

Refugee Legal:

Parliamentary Joint Committee on Human Rights - Inquiry into Australia's Human Rights Framework

Question on notice from Senator Lidia Thorpe, 25 August 2023:

We know that those whose rights are being abused, those who are most oppressed, often do not have the time, resources, energy, money, knowledge, and access to protecting their human rights. How do you imagine a HR accountability-based framework system to look like, that doesn't place the onus of enforcing that right on the person who has had their rights abused, and does this perhaps exist outside of existing mechanisms like the court system?

Access to justice is precarious in this country; barriers to accessing lawyers is a commonplace and systematic issue, particularly for those who are most marginalized, including people held in immigration detention. As such, additional supports to improve access to justice are needed to help people to exercise their rights under a federal human rights act. It is critical that there is funded legal assistance to bring complaints in relation to breaches of rights under a human rights act.

Other measures to enhance access to justice include providing avenues for complaint that are low-cost and accessible such as alternative dispute resolution and/or conciliation through the Australian Human Rights Commission (AHRC) or other body, particularly if these processes are able to be independently initiated by the third party. However, there is no existing capacity to make binding recommendations through these processes. We recommend that measures to strengthen such processes under a federal human rights act are considered.

Another potential response is to expand who has standing to bring human rights complaints beyond the person directly affected by the particular government action/inaction to others with an interest in responding to systemic human rights breaches. The exact composition of a standing provision would need to be carefully considered, for example, to accommodate the rights and interests of the directly affected person(s), but it could help to reduce the onus on those who are most oppressed.

Accountability for laws potentially breaching human rights may also be provided through strengthened parliamentary responses, such as mandating that legislation cannot be passed prior to oversight by the PJCHR and requiring the Attorney-General to consider legislation found to be incompatible with human rights by the courts. Parliament can also enhance rights protection and reduce the onus on individual complainants by passing legislation embedding processes directed at safeguarding the rights set out in the human rights act. For example, while it is essential that a person detained in immigration detention has the ability to bring proceedings to challenge the legality and conditions of detention, the right not to be arbitrarily detained can be further protected through other legislative measures which are not dependent on complaints initiated by affected persons. In this context, for example, this could include the amendment of the Migration Act to provide for maximum detention periods and automatic periodic judicial oversight of the ongoing necessity of detention.

Refugee Legal:

Defending the rights
of refugees.

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