

Human Rights Act

The evidence base for this paper draws on the work of the National Disability Footprint, including the Data and Research Footprint (Element 2) delivered in partnership with Dr Scott Avery and Girra Maa Indigenous Health, University of Technology Sydney.

Australia does not have a national Human Rights Act, unlike comparable democracies. Australia is bound by international law through seven core United Nations human rights treaties, but treaty obligations do not automatically become domestic law. Existing Commonwealth and state laws partially implement obligations, for example the Racial, Sex and Disability Discrimination Acts, and state charters in the Australian Capital Territory, Queensland and Victoria.

FPDN believes a national Act should establish positive duties for public authorities, a direct cause of action with effective remedies, and coverage of private entities performing public functions. It should explicitly embed the rights and leadership of First Nations people with disability, align with the Convention on the Rights of People with Disability (CRPD) and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principles, and support Closing the Gap. The Act should be codesigned with First Nations people. This paper updates facts and proposes a practical model for reform. (AHRC 2023; AGD n.d.; VEOHRC n.d.; ACT HRC 2024; QHRC 2024; PC 2025; NDIS Act 2013).

Implementing a national Human Rights Act would create a single, comprehensive Act of protections for all Australians that would ensure equality; protect vulnerable groups such as First Nations people with disability; guide government decision making; foster a culture of fairness and accountability; improve public health and education; and increase workforce equality and productivity (AHRC 2023; DHAC 2025; PC 2025; DRC 2023).

Background and Context

A Human Rights Act (HRA) is a piece of legislation which translates international human rights obligations into domestic law. Australia is the only Western liberal democracy without a national Human Rights Act or constitutional charter of rights. (AHRC 2023; Parliamentary Joint Committee on Human Rights 2024).

However, whilst Australia does not have a national HRA, it is a party to seven core international human rights treaties put forward by the United Nations. Australia has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(Attorney-General's Department n.d.; UN Treaty Collection n.d.).



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International human rights instruments are legal frameworks developed at an international level to address specific issues or areas of concern. The instruments which are relevant to FPDN's advocacy are (treaties to which Australia is a party unless indicated):

- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965.
- The International Covenant on Civil and Political Rights (ICCPR) 1966.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984.
- The Convention on the Rights of the Child (CRC) 1989.
- The International Convention for the Protection of All Persons from Enforced Disappearance (not ratified by Australia).
- The Convention on the Rights of Persons with Disabilities (CRPD) 2006.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (not ratified by Australia).
- The Universal Declaration of Human Rights 1948 (declaration).
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007 (declaration). (AGD n.d.; UNTC n.d.).

CRPD Article 13(2) requires States Parties to promote appropriate training for people working in the administration of justice, including police and prison staff. (OHCHR n.d.).

How international human rights become Australian law

Australia is bound by international law to comply with treaties it ratifies, but treaties do not form part of Australian law unless incorporated by legislation. The law that applies within Australia is primarily contained in Acts passed by the Commonwealth or the states and territories. (AGD n.d.).

Australia has enacted statutes that give effect to parts of its treaty obligations, including the Racial Discrimination Act 1975, Sex Discrimination Act 1984 and Disability Discrimination Act 1992. However, there is no comprehensive national Human Rights Act. (AGD n.d.).

When the Commonwealth ratifies a treaty, the external affairs power in the Constitution can support laws implementing that treaty. For example, the NDIS Act expressly gives effect, in conjunction with other laws, to Australia's obligations under the CRPD. (NDIS Act 2013 s 3; Explanatory Memorandum to NDIS Bill 2013).

FPDN advocates for a comprehensive HRA that would:

- incorporate obligations from treaties including the CRPD.
- support development of legislation and policies that reflect Australia's human rights obligations.
- recognise intersectional inequity and discrimination.
- promote the understanding that human rights are inalienable.
- provide pathways to address intersecting human rights breaches.
- require public authorities to act compatibly with human rights and to give proper consideration to rights in decision-making. (ACT HRA s 40B; QLD HRA s 58; VIC Charter s 38).

For a HRA to be functional, it would need to:

- clearly set out rights contained in relevant instruments.
- establish practical mechanisms for people to raise and resolve rights issues.
- include duties on decision-makers to act compatibly with rights and to consider rights in making decisions.
- include a direct cause of action and effective remedies for serious breaches.
- include regular reporting and statements of compatibility for new laws. (PJC Human Rights 2024; VEOHRC n.d.).

Australian Models

Australia does not have a national Human Rights Act. However, some states and territories have passed their own human rights laws, including the ACT, Queensland and Victoria.

The ACT Human Rights Act was the first of its kind in Australia. In 2024–2025 the ACT introduced a pathway allowing human rights complaints to be made to the ACT Human Rights Commission with possible referral to ACAT, addressing access to justice concerns. (ACT HRC 2024).

A 2024 independent review of the Queensland Human Rights Act recommended expanding rights coverage and removing barriers to remedies, with government considering next steps. (QHRC 2024).

Victoria's Charter of Human Rights and Responsibilities sets out 20 civil and political rights and primarily binds public authorities. It does not provide damages for a breach of Charter rights alone, though courts can make declarations of inconsistent interpretation and unlawful decisions may be set aside where another cause of action exists. (VEOHRC n.d.).

HRAs and the concept of a 'positive duty'

Many HRAs impose positive duties requiring public authorities to proactively uphold human rights in policy and operations, not

simply to avoid discrimination. (ACT HRA; QLD HRA; VIC Charter).

Binding legislatures and non-government entities

Under Australia's constitutional arrangements, a national HRA would guide Parliament and require statements of compatibility, but cannot entrench rights against all future legislation without constitutional change. (PJC Human Rights 2024).

Effective protection should extend to private entities performing public functions. Internationally, courts have required businesses to make digital services accessible under disability law, for example *Robles v Domino's Pizza LLC* (9th Cir, 2019). (*Robles v Domino's* 2019).

Why should a Human Rights Act be a positive development for First Nations people with disability?

Royal Commission findings and Closing the Gap data underline persistent inequalities affecting First Nations people with disability. A national HRA should embed self-determination, cultural safety and community-controlled solutions, aligned with Priority Reforms and Volume 9 of the Disability Royal Commission. (DRC 2023, Vol 9; PC 2025).

An Australian HRA should also recognise that one action can breach multiple, indivisible human rights. A person experiencing intersectional harm should not be required to choose a single aspect of identity or pursue separate breaches. (CRPD; UNDRIP principles).

The United Nations Declaration on the Rights of Indigenous Peoples

Australia endorsed UNDRIP in 2009. As a UN General Assembly declaration, it is not legally binding, but it sets minimum standards and should guide Australian law and policy, including participation in decision-making and self-determination. (UN OHCHR 2009; APH Committee 2023).

Recommendations

- **Legislate a national Human Rights Act** in 2026 aligned to the AHRC model, with a direct cause of action and effective remedies. (PJC Human Rights 2024; AHRC 2023).
 - **Duty on public authorities and contracted providers to act compatibly with rights** and to give proper consideration in decisions. (ACT HRA; QLD HRA; VIC Charter).
 - **Embed First Nations leadership and cultural safety commitments**, aligned to Closing the Gap Priority Reforms. (PC 2025).
 - **Mandate CRPD-consistent training** for police, courts and corrections staff under Article 13. (CRPD Art 13).
1. **Establish an independent Human Rights Commissioner for First Nations people with disability** to monitor and report on implementation. (DRC 2023; PC 2025).



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