



A Human Rights Act for Australia

Why Australia needs a Human Rights Act

We have very few laws protecting human rights in Australia

Australia is a country with a strong sense of human rights and freedoms. Many people are therefore surprised to discover that there are actually very few laws protecting human rights in Australia. We have federal legislation that addresses discrimination, and we have some protections of rights in common law and in the Constitution. However, many human rights – such as the right to free speech, or freedom from torture – have limited protection in Australian law.

Australia has signed a number of United Nations conventions that commit us to protecting and promoting all human rights, but the majority of our international commitments have not been translated into our own national laws.

Human Rights Acts have been passed in Victoria, the Australian Capital Territory and Queensland, and have had positive impacts. But Australia has no Human Rights Act at the federal level. We are the only liberal democracy in the world without a Human Rights Act or a Constitutional Charter of Rights.

Our federal Government should be obliged to consider human rights to ensure that they are upheld

At present, the Australian government is not obliged to consider human rights in their policy-making or decision-making. A national Human Rights Act would embed transparent, human rights-based decisions as part of public culture, which could prevent breaches of human rights from occurring.

We need legal remedies for people whose human rights have been breached

In many cases, individuals whose human rights have been breached have no avenue now to pursue a legal remedy.

A proposed model for a Human Rights Act for Australia

A national Human Rights Act would be an evolution, not a revolution. It would build on the success and lessons learned from our state and territory models, and on the experience of the Australian Human Rights Commission in handling complaints since 1981. The Australian Human Rights Commission has released a report (<https://humanrights.gov.au/human-rights-act-for-australia>) setting out how a national Human Rights Act should operate.

Key elements of the Commission's proposal for a Human Rights Act

Federal policy-makers and decision-makers

Government, administrators and public service providers would be required to consider human rights and to act in accordance with human rights when making policy or decisions that affect individual lives. They would have to consult with the people who would be directly or disproportionately affected by policies or laws, especially First Nations people, children, and people with disability.

Federal law-makers

Parliament would be required to place greater priority on the human rights impacts of all new proposed laws.

Federal courts

Courts would be required to interpret legislation, where possible, in a way that is consistent with human rights. However, courts would not have the power to strike down laws for not being compatible with human rights.

Limitations on human rights

Limitations could be placed on some human rights in certain circumstances. For example, it might be necessary to balance the right to freedom of expression with the right to privacy, or the right to access information with national security interests.

When deciding whether to pass a new law that limits human rights, Parliament would have to consider whether the proposed limitation is *proportionate*. For example, any limitation on individual rights would need to be reasonable and necessary to achieve an important public interest and be put in place for the shortest time possible.

Complaints

Individuals who consider that their human rights have been breached would have the option of making a complaint to the Australian Human Rights Commission. A complaint could proceed to conciliation, a facilitated process for the parties to seek a resolution on their own terms.

Access to the court for a remedy

If a complaint about human rights cannot be resolved through conciliation, then the individual would have the option of taking the complaint to the relevant federal court. The court could provide remedies such as preventing government from taking an action that would breach human rights, or ordering government to pay compensation.

For more detail about the Australian Human Rights Commission's proposal for a Human Rights Act for Australia, visit <https://humanrights.gov.au/human-rights-act-for-australia>.

