
- ☐ Our view of the possible future of the PJCHR with a HRA in place (Attachment B).

To provide further context for CLA's approach, I have also attached our short responses to the Terms of Reference raised by both the Attorney General and the Committee. (Attachment C).

Yours sincerely

Dr Kris Klugman
President
Civil Liberties Australia

13 November 2023

ATTACHMENT A

The effect on states and territories of a Federal right to housing

“We consider that a dwelling of good standard and equipment is not only the need but the right of every citizen...”

Commonwealth Housing Commission, 1944

The Commonwealth will be able to promote and protect rights to the limit of its jurisdiction. In the case of public housing, states and territories are generally responsible for building and maintaining it. When the Commonwealth Government provides funding through tied grants, the conditions under which that grant is made will need to be consistent with a Federal HRA if one is in place.

As with all tied grants under s96 of the Constitution, the conditions of that grant would be a matter of negotiation between the Commonwealth and the other Australian jurisdictions. These conditions might include an obligation on states and territories to protect and promote the right to housing consistent with the Federal HRA when spending Commonwealth money.

This will be much less of an issue in the ACT, Queensland and Victoria as they have a HRA in place. While none of these jurisdictions currently have a specific right to housing, they do offer a package of relevant rights that a negotiation can be built on, including:

- right to recognition and equality before the law
- right to property
- right to privacy and reputation
- right to protection of families and children
- cultural rights of Aboriginal peoples and Torres Strait Islander people; and
- right to liberty and security

and, increasingly, a means to allow individuals the opportunity to seek remedy for breaches of those rights.

We are aware that South Australia, the Northern Territory and NSW are thinking of putting a HRA on their policy agenda. A change of Government in Tasmania would put it in the same situation and we understand from WA Attorney General Quigley that WA would follow the Commonwealth’s lead on a HRA.

The tied grants process covered by a Federal HRA may spur other states and territories to enact a HRA of their own to ensure consistency.

ATTACHMENT B

CLA's view of the possible future of the Parliamentary Joint Committee on Human Rights after a Federal Human Rights Act (HRA) is in place.

The Government should:

1. Identify human rights as a separate portfolio responsibility for the Attorney General (it is currently a subset of responsibilities under law and justice) or create a separate minister assisting the Attorney General for Human Rights.
2. Create a standing item on the Standing Committee of Attorneys General (SCAG) agenda on the consistent promotion and protection of human rights across Australian jurisdictions. This item would allow Australian jurisdictions to develop consistent/complementary approaches to human rights once the Federal Government has implemented its HRA.

The PJCHR should:

- Sign off on the human rights aspects of Bills before they are passed, or make recommendations to the Attorney General on whether the Bills are compliant with HR obligations before they are passed; and
 - be able to call ministerial advisers and departmental staff to answer questions in relation to the human rights aspects of those Bills
- Advise the Attorney General on legislation identified by the judiciary as being incompatible with the HRA;
- Initiate inquiries into the compatibility of existing or proposed Federal legislation with the HRA, without a referral from the Attorney General, noting that any such inquiry should not delay the passage of legislation, or cause its suspension; and
- Advise the Attorney General on issues raised in relation to that SCAG standing agenda item on human rights.

The Australian Human Rights Commission should:

- retain all existing roles and extend its complaints conciliation process to cover all rights under a human rights act, as is the case in Queensland and under the No Rights Without remedy reforms in the ACT.
- under the 'No Rights Without Remedy' principle, have the capacity to refer complaints not amenable to conciliation to the Australian Review Tribunal or other relevant bodies able to make binding legal decisions and mandate remedies.

ATTACHMENT C

Terms of reference from Attorney General Dreyfus

to review the scope and effectiveness of Australia's 2010 [Human Rights Framework](#) and the [National Human Rights Action Plan](#);

Despite the best intentions of those who implemented and maintained the National Human Rights Framework in the wake of the 2009 National Human Rights Consultation (Brennan) Report, the Framework has failed to protect Australians from repeated abuses of human rights precisely because it was designed to operate within a flawed ethical infrastructure.

The framework also failed to educate the public service and the nation about human rights and responsibilities. Had that occurred, then-future governments may not have faced subsequent problems like Robodebt and the lack of social capital which greeted the Voice debate.

Enacting a Human Rights Act will, of itself, be a major educational factor. It will provide a platform for educating the Australian community, from schools to Probus clubs, about what a "fair go" really means for Australians.

CLA makes two observations about the educational effect of a human rights act underpinned by a standalone cause of action. There is nothing that will educate a public servant to make human rights based decisions faster than the prospect of third party scrutiny, and nothing will educate the public faster than adding a schedule to any new piece of legislation, spelling out the rights, obligations and pathways to remedy arising from it.

to consider whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made;

A system akin to the "Framework" will emerge as a natural consequence of a federal HRA with a standalone cause of action. A positive duty, rights education and a pathway to remedy will drive the creation of a legal and administrative framework.

to consider developments since 2010 in Australian human rights laws (both at the Commonwealth and State and Territory levels) and relevant case law; and

Australia in 2024 will have 42 years' experience of living under local human rights legislation: the ACT since 1 July 2004, Victoria since 2006 and Queensland since 2020.

In all jurisdictions, the Acts have delivered positive outcomes for their people. In the ACT, two decades of experience is now being expanded to deliver the "No Rights Without Remedy" concept of simpler, quicker, easier and more citizen-friendly conciliation-tribunal decision making for people with human rights complaints, many of whom are the nation's most vulnerable.

to consider any other relevant matters.

CLA has commented at length in our submission how a Human Rights Act, and the rest of the "Framework"-style issues that flow from it, will comprise an improved and expanded integrity system for Australia as a partner to the National Anti-Corruption Commission.

Terms of reference from Parliamentary Joint Committee on Human Rights

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](#));

CLA endorses the AHRC model as a workable template for a federal HRA. CLA maintains that Parliament should enact a HRA to serve justice and promote trust in our parliamentary and government institutions by:

1. Ensuring that *all* the rights Australia has committed to through the United Nations family of human rights instruments are protected and promoted in Australia;
2. Embracing the fact that there are no rights without remedy by building a pathway to remedy for any individual when their rights have been breached within the federal jurisdiction;
3. Enabling each citizen to stand before a tribunal on an equal footing with the decision maker to make the case that their rights have been abused; and
4. Providing a foundation on which to build the social capital needed to allow governments to make the intergenerational decisions on issues like climate change and the social wage necessary to sustain our society.

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

See **ATTACHMENT B** above

The effectiveness of existing human rights Acts/Charters in protecting human rights in the Australian Capital Territory, Victoria and Queensland, including relevant case law, and relevant work done in other states and territories.

HRA articulate the Government's obligation to be humane to the powerless and set a process that makes sure the powerless are not priced out of obtaining justice when their rights are breached. HRA also emphasise the need for balance, proportionality and relevance when jurisdictions decide to limit rights in particular circumstances.

All three Australian human rights jurisdictions have provided detailed evidence of how and where a HRA has been critical in ensuring the rights of people were upheld. Summaries of the cases are published by relevant Human Rights Commissions and by the Human Rights Law Centre, and the case law for each example is readily available.

During the COVID-19 pandemic, the human rights acts were frequently over-ruled by emergency legislation. HRA clarified the need for better balance and proportionality from governments and authorities in how they treated citizens during emergencies. These are lessons that will be accommodated in updates and rewrites of both emergency laws and rights laws in future.

We are aware that South Australia, the Northern Territory and NSW are thinking of putting a HRA on their policy agenda. A change of Government in Tasmania would put it in the same situation and we understand from WA Attorney General Quigley that WA would follow a Federal lead on a HRA.

The more stress society is under, the more minds turn to a Fair Go...and therefore a HRA. ENDS