

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

Question on Notice from Public Hearing 15 August 2023, Brisbane

Do you have a view on whether there should be a function to allow community groups or other entities to bring human rights action on behalf of a group?

The people who are most likely to have a human rights claim are from vulnerable or marginalised groups, such as Aboriginal and Torres Strait Islanders, people with a disability and people from a cultural and/or linguistically diverse background. However, they will face many challenges in pursuing a human rights claim. One of those challenges is that they are expected to pursue the claim individually and may not have access to legal representation. Often the issues that they are experiencing are not individualised and are common to a group.

This is certainly the case in discrimination claims. For example, where a person with a disability who cannot access a building has to bring an individual claim against the owner of the building and attempt to have the access changed, they are addressing the individual instance of discrimination they have experienced, along with ensuring another person with a disability isn't discriminated against. This is a heavy burden for an individual to bear.

Human rights claims are similar in nature and, therefore, we think that community groups and other entities should be able to bring claims on behalf of a group.

Federal, state and territory anti-discrimination laws permit representative claims as follows:

Australian Human Rights Commission Act 1986 (Cth)	ss 46PB, 46PC
Anti-Discrimination Act 1977 (NSW)	ss 87A(1)(a)(ii) and (c), 87B, and 87C
Anti-Discrimination Act 1991 (Qld)	s 134(2)
Anti-Discrimination Act 1992 (NT)	s 61
Anti-Discrimination Act 1998 (Tas)	s 60(1)(b)(ii)
Equal Opportunity Act 1984 (SA)	s 93(1)(b)
Equal Opportunity Act 1984 (WA)	ss 83(1)(a) and (b)
Equal Opportunity Act 2010 (Vic)	ss 113, 114, 124
Human Rights Commission Act 2005 (ACT)	s 43(8)

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For example, in Victoria a person may bring a complaint to the Victorian Equal Opportunity and Human Rights Commission on behalf of another person if the alleged contravention arises out of the same conduct.¹ A representative body which has ‘sufficient interest’ in the dispute may also bring a dispute to the Commission.² A representative body is considered to have ‘sufficient interest’ in the dispute where the alleged contravention is a “matter of genuine concern to the body because of the way conduct... adversely affects or has the potential to adversely affect the interests of the body or the interests or welfare of the persons it represents”. The representative body can also bring a claim to the Victorian Civil and Administrative Tribunal on similar grounds.³

Giving community groups and other entities the ability to bring a claim would be valuable for claims that affect more than one individual and/or claims that require a systemic change such as changing a policy or practice.

¹ *Equal Opportunity Act 2010* (Vic) s 113(2).

² *Equal Opportunity Act 2010* (Vic) s 114.

³ *Equal Opportunity Act 2010* (Vic) s 124.