

CHARTER OF RIGHTS

**A HUMAN RIGHTS CHARTER
BENEFITS EVERYONE**

**Charter of Rights campaign coalition submission
Pre-inquiry version**

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The Charter campaign coalition of organisations acknowledges the Aboriginal and Torres Strait Islander people and Nations that are the traditional owners of the unceded land on which all of our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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1. Executive summary

1.1 Outline

This submission is made by the Charter of Rights campaign coalition, an alliance of 90 organisations across the Australian community. The coalition was founded in 2018 to bring together organisations across the breadth of our community united by a call for a Human Rights Charter or Act (**Charter**). Our coalition of organisations includes organisations across the country as well as parts of our community as diverse as Aboriginal and Torres Strait Islander people, people with disability, women, children, older persons, LGBTIQ+ people, and people from migrant and multicultural backgrounds. It includes social services peak bodies, faith-based organisations and organisations advocating for refugees, as well as institutes, legal advocates, and community organisations focused on human rights and social justice. This alliance, which continues to grow, calls for the current inquiry to recommend unequivocally a legislated Charter.

We welcome this inquiry into Australia's human rights framework as there is need for a clearer and more effective framework to guide government decision making, prevent breaches of human rights and provide access to justice. Royal Commissions have highlighted repeated and widespread examples of human rights breaches in the aged care sector and for people with disability. During the COVID-19 pandemic, the lack of human rights analysis from within federal government was laid bare through the initial vaccine rollout when people who needed vaccination the most faced obstacles, and when Australian citizens and permanent residents were threatened with up to 5 years in prison for returning home from India at the onset of the COVID-19 Delta variant outbreak.

These, and many more, examples highlight the need for human rights standards to be at the heart of government laws, policies and services. A Charter will embed lasting change. A Charter will not only help to realise a fairer and more just Australia which benefits everyone in the community, but would also provide even greater benefits for marginalised communities. The Australian Human Rights Commission's position paper *Free and Equal: A Human Rights Act for Australia* provides a strong starting point for what that Charter should look like.

There are three Charters of Rights operating successfully at the state and territory level: in the Australian Capital Territory (ACT) since 2004, Victoria since 2006, and Queensland since 2020. These Charters have been quietly improving people's lives, in small and big ways. This submission outlines the ways in which Charters have helped to ensure that governments and public agencies treat people with greater fairness, dignity and respect, preventing families from homelessness, ensuring people with a disability receive appropriate support, and so much more. The sooner there is an Australian Charter of Human Rights, the better for everyone in our community.

This submission is intended to be a broad overview of the need for enforceable human rights standards and the benefits which flow when Charters exist. Many of the organisations in the coalition intend to make their own submissions to the inquiry to

outline more details from their perspective. We welcome the opportunity to provide further information for the Committee's consideration.

1.2 Recommendation

The Parliamentary Joint Committee on Human Rights recommend the Federal Government implement an Australian Charter of Human Rights.

2. Human rights in Australia

2.1 Human rights in Australia

For most people, most of the time, Australia is a great place to live where human rights are upheld and a range of freedoms are enjoyed. But no government is perfect, and some people won't have their rights fully respected. Yet, Australia has no national Charter of Human Rights that comprehensively protects people's human rights in law. We are the only Western democracy without a national Charter or similar law.¹

2.2 Human rights standards

Human rights are the basic rights and freedoms that belong to every person in the world, defined and recognised under international law and that governments around the world have promised to comply with. They seek to ensure that every one of us, no matter who we are or where we are, can live a decent, dignified life. Human rights reflect values like freedom, respect, equality and dignity, and respecting human rights helps to keep our society fair and just. Charters of Human Rights give human rights a legal basis in national law and culture, and give people the power to take action if their rights are breached.

There is a long history of recognising human rights going back many centuries. More recent examples include the United Nations Declaration on Human Rights in 1948, which was then codified in international law with the International Covenant on Civil and Political Rights (ICCPR)² and International Covenant on Economic Social and Cultural Rights (ICESCR)³.

While Australian governments have promised to comply with many key international human rights treaties, including the ICCPR and ICESCR and others protecting the rights of women, children and people with disabilities, these treaties are not directly enforceable under Australian law without specific domestic legislation to implement them.⁴ In the absence of a national Charter that comprehensively protects human rights, Australians are left to seek justice through a complicated and incomplete patchwork of laws, including anti-discrimination laws, that only partially protect our rights. A similar pattern also exists at the state and territory level.

¹ *Why an Australian charter of rights is a matter of national urgency*, Emeritus Professor Gillian Triggs, The Conversation, 13 August 2019

² Adopted 16 December 1966, entered into force 23 March 1976, Office of the High Commissioner for Human Rights, accessed at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³ Adopted 16 December 1966, entered into force 3 January 1976, Office of the High Commissioner for Human Rights, accessed at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

⁴ *Free & Equal Position Paper: A Human Right Act for Australia*, Australian Human Rights Commission, pages 11 - 12

2.3 Human rights laws in Australia

Human rights standards in Australian law are fragmented, incomplete and sometimes inconsistent.

The *Australian Constitution* provides only limited human rights guarantees. It explicitly protects, for instance, the right to trial by jury for certain Federal criminal offences under section 80. While it is not spelled out explicitly, the High Court has interpreted the text and context of the Constitution to mean we enjoy freedom of political communication, which is still far less than the international law definition of every person's right to freedom of expression.⁵ However, these limited protections require people to take their cases to the Federal or High Courts, which is not a practical option for many.

There are several Federal laws covering various forms of discrimination,⁶ but they are not standardised in how they operate⁷ and there are some forms of discrimination that are either exempted from the scope of these laws, such as discrimination on the basis of sexual orientation in s38(3) of the *Sex Discrimination Act 1984* being exempted from the requirements of s21 of that Act, or aren't deemed to be an attribute within scope for anti-discrimination law, such as religious belief.⁸

But whilst essential, anti-discrimination laws are insufficient by themselves. Federal anti-discrimination laws aim to protect the right to be treated equally regardless of race, sex, disability, age, sexual orientation, gender identity or intersex status. Anti-discrimination laws can't positively promote the range of fundamental human rights that all people should enjoy. Without recognising these rights, it is possible to comply with anti-discrimination law but still violate human rights that are accepted community standards.

Like anti-discrimination laws, positive human rights standards are also fragmented in Australian law. For example, the right to health is promoted through various laws including those covering Medicare⁹ and Pharmaceutical Benefits Scheme.¹⁰ The right to education and some children's rights are advanced through education laws and standards, such as the legislation regarding higher education¹¹ and early childhood education and learning.¹² Various civil and political rights are in laws such as those covering elections, the criminal law system, and migration. However, all of these laws and others covering human rights are not comprehensive, clear, or even consistent in applying those human rights standards. They are also difficult to enforce when rights in these laws are being breached.

⁵ *Lange v Australian Broadcasting Corporation* 189 CLR 520

⁶ *Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1992, Age Discrimination Act 2004*

⁷ *Free and Equal – A reform agenda for Federal discrimination laws*, Australian Human Rights Commission, December 2021, pages 20 - 22

⁸ There are limited anti-discrimination protections for religious belief in the *Fair Work Act 2009*

⁹ *Health Insurance Act 1973*

¹⁰ *National Health Act 1953*

¹¹ *Higher Education Support Act 2003*

¹² *Child Care Act 1972*

There has been welcome progress on legally protecting human rights at the state and territory level. The Australian Capital Territory,¹³ Victoria¹⁴ and Queensland¹⁵ have all legislated human rights standards into the heart of their state or territory laws. However, whilst these laws cover some of the main civil, political and cultural rights, they only partially cover economic and social rights, and are not straightforward to use in practice for a person seeking justice. Most importantly, they only apply to the laws and services in the state or territory in question. There is no Charter or similar in the remaining states or in the Northern Territory, nor which covers federal agencies or services.

Essential human rights, for instance the right to health, the right to education, freedom of association, or freedom of expression, are not adequately protected in our laws. Our lives are better, and our communities are stronger and healthier when human rights are properly protected.

3. Human rights breaches in Australia

3.1 Long history

Since Federation, there have been many human rights abuses at the Federal level documented in places as diverse as Royal Commissions, Parliamentary investigations, Australian Human Rights Commission inquiries, and in investigative reporting. Those human rights breaches have affected various parts of our community, but there is no doubt that some parts of our community have had to endure more than others, such as Aboriginal and Torres Strait Islander peoples and people with disability.

Below we include some examples to show the breadth and scope of human rights violations which directly impact people across our community, especially marginalised parts of society.

3.2 Older Australians and the aged care system

Royal Commissions have exposed the serious consequences when governments and public agencies have violated people's rights, as well as the further harm caused when people in our community cannot take effective action in response.

The Federal Government is the funder and regulator of the aged care system in Australia. The Aged Care Royal Commission highlighted widespread neglect and at times mistreatment of too many older Australians in aged care facilities.

For instance, the Royal Commission highlighted numerous forms of abuse, ranging from various forms of assaults of residents by staff or other residents, to the unjustified use of restrictive practices on aged care residents which had been identified as a problem in the

¹³ *Human Rights Act 2004 (ACT)*

¹⁴ *Charter of Human Rights and Responsibilities Act 2006 (Vic)*

¹⁵ *Human Rights Act 2019 (Qld)*

aged care system in Australia for more than 20 years.¹⁶ The Royal Commission also exposed problems for parts of the community with diverse needs, such as Aboriginal and Torres Strait Islander people and multicultural communities (amongst others), who had not always been able to receive care that was appropriate to their particular needs.¹⁷ Commissioner Briggs concluded that 1 in 3 people who were accessing residential aged care or home care services had received substandard care.¹⁸

The absence of enforceable human rights to guide government decision-making allowed these systemic issues to flourish. The Royal Commission recommended the creation of a legally enforceable rights framework in aged care through a new Aged Care Act with the rights to health and dignified treatment.¹⁹

3.3 People with disability

Similarly, the Disability Royal Commission is exposing degrading and inappropriate treatment of people with disability in breach of their rights, in circumstances where they have limited options to take action to protect their rights.

The Royal Commission has heard about clearly inadequate services, mistreatment, and neglect faced by children with disability in the school education system,²⁰ exclusion and violence faced by some people with disability in group homes,²¹ and systemic neglect of people with cognitive disability in the health system.²² The Royal Commission has flagged looking at recommendations that better entrench human rights standards, noting that *“Human rights play an important role beyond just imposing legal obligations on government. They reflect a set of values, such as the dignity, autonomy, freedom and equality of all people”*.²³

3.4 COVID-19 and the vaccination rollout

The right to health care is an essential right for everyone in the community, but the effects of that right being poorly implemented are felt more by marginalised communities. During the COVID-19 pandemic, there were delays in distributing vaccines to prevent death and serious illness from a virus that disproportionately affected marginalised parts of the community.

The Federal Auditor-General, with respect to the vaccination rollout during 2021, concluded that the *“administration of vaccines to priority populations and the general population has not met targets. The vaccine rollout to residential aged care and*

¹⁶ *Volume 1 Summary and Recommendations, Final Report: Care, Dignity and Respect*, Royal Commission into Aged Care Quality and Safety, page 68

¹⁷ *Ibid*, page 71

¹⁸ *Ibid*, page 72

¹⁹ *Ibid*, pages 205-206

²⁰ *Interim Report*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, pages 223- 239

²¹ *Ibid*, pages 247 – 258

²² *Ibid*, pages 267-286

²³ *Ibid*, page 9 and page 307

residential disability were both slower than planned, and the vaccination rate for Aboriginal and Torres Strait Islander people has remained lower than for the Australian population.”²⁴

Some of the consequences involved remote Aboriginal communities being exposed to COVID-19 before their community had been sufficiently vaccinated.²⁵ This was also identified by the Disability Royal Commission with respect to people with disability, writing that *“The Royal Commission remains concerned that people with a disability may still not be sufficiently prioritised for essential services and protection from infection during the Omicron wave of the COVID-19 pandemic. In the February 2022 Statement of ongoing concern, we noted the pandemic continued to expose the underlying inequities, discrimination and exclusion people with disability experience in the delivery of fundamental services and supports”*.²⁶

This failure is particularly troubling because of the disproportionate impacts COVID-19 had on marginalised parts of the community. For example, the Australian Bureau of Statistics found that, by January 2022, migrants were three times more likely to die from COVID-19 than the population generally. Even worse, people born in the Middle East were ten times more likely to die from COVID-19 than members of the population born in Australia.²⁷

3.5 COVID-19 and the India travel ban

On 30 April 2021, concerns about the spread of the COVID-19 Delta variant led the Morrison Government to introduce penalties of up to 5 years in prison and \$66,000 fines for anyone coming to Australia from India.²⁸ This included Australian citizens and permanent residents trying to return home. The ban prevented any Australian citizens and permanent residents to return to Australia from India even though people entering Australia were subject to mandatory quarantine at that time.²⁹

²⁴ Auditor-General Report No.3 2022–23 Australia’s COVID-19 Vaccine Rollout, Australian National Audit Office, page 8

²⁵ *Anger as slow vaccine rollout leaves Western NSW Aboriginal communities exposed to COVID*, The Guardian, 12 August 2021

²⁶ *Issue Paper - The impact of and responses to the Omicron wave of the COVID-19 pandemic for people with disability*, The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, page 2

²⁷ *Migrants have died from COVID-19 at three times the rate of people born in Australia*, SBS News Online, 17 February 2022

²⁸ *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—High Risk Country Travel Pause) Determination 2021*

²⁹ *Travel arrangements to be strengthened for people who have been in India*, Federal Health and Aged Care Minister Greg Hunt MP media release, 30 April 2021, accessed at <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/travel-arrangements-to-be-strengthened-for-people-who-have-been-in-india>

This ban was condemned by members of the Indian-Australian community,³⁰ human rights organisations,³¹ the Australian Human Rights Commission,³² and the United Nations Human Rights Committee³³ as being a disproportionate response that violated the right of people being able to return home. However, a Federal Court challenge by one of the people banned from returning to Australia from India failed³⁴ and eventually the ban ended when Federal Government decided to let it lapse on 15 May.³⁵

3.6 Examples of a general problem

These examples show that whether in the middle of a crisis like the COVID-19 pandemic, or when times are good, not having human rights standards at the heart of our laws, policies and services has major impacts on people across the community. Enforceable human rights standards can prevent problems affecting people in our community getting to the stage where it is a crisis.

4. Charter of Human Rights

4.1 What is a Charter of Human Rights

No matter who we are or where we are, our lives are better when we all treat each other with fairness and respect and when we can all enjoy our rights. But politicians and corporations don't always respect people's rights. A Charter helps to level the playing field by promoting and requiring respect for human rights and by giving people power to take action if their rights are breached.

A Charter ensures the actions of our governments are guided by values of freedom, equality, compassion, and dignity. A Charter fosters respect for human rights and helps everyone, from school children to people who decide to call Australia home, to understand the rights and freedoms that we all share. A Charter reflects our values and helps to articulate the kind of society we all want to live in.

A Charter helps to prevent human rights violations by putting human rights at the heart of decision making when governments are developing laws and policies and delivering services. Importantly, they also provide a powerful tool to challenge injustices, by enabling people and communities to take action and seek justice if their rights are violated. Yet, Australia has no national Charter that comprehensively protects people's

³⁰ *Australia's India ban criticised as 'racist' rights breach*, BBC News Online, 3 May 2021

³¹ *The Morrison Government should help Australians get home from India*, Human Rights Law Centre media release, 3 May 2021

³² *Statement on travel ban and sanctions on Australians travelling from India*, Australian Human Rights Commission, 1 May 2021

³³ *UN raises serious human rights concerns over Australia's India travel ban*, The Guardian, 5 May 2021

³⁴ *Newman v Minister for Health and Aged Care [2021] FCA 517, Federal Court throws out part of challenge to Federal Government's India travel ban*, ABC News Online, 10 May 2021

³⁵ *India travel ban legal challenge dropped*, The West Australian, 14 May 2021

human rights in law. We are the only Western democracy without a national Charter or similar law.

There is strong community support for better human rights protections in Australia. Repeated polling has confirmed this, including polls conducted by Amnesty International Australia's Human Rights Barometer in 2022,³⁶ and the Human Rights Law Centre in 2021.³⁷ This research is further supported by research at State levels, such as a 2021 survey of Queensland attitudes by Griffith University.³⁸

There are three Charters of Human Rights or Human Rights Acts operating successfully at the state and territory level; in the Australian Capital Territory (ACT) since 2004, Victoria since 2006, and Queensland since 2020. Examples below will show some of how these Charters have been improving people's lives across the community and provide a concrete demonstration of the benefits a Charter at the Federal level will provide.

4.2 How Do Charters of Human Rights Help?

The Victorian Charter and the Queensland and ACT Human Rights Acts all work in a similar way. They protect and promote people's rights when dealing with governments; the Victorian Government, Queensland Government and the ACT Government respectively. They also promote transparency in the way the governments and parliaments deal with human rights issues.

They require public authorities, including government departments, public servants, local councils, police and other agencies, to:

- properly consider human rights when making laws, developing policies, delivering services and making decisions; and
- act compatibly with human rights.

They require new laws to be assessed in Parliament against human rights standards. In some circumstances, a parliament can expressly choose to override human rights.³⁹

In some circumstances, they allow governments to limit or restrict human rights. Governments can only do this if they have a good reason for restricting the right and they do it in a reasonable way that is justified in a free and democratic society. In assessing whether a government has lawfully restricted a right, a court will look at things like the nature of the right, the reason for the restriction and any reasonably available less restrictive way to achieve the purpose for the restriction. In broad terms, to lawfully restrict

³⁶ *Amnesty International Australia 2022 Human Rights Barometer: What are Australians current attitudes to their rights and the rights of others?*, released 5 September 2022

³⁷ *COVID-19 sees huge increase in support for a Charter of Human Rights: poll*, Human Rights Law Centre media release, 9 September 2021

³⁸ *Most Queenslanders support human rights – survey finds*, Griffith University media release, 22 September 2021

³⁹ Part 5 *Human Rights Act 2004* (ACT); Part 3, Division 1 *Charter of Human Rights and Responsibilities Act 2006* (Vic); Part 3, Division 2 *Human Rights Act 2019* (Qld)

a right, a government must have a good reason for the restriction and must use the lowest level of restriction to get the job done.

If a government doesn't act compatibly with human rights or if it fails to properly consider human rights, the Charter and Human Rights Acts give people the power to take action in the courts. There are different ways of doing this in each state or territory that has a Charter. By taking legal action, people can help to stop governments from breaching their human rights. However, people can't get money as compensation if a government breaches their human rights.⁴⁰ Also, courts can't invalidate laws that breach human rights. Parliaments have the final say on whether laws can breach human rights.

The Charters and Human Rights Acts require courts to interpret laws consistently with human rights.

If someone thinks their rights have been breached or may be breached, they can make a complaint about the issue directly with the relevant government agency. They can also make a human rights complaint to the Victorian Ombudsman in Victoria and the Queensland Human Rights Commission in Queensland. The ACT Government will be amending its Human Rights Act this year to allow the ACT Human Rights Commission to be able to receive human rights complaints related to that Act.⁴¹

The Human Rights Commissions in Victoria and Queensland each monitor and report on the operation of the Charters or Human Rights Acts in their relevant state or territory. The Charters and Human Rights Acts in Victoria, Queensland and the ACT don't apply to the Federal Government or other state and territory governments.

4.3 What difference a Charter can make for people

By ensuring human rights are at the heart of our laws, and that people can take action when their rights are violated, a Charter makes a huge difference to the lives of people across our community. Charters are of particular importance for parts of the community marginalised by a combination of neglect with respect to critical services, or cultural attitudes that lead to discrimination, and as a result are prevented from fully enjoying their rights. People need enforceable human rights to help redress the wrongs they face, but more importantly improve government laws and decisions so that they properly consider human rights at the outset.

The Charters of Human Rights and Human Rights Acts in the three jurisdictions where they currently operate have a track record of delivering for people. Whilst those three Charters and Acts could be improved, they are a testament to the changes for the better that people have compared to jurisdictions where a Charter is lacking.

⁴⁰ s40C *Human Rights Act 2004* (ACT); s39 *Charter of Human Rights and Responsibilities Act 2006* (Vic); [s59 *Human Rights Act 2019* (Qld)]

⁴¹ *ACT Government commits to introducing conciliation process for human rights law breaches*, Canberra Times, 21 October 2022

5. Examples from Victoria, Queensland and the Australian Capital Territory

5.1 Charter of Human Rights in action

Charters make a difference to people's lives in small and big ways. Charters have:

- Helped governments to identify and address human rights issues affecting people at an early stage of policy development.
- Ensured transparency around how governments and parliaments have considered people's human rights.
- Promoted better understanding of human rights.
- Prevented human rights issues from escalating.
- Provided a way for people to resolve human rights issues by raising them with government and agencies.
- Given people the power to take action and address human rights issues affecting them through complaint mechanisms and in the courts.

The Human Rights Law Centre compiled for the Charter campaign 101 examples from Victoria, Queensland and the ACT on how people have benefited from having a Charter uphold their rights. They show what benefits for people nationwide could be possible if there is a national Charter of Human Rights. Here are a few of those examples, with the full set available at <https://charterofrights.org.au/101-cases>.

5.2 Victoria – freedom of religion

Bendigo's Muslim community sought a permit to construct a mosque, which the City of Greater Bendigo Council granted. Eleven objectors applied to the Victorian Civil and Administrative Tribunal (VCAT) seeking review of the council's decision claiming there would be adverse social effects as an Islamic Mosque was an unacceptable use of the land because of the very nature of Islam. In the hearing, it was argued in response that the permit was consistent with Victoria's planning objectives because the mosque would allow Bendigo residents to exercise their religious freedom. VCAT upheld the permit as it was not satisfied that granting the permit would likely result in any significant social effects. The decision was appealed to the Victorian Court of Appeal, which upheld the VCAT decision as the Charter's rights to freedom of culture, religion and belief informed the interpretation of the planning objectives to be considered by the council and the tribunal. The High Court refused special leave to appeal the decision, after which the

Bendigo Islamic community proceeded with construction of the community centre and mosque.⁴²

5.3 Australian Capital Territory – right to education

The ACT Human Rights Act protects the right to education. The Human Rights and Discrimination Commissioner raised concerns with the ACT Education and Training Directorate about its policies to charge certain international students on various visa subclasses to attend ACT public schools. International students affected by these policies included children and young people granted refugee status, and those seeking asylum while living in Canberra. The various circumstances of these students were relevant to the reasonableness and proportionality of the Directorate's policies under human rights and discrimination law. The Commissioner worked with the Directorate over two years to develop new policies and procedures that better met the Directorate's human rights and discrimination law obligations including policies confirming that ACT public education is free for asylum seekers.⁴³

5.4 Queensland – domestic violence survivor and housing

Tenants Queensland used the Queensland Human Rights Act to help a single mother who had experienced domestic violence to avoid eviction. The tenant's housing provider had sought to terminate her lease for serious breaches caused by her ex-partner who refused to leave the premises. Tenants Queensland assisted the mother to draft a letter of complaint under the Human Rights Act and submissions in response to the application for termination. The tribunal (QCAT) granted an adjournment which allowed the parties to negotiate a transfer of tenancy. The housing provider then withdrew the application for termination.⁴⁴

5.5 Victoria – right to medical treatment

A woman was denied immediate medical assistance to treat contractures in her hand due to her being over 50 years of age. These contractures caused her pain and suffering and, over time, the deterioration of her hand. The woman had been waiting three years for treatment and the failure to access treatment in the near future could have led to the need to amputate her hand. Her advocate used the Charter to argue for her access to treatment and she received funding in order to arrange for immediate treatment.⁴⁵

⁴² 'A Current Snapshot of the Victorian Charter of Human Rights', speech by the Chief Justice of Victoria Hon Marilyn Warren AC to Muslim Legal Network Annual Legal Profession Iftar, 15 June 2017

⁴³ *ACT Human Rights Commission Annual Report 2015-16*, page 25

⁴⁴ *The First Annual Report on the Operations of Queensland's Human Rights Act 2019-20*, Queensland Human Rights Commission, page 112

⁴⁵ Public Interest Advocacy Centre, Submission to the Review of the Victorian Charter, 2011

5.6 Queensland – child exempted from hotel quarantine

A family detained in hotel quarantine in Queensland complained to the Queensland Human Rights Commission about the impact of the detention on their child who has autism spectrum disorder. The child experienced serious food aversions which were not accommodated by the hotel quarantine operator. The family was also separated in quarantine so that the child's mother was not able to be supported by the other family members. The hotel quarantine conditions caused the child to experience serious distress. The Commission used the Queensland Human Rights Act to engage with Queensland Health and secure the family a fast-tracked exemption to the hotel quarantine requirement one day after the family's complaint was lodged, allowing the family to quarantine at home.⁴⁶

5.7 Victoria - pandemic laws

In response to the ongoing COVID-19 pandemic, the Victorian Government introduced legislation into Parliament which, if passed, would have allowed officers, authorised under public health legislation, to detain people based on the officer's belief about what the person might do. At the same time, the Government sought to expand the type of people who could be authorised as officers; under the proposal, a member of the public could have been appointed as an authorised officer and given the power to detain people. The Government specifically flagged the use of the controversial powers against people with mental illness. A range of bodies raised human rights concerns with the legislation. A Victorian Parliamentary committee, which reviews proposed legislation for compatibility with Victoria's Charter, also raised human rights questions about the proposal. The Government agreed to amend the legislation and did not proceed with the proposed detention powers.⁴⁷

6. Conclusion

This submission has outlined the practical impact where a Charter of Human Rights has required or enabled a decision-maker to consider the fundamental human rights of people. This is the power of Charters. They prompt governments to think about the human impact of their actions, whether it's in delivering housing services, responding to people with mental illness, or supporting a young person with disability to exercise their rights when making decisions about their own lives. When they work properly, Charters embed human rights into the heart of government decision making when governments

⁴⁶ *The First Annual Report of the Operations of Queensland's Human Rights Act 2019-20*, Queensland Human Rights Commission, page 136

⁴⁷ Parliament of Victoria Scrutiny of Acts and Regulations Committee Alert Digest No.9 of 2020, accessed at parliament.vic.gov.au; *2021 Report on the Operation of the Charter of Human Rights and Responsibilities*, Victorian Equal Opportunity and Human Rights Commission, pages 26-27

are developing laws and policies and delivering services. Australians recognise the need for a comprehensive Charter. Protecting people's human rights is in all our interests. Charters help to make life better for everyone.

On this basis, we make the following recommendation, and if accepted the next step should be a draft bill to go into the details of what that Charter should contain and how it would work.

4.1 Recommendation

The Parliamentary Joint Committee on Human Rights recommend that the Federal Government implement an Australian Charter of Human Rights.