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Parliamentary Joint Committee on Human Rights

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Submission to the Inquiry into Australia's Human Rights Framework Canberra Community Law, September 2023

Introduction

Canberra Community Law welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework.

Canberra Community Law endorses the model framework proposed by the Australian Human Rights Commission in their position paper *Free & Equal*.¹

Canberra Community Law uses human rights advocacy in our everyday legal work. We advocate to hold public authorities accountable through the *Human Rights Act 2004* (ACT) (**ACT Human Rights Act**), and to make sure that human rights and cultural rights are given priority consideration by decision-makers. In our experience, the *ACT Human Rights Act* is a vital tool for the protection of the fundamental civil and political human rights of ACT citizens.

In this submission, we comment on the effectiveness of the *ACT Human Rights Act* in protecting human rights in the ACT. We have included several de-identified case studies based on the experiences of some of our First Nations clients. These case studies illustrate our use of the *ACT Human Rights Act* and provide insight into the ways that a future Federal Human Rights Act could be used to protect human rights. We conclude with recommendations for a Federal Human Rights Act.

About Canberra Community Law

Canberra Community Law, formerly the Welfare Rights and Legal Centre, has been providing free legal services to people on low incomes for over 30 years. Canberra Community Law provides legal assistance to people in the Australian Capital Territory (**ACT**) on low incomes for matters relating to human rights, tenancy, public housing, social security, race discrimination and disability discrimination law. We aim to promote the human rights of our clients experiencing complex disadvantage and undertake strategic litigation in Canberra Community Law's areas of expertise to

¹ See Australian Human Rights Commission, *Free & Equal – Position paper: A Human Rights Act for Australia* (December 2022).

Canberra Community Law acknowledges the traditional custodians of the land on which we work in the ACT and surrounding region and pay our respect to their elders past, present and future for they hold the memories, traditions, the cultures and the hopes of Australia's First Peoples. We are grateful that we share this land and express our sorrow for the costs of this sharing to Australia's First Peoples. We will continue to acknowledge the legacy of our history and strive in our goals to empower our community through social justice. We hope that our efforts can contribute to a realisation of equity, justice and partnership with the traditional custodians of this land.

advance human rights law in the ACT.² Canberra Community Law currently operates three programs with a particular focus on human rights:

- The Dhurrawang Aboriginal Human Rights Program, which provides free legal services to Aboriginal and Torres Strait Islander communities in the ACT. Dhurrawang was founded on the principles of the *ACT Human Rights Act*. The service is provided through a human rights framework based on human rights principles of participation, inclusion, and self-determination.
- The Disability Law Service, which includes our Disability Discrimination Law program and the Mental Health Justice Clinic. The Mental Health Justice Clinic provides legal assistance to people with lived experience of mental ill-health, with a focus on socio-economic rights. Canberra Community Law's vision of disability justice under our fourth Disability Action and Inclusion Plan draws directly on human rights principles, including but not limited to the right to equality and non-discrimination, to live independently and participate fully in all aspects of life, to equal recognition before the law, and to an adequate standard of living and social protection.³
- The Public Housing Duty Lawyer Service at the ACT Civil and Administrative Tribunal (ACAT) each Thursday for people facing eviction in the social housing list. Human Rights arguments are often raised in the defence of eviction proceedings brought by social housing providers.

Canberra Community Law operates a range of other programs:

- The Parachute Program, which provides wrap around legal assistance with public Housing and Centrelink matters for women experiencing domestic violence in the ACT.
- Housing Law, for clients having problems with Housing ACT or other ACT community housing providers.
- The Night Time Legal Advice Service, which provides information, referral or one-off legal advice in most areas of law.
- Social Security Law, for assistance with Centrelink and Social Security matters for people living in the ACT.
- The Socio-Legal Practice Clinic, which provides intensive social work support to people receiving legal services from our programs.
- Street Law, which provides a generalist outreach legal service for people who are homeless or at risk of homelessness.

² See Canberra Community Law Strategic Plan 2020-2024 < <https://canberracomunitylaw.org.au/about-us/strategic-plan/> >.

³ See Canberra Community Law Disability Action and Inclusion Plan 2022-2025 < <https://canberracomunitylaw.org.au/about-us/disability-action-and-inclusion-plan/> >.

Summary of recommendations

Canberra Community Law endorses the model framework proposed by the Australian Human Rights Commission in their position paper *Free & Equal*.⁴

Canberra Community Law also endorses the submission to this Inquiry of Economic Justice Australia.

We recommend that:

- **The Australian Parliament should enact a Federal Human Rights Act.**
- The Federal Human Rights Act should **protect civil, political, economic, social, environmental, and cultural rights.**
- The Federal Human Rights Act should include a **cause of action**, an accessible **complaints pathway** through the Australian Human Rights Commission, and **enforceable remedies.**
- The human rights principles enshrined in the Federal Human Rights Act should reflect Australia's obligations under international law.
- Human rights principles should be adopted and implemented by government departments and all decisions made by public officials should consider the impacts the decisions have on a person's human rights.

⁴ See Australian Human Rights Commission, *Free & Equal – Position paper: A Human Rights Act for Australia* (December 2022).

About the *ACT Human Rights Act*

The *Human Rights Act 2004* (***ACT Human Rights Act***) was the first Australian law to explicitly protect human rights. The *ACT Human Rights Act* sets out to encourage individuals to see themselves, and each other, as the holders of rights and as being responsible for upholding the rights of others.⁵ It requires all ACT government policies and legislation to be interpreted and applied in accordance with human rights principles.⁶ It also requires public authorities (including private bodies performing public functions on behalf of government) to carry out their functions in a way that is compatible with human rights.⁷

The *ACT Human Rights Act* safeguards a range of human rights, including the rights to equality before the law,⁸ protection of the family and children,⁹ privacy and reputation,¹⁰ freedom of thought, conscience, religion, and belief,¹¹ freedom of expression,¹² liberty and security,¹³ humane treatment when deprived of liberty,¹⁴ and education.¹⁵ It also specifically protects the cultural and other rights of Aboriginal and Torres Strait Islander peoples, in recognition of the special significance of rights protection to First Nations People.¹⁶ More recently, the ACT Government has also committed to introducing the right to a healthy environment into the *ACT Human Rights Act*.¹⁷

Human rights protected by the *ACT Human Rights Act* are subject only to reasonable limits set by laws that can be 'demonstrably justified in a free and democratic society'.¹⁸ The Act provides criteria by which the reasonableness of any limitation to be placed on a human right must be assessed.

The *ACT Human Rights Act* influences policy and law by requiring the ACT Attorney-General to scrutinise all proposed government legislation to assess its compatibility with human rights.¹⁹ This front-loads human rights considerations for the executive and the legislature, reducing the risk of human rights violations when law and policy becomes practice. There is an individual right of action in the Supreme Court of the ACT against public authorities that breach human rights.²⁰ Individuals may also rely on their human rights in other legal proceedings in ACT courts and tribunals.²¹ The

⁵ *Human Rights Act 2004* (ACT) Preamble para 7.

⁶ *Human Rights Act 2004* (ACT) s 30.

⁷ *Human Rights Act 2004* (ACT) s 40B.

⁸ *Human Rights Act 2004* (ACT) s 8.

⁹ *Human Rights Act 2004* (ACT) s 11.

¹⁰ *Human Rights Act 2004* (ACT) s 12.

¹¹ *Human Rights Act 2004* (ACT) s 14.

¹² *Human Rights Act 2004* (ACT) s 16.

¹³ *Human Rights Act 2004* (ACT) s 18.

¹⁴ *Human Rights Act 2004* (ACT) s 19.

¹⁵ *Human Rights Act 2004* (ACT) s 27A.

¹⁶ *Human Rights Act 2004* (ACT) s 27.

¹⁷ Minister for Human Rights, Legislative Assembly for the Australia Capital Territory, *Your Say Report – Right to a Healthy Environment – Report on What We Heard* (November 2022) 3.

¹⁸ *Human Rights Act 2004* (ACT) s 28.

¹⁹ *Human Rights Act 2004* (ACT) s 37.

²⁰ *Human Rights Act 2004* (ACT) s 40C(2)(a).

²¹ *Human Rights Act 2004* (ACT) s 40C(2)(b).

ACT Government has also committed to creating a new pathway for human rights complaints to the ACT Human Rights Commission.²²

Impact of the *ACT Human Rights Act*

At Canberra Community Law, we seek to hold public authorities accountable to their human rights obligations under the *ACT Human Rights Act* in two key ways:

1. By raising human rights issues in litigation; and
2. By prompting public authorities to consider human rights in their decision-making processes, for example in public housing applications.

In our experience, the *ACT Human Rights Act* is a powerful advocacy tool in, and outside of, courts and tribunals.

Canberra Community Law draws on the *ACT Human Rights Act* in our work:

- to prevent people being evicted from social housing,
- to advocate for people to be housed and for appropriate and safe housing conditions,
- to protect access to education and work,
- to protect cultural and kinship rights,
- to advocate for and protect access to disability support and services, and
- to advocate for and protect the rights of people in custody.

The existence of a Human Rights Act in the ACT does not guarantee that human rights will always be protected. However, in many cases, **the *ACT Human Rights Act* is the only protection that our clients in precarious situations have under law.** The experiences of clients like Louise (all client names have been changed for privacy reasons) demonstrate that human rights can be vital guardrails for security and human dignity.

Case Study 1 – Louise

Protection of Children and Family Unit

Louise is an Aboriginal woman who is a mother of six. Louise found that she had no rights under tenancy law to stay in her home when her partner (the leaseholder) suddenly died. Although the family had no right to stay in their home under tenancy law, they had the right under the *Human Rights Act*, to have the family unit and children protected.²³

Dhurrawang successfully advocated with the public housing authority using the *ACT Human Rights Act* to allow the family to stay in their home for a fixed period to grieve and undertake sorry business. The family were then assisted to find stable, long-term accommodation.

²² ACT Government, 'New human rights complaint pathway for ACT' (Media Release), 20 October 2022 <https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/cheyne/2022/new-human-rights-complaint-pathway-for-act>.

²³ *Human Rights Act 2004* (ACT) s 11.

Human rights in litigation

We have seen the greatest impact of the *ACT Human Rights Act* in litigation. In the ACT, human rights are a relevant matter to be considered as part of the exercise of the discretion of the ACT Civil and Administrative Tribunal (**ACAT**).²⁴ This means that human rights can be raised in wide range of proceedings, from housing to discrimination matters.

Human rights-related litigation in the ACT has confirmed protections for a range of rights, notably including the right of detainees to open air and exercise.²⁵ In one *ACT Human Rights Act* case, the importance of stable accommodation in the rehabilitation of offenders was highlighted.²⁶ Litigation has also been used to confirm that a person with cognitive disability should not be automatically assumed to lack capacity to make decisions about their mental healthcare because they have lacked capacity in the past.²⁷ These cases have direct implications for our clients, who are able to assert their human rights in similar situations.

At Canberra Community Law, we have used the *ACT Human Rights Act* in our advocacy work to protect the human rights of clients in the course of ongoing litigation matters in eviction proceedings, repair and compensation proceedings for uninhabitable housing, and race discrimination proceedings. In our advocacy, we refer to our client's protected human rights and highlight that they must be considered in all aspects in which we seek to protect the legal rights of our clients, where they are being impacted by the actions of public authorities or organisations carrying out the functions of public authorities.

The following case studies show the power of the *ACT Human Rights Act* to protect a range of rights in the context of litigation.

Case Study 2 – Peter's story

Race Discrimination; Protected Cultural Rights; Protection of Privacy, Reputation and Home

Peter is an Aboriginal Elder and a member of the Stolen Generations. Peter came to Dhurrawang for advice as he felt he was being poorly treated by the public housing authority and not taken seriously when he asked to be left alone to grieve during periods of sorry business.

Peter was engaged in an ongoing coronial inquest following the murder of a family member. Peter also lived with acute mental health barriers. Peter advised the public housing authority about what was happening and asked, in particular, that the authority not attend to conduct inspections or make repairs during one month in the year, which was the anniversary of his family member's death. He advised the public housing authority that at this time each year, he was engaged in the traditional cultural practice of sorry business.

Despite this, the public housing authority continued to schedule inspections each year on the anniversary of the family member's death. On other occasions when Peter needed work done on his home, he was unable to get any response from the public housing authority.

²⁴ *Commissioner for Social Housing v Cook* [2020] ACAT 36.

²⁵ *Davidson v Director-General, Justice and Community Safety Directorate* (2022) 18 ACTLR 1.

²⁶ *Commissioner for Social Housing v Cook* [2020] ACAT 36.

²⁷ *The Matter of ER (Mental Health and Guardianship and Management of Property)* [2015] ACAT 73.

Dhurrawang advised Peter in the first instance to make a complaint to the ACT Human Rights Commission (HRC), as it appeared that the public housing authority's conduct was discriminatory on the basis of race. Efforts by the HRC to conciliate the matter failed and Peter applied to ACAT to determine whether the public housing authority's conduct amounted to race discrimination. As part of Peter's case, he argued that his cultural and kinship rights were engaged and had been breached by the public housing authority.²⁸

The case resolved with the public housing authority agreeing to compensate Peter and review its internal processes and training program, to ensure its staff recognise and respect the cultural right of First Nations tenants to practice sorry business.

Case Study 3: James's story

Protection of Privacy, Reputation and Home; Right to Liberty and Security of Person

James is a young Wiradjuri man in a local prison. James has lived with complex mental health issues since he was a teenager and is a survivor of childhood sexual abuse.

Prior to entering the prison system, James lived in public housing. James had served 12 months of an 18-month sentence and had just become eligible to apply for parole, when the public housing authority applied to ACAT to terminate his tenancy. Without a home to be paroled to, the Sentence Administration Board would not grant parole, as an 'approved residence' is a requirement for parole. Without a home to return to, James would have to compete for scarce short term transitional housing and face an uncertain future.

Dhurrawang represented James at ACAT, asserting that ACAT should not terminate James's tenancy, as his protected rights under the *ACT Human Rights Act* were engaged and had to be taken into consideration in deciding whether to terminate his tenancy. Dhurrawang argued that termination of James' tenancy placed him at risk of being arbitrarily detained²⁹ as he may have to serve 6 months more than he otherwise would if his tenancy was not being terminated. Dhurrawang also argued that termination of his tenancy was an unlawful interference with his protected right to privacy, reputation, and home,³⁰ as it would also likely result in James becoming homeless upon release, placing him at high risk of relapse and recidivism.

After receiving our submissions, the public housing authority withdrew its ACAT application. James was granted parole and released to his home, with community and family support nearby.

Human rights outside of courts and tribunals

Beyond litigation, **human rights arguments have an impact on the decision-making of public authorities in the ACT**. This impact is less obvious to outside observers than direct action through

²⁸ *Human Rights Act 2004 (ACT)* s 27.

²⁹ *Human Rights Act 2004 (ACT)* s 18(1).

³⁰ *Human Rights Act 2004 (ACT)* s 12(a).

the court system. However, it is no less important. Most human rights advocacy in the ACT happens in less public quasi-legal processes, drawing on the growing human rights jurisprudence. Canberra Community Law uses the *ACT Human Rights Act* to get decision-makers to turn their mind to human rights when making decisions, for example about housing and education.

First Nations cultural rights and housing

Canberra Community Law regularly relies on the *ACT Human Rights Act* to defend First Nations clients from eviction and to advocate for access to public housing. The *ACT Human Rights Act* recognises that although human rights belong to all individuals, they have special significance for Aboriginal and Torres Strait Islander peoples.³¹ The Dhurrawang program regularly advocates for the distinct cultural rights of Aboriginal and Torres Strait Islander peoples as they relate to housing.

The *ACT Human Rights Act* recognises that Aboriginal and Torres Strait Islander peoples must not be denied the rights to maintain, control, protect and develop their cultural heritage and distinctive spiritual practices, observances, beliefs and teachings, languages and knowledge, and kinship ties. It also recognises their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs.³²

Canberra Community Law routinely represents First Nations people who are struggling to access appropriate housing to fulfill their kinship caring responsibilities and thereby sustain their connections to culture. We also regularly represent First Nations people, including Elders, who are being evicted from their homes. For members of the Stolen Generations and their families in particular, these experiences are profoundly traumatic, recalling government policies of forced relocation. In many cases, our clients rely on the *ACT Human Rights Act* to defend their enduring connections to culture and place.

Housing issues invoke several different human rights under the *ACT Human Rights Act*. In addition to cultural rights, we also regularly raise the right to privacy and reputation in housing matters, including protection of the home from arbitrary interference. For example, we raise this right where the public housing authority has sought to evict tenants without having exhausted all reasonable means to avoid the need for eviction.³³ We raise the right to protection of the family and children where an eviction would have consequences for children and the family unit that are disproportionate to the legitimate reasons for exercising the power to evict. We have also raised the right to education in the context of housing.

The following case studies demonstrate the impact that human rights arguments can have on the decision-making of public authorities in a human rights jurisdiction. In each of these case studies, the *ACT Human Rights Act* provided protection for the cultural and other rights of our client.

Case Study 4: Rhonda's story

Protected Cultural Rights; Protection of Children and Family Unit; Protection from Unlawful or Arbitrary Interference with Home

³¹ *Human Rights Act 2004 (ACT)* s 27.

³² *Human Rights Act 2004 (ACT)* s 27.

³³ *Human Rights Act 2004 (ACT)* s 12.

Rhonda is an Aboriginal Elder who has lived in her public housing property with her family for over 20 years. Rhonda is the primary carer for her adult daughter, Gina who lives with disabilities. Rhonda and Gina have strong cultural ties to the property. Additionally, over the years they have modified their home at their own expense to accommodate Gina's disabilities. Rhonda also cares for and raises other Aboriginal children. Her home is a meeting place for many within the local Aboriginal community. Rhonda fought hard to secure her home after being homeless for most of her life.

The public housing authority told Rhonda that they planned to sell her home under their Growing and Renewing Program. The Program identifies public housing properties to sell or redevelop to raise revenue for new public housing stock.

Dhurrawang advised and assisted Rhonda in relation to the Growing and Renewing Program exemption process. As part of that assistance, Dhurrawang prepared legal submissions to support the exemption. Dhurrawang used the *ACT Human Rights Act* to argue that Rhonda and Gina had rights to the protection of children and the family unit,³⁴ and to have their home protected from unlawful or arbitrary interference.³⁵ Dhurrawang also argued that Rhonda and her daughter had cultural rights to maintain, control, protect and develop their kinship ties, and that they have strong ancestral and spiritual connections to the ACT and surrounds as their traditional land. The *ACT Human Rights Act* specifically requires their connection to their ancestral land to be recognised.³⁶

An exemption panel considered Rhonda and Gina's needs and protected human rights, exempting them from the program and allowing them to remain in their home.

Case Study 5 – Sienna

Protected Cultural Rights; Protection of Children and Family Unit

Sienna is a proud Wiradjuri mother of three who was living in her car after leaving a violent relationship. Sienna's children were in the care of their father, who is not Aboriginal.

Sienna applied for public housing and was told that the public housing authority was only willing to approve her for a one-bedroom home, as she did not currently have care of her children. Additionally, Sienna was placed on the High Needs waitlist, which meant she would wait several years for housing. Sienna was desperate to get back care of her children, but her family lawyer advised her that a court would not give her care of her children without a suitable home that could accommodate them.

Dhurrawang advocated to the public housing authority that Sienna and her children needed to have their human rights as children and a family unit protected³⁷ and their rights as Aboriginal people to maintain, control, protect and develop their cultural heritage, knowledge and kinship ties respected.³⁸

³⁴ *Human Rights Act 2004* (ACT) s 11.

³⁵ *Human Rights Act 2004* (ACT) s 12(a).

³⁶ *Human Rights Act 2004* (ACT) s 27(2).

³⁷ *Human Rights Act 2004* (ACT) s 11(1) and (2).

³⁸ *Human Rights Act 2004* (ACT) s 27(2)(a).

Dhurrawang argued that the family could not be reunited without allocation of a suitable home which would enable Sienna's children to be placed back into her care. Furthermore, as the children's only Aboriginal parent, Sienna had distinct rights and obligations to ensure that her children maintained their cultural rights.

After considering Dhurrawang's submissions, the public housing authority approved Sienna for a three-bedroom home and moved her to the Priority Needs waitlist, which is the list for people with the most urgent needs. Sienna was housed within five weeks and was consequently able to obtain full custody of her children.

Case Study 6: Ellen's story

Protected Cultural and Kinship Rights; Access to Education

Ellen is a young Wiradjuri woman who was homeless and couch surfing. While homeless, Ellen studied full-time and worked part-time to support herself. She also performed caring duties for her younger siblings and relatives. Despite her difficult situation, Ellen had high grades and glowing reports from her academic supervisors and was involved in several extracurriculars. She expressed a desire to work with Aboriginal and Torres Strait Islander communities once she graduated.

Ellen applied for public housing and was placed on the High Needs list for a one-bedroom property. Applicants on the High Needs list wait on average over three years to receive an offer for a property. Ellen became severely depressed and anxious, and her grades began to slip. She strongly considered abandoning her studies. She was also concerned that she would not have space to care for her relatives if assigned a one-bedroom home.

Dhurrawang wrote to the public housing authority on Ellen's behalf. Dhurrawang submitted that by placing Ellen on the High Needs list and approving her for a home insufficient to carry out her caring obligations, her human right to maintain and develop her kinship ties was affected.³⁹ Dhurrawang further submitted that Ellen's human right to access further education was affected by the decision.⁴⁰

The public housing authority accepted Dhurrawang's submissions and Ellen was placed on the Priority Needs waitlist. Three months later, Ellen moved into a two-bedroom apartment where she continues with her studies, work, and caring duties.

Disability discrimination

At Canberra Community Law, **we also draw on the *ACT Human Rights Act* to prompt public authorities to consider their human rights obligations in the course of resolving disability discrimination complaints.** In cases where discrimination complaints have been made against

³⁹ *Human Rights Act 2004* (ACT) s 27(2)(iii).

⁴⁰ *Human Rights Act 2004* (ACT) s 27A(2).

public authorities, we have been able to remind government of its obligations to uphold human rights in the provision of education, accommodation, services, and facilities, and encourage respondents in related complaints to turn their minds to how their conduct and decisions may impact upon the human rights of people with disability. For example, in a complaint where a student was unable to participate fully in learning due to a lack of reasonable adjustments to accommodate their disability, we raised the right to education in a formal complaint. In this way, the *ACT Human Rights Act* can influence the decision-making of public authorities outside of courts and tribunals, for the benefit of the individuals affected as well as the broader community.

Strengthening human rights protections over time

We are seeing the ACT's human rights framework gradually strengthen over time, as individuals consistently assert their human rights through formal and informal processes. For example, Dhurrawang often makes human rights arguments when advocating for First Nations clients living in overcrowded public housing properties. For many clients, this involves asking social housing lessors to consider extra bedroom entitlements for clients because of their kinship caring responsibilities (see Sienna's case study above).

Recently, Canberra Community Law provided feedback to the ACT government about including human rights in their decision-making processes for public housing. In May 2023, the ACT Government amended the Housing Assistance (Public Rental Housing Assistance Program 2023 (No 1)) to require the Housing Commissioner to take applicants' cultural and kinship rights into account when making certain non-reviewable decisions about public housing tenancies. **In this way, human rights advocacy has led to human rights considerations being woven more deeply into the fabric of law and policy in the ACT.**

Why a Federal Human Rights Act?

A Federal Human Rights Act would:

- Provide a law to rely on with clearly defined rights, which cannot be undermined by poor policy.
- Provide a safeguard for fundamental rights when all other legal avenues are exhausted.
- Extend human rights protections over the decisions of Commonwealth agencies.
- Promote a common language for the protection of fundamental human rights that is consistent with existing State and Territory human rights jurisdictions and with international law.

A Federal Human Rights Act would be an Act for all Australians, but it would have the greatest impact for the people who are most affected by government decision-making. Aboriginal and Torres Strait Islander people, people with disability, people in detention, people experiencing or at risk of homelessness, migrants, social security recipients, and people experiencing poverty are more directly impacted by government decisions in their daily lives than other members of the population. Increased exposure to the decisions of the public service and institutions means that these groups are more likely to be subject to human rights breaches.⁴¹

⁴¹ Australian Human Rights Commission, *Free & Equal – Position paper: A Human Rights Act for Australia* (December 2022), 87.

Protecting the rights of Indigenous peoples

A Federal Human Rights Act which incorporates the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) would be **a concrete step towards healing the harms experienced by First Nations peoples in Australia because of past government policies and processes.**

A law which specifically protects the cultural and kinship rights of First Nations peoples would demonstrate the Government's commitment to sustaining Aboriginal and Torres Strait Islander cultures and cultural identities.

Further, it would aid in the Government's commitment to addressing outcomes and priorities under the National Closing the Gap Agreement. It will ensure that all decisions made for First Nations peoples take into account their unique and distinct cultural rights.

As the case studies of Louise, Peter, James, Rhonda, Sienna, and Ellen show, the protections of a Human Rights Act can have material consequences for an Indigenous person's safety, dignity, wellbeing, and cultural connection.

Protecting the rights of people with disability

Having clearly articulated human rights under a Federal Human Rights Act would assist in **combatting the stigma that people with disability and lived experience of mental ill-health experience** due to attitudinal and structural barriers. With respect to people with disability in the ACT, principles of autonomy and the right to supported decision making have been reinforced through the availability of a *Human Rights Act*⁴² which requires courts and tribunals to interpret a Territory Law in a way that is compatible with human rights.⁴³ This can include consideration of rights set out in the ACT *Human Rights Act*, and international human rights treaties including the Convention on the Rights of Persons with Disabilities.

Extending rights obligations to Commonwealth agencies

We have seen the distinct and positive impact that human rights protections can have on the lives of our clients, particularly in housing and tenancy matters. However, the human rights protections which are available to our clients do not extend to the decisions of Commonwealth agencies, including those entities that may interact closely with people on low incomes and those facing other disadvantage in the provision of Australian Government services, such as Centrelink and Medicare.

A Federal Human Rights Act would improve our ability to advocate for our clients and allow us to get **better outcomes for clients affected by Commonwealth agency decisions.** Our social security clients would receive fairer decisions if Commonwealth authorities were required to consider their human rights, for example when making decisions about mutual obligations in Centrelink matters or claims for the Disability Support Pension.

Extending rights protections across State and Territory borders

Having a Federal Human Rights Act would ensure that **people in states and territories without Human Rights Acts would still be afforded human rights protections.** As the human rights

⁴² See E.g., *In the Matter of E.R (Mental Health and Guardianship and Management of Property)* [2015] ACAT 73 (29 October 2015).

⁴³ ACT Human Rights Act s 30.

protections under the *ACT Human Rights Act* do not extend over the ACT border, some of the people who contact Canberra Community Law for legal help do not have the same protections for their housing, education, and family unit as their neighbours in NSW, who may live just a few kilometres away. A person's individual human rights protections should not depend on where they live.

Fostering a human rights culture

Public authorities can both *limit* and *promote* human rights. In our view, a Federal Human Rights Act would foster **a culture of human rights compliance and proactive consideration of human rights in Commonwealth government decision-making.**

Preventing systemic human rights breaches

A Federal Human Rights Act would assist to prevent systemic human rights breaches by embedding human rights considerations upstream. Canberra Community Law was one of the many community legal centres forced to respond when the Robodebt scheme resulted in thousands of welfare recipients being sent inaccurate Centrelink debt notices. The scheme operated for several years, causing extreme community distress, absorbing community legal resources, and resulting in massive costs including a record settlement and a Royal Commission.

With a Federal Human Rights Act in place, government policy would be subject to human rights scrutiny during development and implementation, reducing the risk of systemic human rights breaches down the line. A direct cause of action and complaints mechanism would provide an additional line of defence against systemic breaches, by calling attention to the negative human rights implications of any particular policy.

Recommended features of a Federal Human Rights Act

An accessible complaints mechanism

For a Federal Human Rights Act to be effective, it must include an accessible avenue for individuals to raise and resolve complaints.

Drawing on our experience of the *ACT Human Rights Act*, as well as our engagement with our local ACT Human Rights Commission, we would strongly support an option for individuals to make human rights complaints directly to the Australian Human Rights Commission.

Pursuing legal action through the courts system is costly and impracticable for most people, and particularly so for those who are most likely to suffer human rights infringements. A human rights complaint pathway provides a simple and easy way for people to uphold their rights, as we advocated during the successful “No Rights Without Remedy” campaign in the ACT.

A no cost, simple complaints pathway would:

- Enable the timely resolution of human rights complaints.
- Minimise the financial and psychological burden of asserting one's human rights.
- Enhance access to justice through a dispute resolution mechanism, including access to remedies.
- Reduce dependence on legal advocates, enhancing the agency that individuals have over their rights and improving access to justice.

A direct cause of action

We also support a direct cause of action attached to each right in a Federal Human Rights Act. We have seen in the ACT that a direct cause of action is critical for bringing human rights to life.

From our perspective, the potential for a flood of federal human rights litigation is limited. The vast majority of our clients seek modest, proportionate remedies to wrongs. They do not want to engage in lengthy, expensive litigation. They want acknowledgement and compensation, and they want to make sure that what has happened to them does not happen to anyone else.

However rare, human rights litigation in the ACT has been beneficial. Litigation clarifies the operation of human rights and enhances compliance by putting public authorities on notice of their obligations. In this way, human rights advocacy “trickles up” – when one person asserts their human rights, often the system changes for the better for everyone.

Remedies

A Federal Human Rights Act should also include access to appropriate remedies for human rights breaches, including injunctions, orders requiring action, declaratory relief, monetary damages, and administrative law remedies.

Reflecting obligations under international law

A Federal Human Rights Act should reflect Australia's obligations under International Conventions, in particular those in relation to children (Convention on the Rights of the Child (CRC)) and persons with disability (Convention on the Rights of Persons with Disabilities (CRPD)); as well as rights and principles from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), noting Australia's particular obligations to First Nations peoples.

The Federal Government should develop the Federal Human Rights Act with the genuine participation of First Nations peoples and people with disability.

Funding for a sustainable sector

A Federal Human Rights Act will need to be accompanied by adequate funding for community based legal services who work at the front-line, providing legal services to the most vulnerable Australians. Although an accessible complaints mechanism will reduce dependency on lawyers, a strong and sustainable community legal sector is essential to ensuring all people have fair and equitable access to the enforcement and realisation of human rights.

Conclusion

We strongly support the call for a Federal Human Rights Act.

In the ACT, we are empowered by a Human Rights Act to defend a person's safety, security, dignity, and cultural connection.

We recognise the courage of our clients who assert their human rights under the *ACT Human Rights Act* – particularly our First Nations clients - whose efforts in many cases have transformed the ways that public authorities make decisions about the lives of others.

It is our sincere hope to see a Federal Human Rights Act that protects the rights of all Australians beyond the ACT.

We are grateful for the opportunity to contribute to this Inquiry, and we would welcome the opportunity to give evidence before the Inquiry.