

Question on notice received 30/8/2023: You advocate for a prevention focused approach because the proposed AHRC reforms have the main instrument for protecting the rights of all people tied to a system that only a portion of them can access due to intersectional barriers. Is there any true prevention approach currently being pursued in Victoria or what would a prevention focused approach practically look like?

Thank you for your question Senator Thorpe.

I apologise for anything that was unclear in my written statement and hope that the following will provide the necessary extra detail.

In our written statement to the Inquiry we stated in the “key points” section on page one that:

The reliance on the evolution of common law rather than a prevention focused approach is misguided and assumes equal access to the legal system for all citizens. We know that this is not the case and it doesn't make sense to have your main instrument for protecting the rights of all people tied to a system that only a portion of them can access.

This comment was not intended to suggest we don't support the AHRC's proposed prevention-based approach but rather that we do and that we are also supportive of their observations around the inadequacy of common law development to be the sole mechanism by which rights are protected.

On page 61 of “Free and Equal: A Human Rights Act for Australia” the AHRC discuss the role of common law in protecting rights and state:

The common law is often cited as one of the reasons why Australia's current system of human rights protection is sufficient. This is simply not the case. Common law protections are fragile, as Parliament can pass law that overrides them at any time. Additionally, many of the human rights the Australian Government has agreed to uphold are not protected at all by the common law.

Further issues with relying solely on the common law for human rights protections are given on page 62:

The evolution of the common law over time also depends on individuals bringing cases to court, which leads to ad hoc developments arising from individual injustice, rather than a holistic (and prevention-focused) approach to human rights protection.

And:

...the common law can be 'blind to power and privilege, and therefore to the commitments of equality and non-discrimination' and has been relied upon to protect political and moneyed interests, including to the detriment of individual rights.

DBA supports these assertions and also believes reliance on the common law alone to be insufficient because it does not account for the disadvantage experienced by Deafblind people and others when attempting to navigate or engage with the justice system. Access to facilities, services, information etc are severely compromised for many due to glaring and persistent workforce gaps in the industries necessary to support this access such as Auslan interpreters.

For Deafblind people around the country, a truly prevention focused approach to human rights protections requires not only the enshrinement of rights in legislation but also a shift in the cultural conception of Rights enablement especially around concepts like Positive Duty and, perhaps most crucially, targeted efforts to address the chronic undersupply of interpreters and Communication Guides (CommGuides).

Given the multi-pronged approach required to create a truly preventative focused approach to delivering access to rights it cannot be said with confidence that any such approach exists in Australia currently.

Whilst Victoria and other jurisdictions have made important and welcome advancements in the legislative arm of this process there has not been commensurate investment in resolving workforce issues that continue to put limits on the enjoyment of rights for Deafblind people or on shifting the cultural conversation about rights towards one of addressing the role played by mainstream society and services in creating or mitigating disabling experiences for others.