

Anita Coles
Committee Secretary
Parliamentary Joint Committee on Human Rights
Via email human.rights@aph.gov.au

17 October 2023

Dear Ms Coles,

Inquiry into Australia's Human Rights Framework

Please see below for responses to the Questions on Notice put to Mr Schild and Mr Levin, as representatives of National Legal Aid.

- 1. You talk about how the Victorian Charter plays a crucial role making sure government decision making centres human rights and referenced good news stories about accommodation. Yet, the VIC government will demolish and rebuild public housing towers, displacing 10 thousand people, dislocating low-income communities despite warnings it will cause serious harm and even death. How effective is the Victorian model when it can't even stop this and what lessons can we learn for the federal model in terms of keeping parliaments across jurisdiction not just accountable but stopped for actively causing human rights abuses?*

We consider the Victorian Charter ('the Charter') an important tool to promote and enforce human rights in Victoria. In particular, we have seen the tangible benefits due to the way the Charter considerations are incorporated into daily decision-making by Victorian public servants in relation to decisions that are consequential for our clients. In addition, the utility of the Charter in bolstering existing legal cases has prompted the development of human rights interpretation through the common law and provided critical guidance to lawyers, members of the public and the Victorian government to clarify the scope of the various Charter rights and responsibilities, including in relation to the right to housing and homelessness issues.

As mentioned in our submission, there are limitations to the Charter that are relevant to inform a federal model. In particular, there is a need for a direct and enforceable cause of action, allowing parties alleging a breach of human rights by a public authority to commence proceedings. In our view, the effectiveness of the Charter would increase significantly if this was possible. Firstly, it would provide individual remedies for those whose rights have been impacted. Secondly, it would pave the way to increased guidance and policy around how the Charter can be made to work practically to influence the decisions of government. Finally, it will assist in building a culture of Charter compliance in government departments due to the significantly increased likelihood that government can be held accountable for the decisions it makes.

2. *Other submissions said the AHRC is not ambitious enough and without human rights being constitutionally enshrined, breaches that impact the very right to life will continue. How do we get a system of remedies that doesn't just focus on individual experiences but examines systemic issues?*

Our submission recommends a human rights framework around a Human Rights Act with positive duties for public authorities, including across our anti-discrimination laws, broadening the functions of the AHRC to enable it to carry out voluntary audits and inquiries into systemic issues including human rights and discrimination, and adequately resourcing the AHRC to carry out these functions. This is in addition to recommending the availability of accessible and appropriate remedies including damages for individuals and groups seeking to enforce their rights.

3. *The traumatising nature of pursuing sexual assault cases in court, resulting in convictions of only 1.5% show the huge power imbalance in the rights of the accused versus the victims. Are victims' rights protected strongly enough in the AHRC model?*

The AHRC's model Human Rights Act contains clauses on an accused's right to a fair trial and criminal process which are modelled on clauses in the *Human Rights Act 2004* (ACT) (the '*HRA Act* (ACT)'). The clauses in the *HRA Act* (ACT) were considered by the ACT Supreme Court in *R v QX (No2)* [2021]ACTSC 244, where an accused challenged the appointment of an intermediary for a child complainant in their criminal proceedings. The court found, after balancing the rights of the accused to a fair trial and the criminal process with the rights of the child and the right to equality (all proposed clauses in the AHRC model), that an intermediary to assist a vulnerable witness give evidence did not unreasonably affect the ability of the accused person to defend themselves.

Yours sincerely

LOUISE GLANVILLE

Chair, National Legal Aid
CEO, Victoria Legal Aid