

Strengthening protection of the rights of people with disability through a national Human Rights Act (HRA)

Position Statement by Disability Representative Organisations (DROs)

The human rights of people with disability must be protected in Australian law. We support a national HRA that integrates specific provisions for disability rights, which ensures both comprehensive coverage and targeted protections

The issue

The current legal frameworks in Australia do not effectively protect, promote or advance the rights of people with disabilities. Australia's current approach to human rights and anti-discrimination is fragmented and inconsistent.

The Disability Royal Commission (DRC) revealed the experiences of people with disabilities and the extent of violence, neglect, and abuse in Australia. Substantial legislative reforms are required to protect the rights of people with disabilities and to ensure we have appropriate recourse when those rights have been violated.

While there is strong support for better legal protection of the rights of people with disability by translating the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into federal legislation, there are differing opinions on what approach would be most effective to address this issue. While some recommend the development of a specific Disability Rights Act (DRA), others support the implementation of a comprehensive national HRA.

What did the DRC recommend?

The DRC Final Report recommended that the Government establish a DRA 'to translate the international human rights of people with disability into domestic Australian law'.¹

The DRC Final Report called for the establishment of the National Disability Commission which would be responsible for promoting disability rights and understanding of the rights and duties under the proposed DRA. It also made a number of recommendations to strengthen the *Disability Discrimination Act 1992* (DDA).

One of the key issues discussed in the Final Report and in conversations around Australia's human rights frameworks is the need to shift towards a positive duty and recommendations reflect this.²

¹ Volume 4: Realising the human rights of people with disability, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final Report.

² Recommendation 4.12: Positive duty to promote disability equality and inclusion in the proposed DRA; Recommendation 4.27: Positive duty to eliminate disability discrimination as a standalone duty on duty-

Public consultation with stakeholders on the DRC confirmed strong support for improved legal mechanisms to protect the rights of people with disability. Some stakeholders prioritised a DRA, and some supported an overarching federal HRA, of which disability rights would be one aspect.³

Our policy positions

Our organisations strongly believe that the Government must prioritise fully upholding its obligations under the CRPD within the domestic legal framework. Government must take active and meaningful steps towards addressing the inadequacies of existing human rights mechanisms in protecting the rights of people with disability. The fragmented legislative landscape has led to significant gaps, necessitating a uniform approach to the rights of people with disabilities.

While there are diverging views on the chosen model for legislative action, our organisations recognise that a HRA can implement human rights and provide for specific protections to address the unique rights violations that people with disability experience.

Support for a national HRA

Our organisations believe that the protection of the rights of people with disabilities will best be achieved through a comprehensive national HRA – rather than a standalone DRA.

Our collective vision is to support a national HRA that applies specific provisions for disability rights within a broader framework of human rights protection. This comprehensive approach balances the importance of addressing the unique rights violations people with disability face, with the need to provide inclusive protection for ALL, aligning with the CRPD.

By embedding targeted protections for people with disability within a national HRA, their rights are upheld alongside those of other marginalised groups, fostering a cohesive and unified legal framework. This approach not only guarantees broad human rights coverage, but also offers the focused protections specific to the experiences of people with disability.

Our goal is to create an inclusive national HRA that affirms the dignity, equality, and rights of every person, while specifically addressing the needs of people with disability, thereby promoting a just and equitable society for all.

holders under the Disability Discrimination Act 1992 (Cth) (DDA). Volume 4: Realising the human rights of people with disability, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final Report.

³ Commonwealth of Australia (Department of Social Services), June 2024, Public Consultation on the Disability Royal Commission – Summary Report, p6. Public Consultation Report | engage.dss.gov.au

Protecting rights specific to people with disability

The choice between a HRA and a DRA involves balancing the need for broad, inclusive human rights protection with the necessity of addressing specific issues faced by people with disability. While a DRA provides the opportunity for targeted protections and empowerment for people with disability, it poses the risk of creating a fragmented legal framework that does not reflect the indivisible, interdependent and interrelated nature of human rights.

A HRA offers comprehensive protection and aligns with international standards. In line with CRPD, it will ensure the application of all human rights to people with disability with a framework for human rights protections in the specific context of disability. Therefore, it is essential that it is designed to encompass and address the needs of specific groups and the diversity within those groups.

The HRA must address the issues that would have been covered by a separate DRA, including rights that have meaning and relevance for people with disability: For example:

- Supported decision making: making decisions is a right that is reinforced by the CRPD⁴ including accessing support needed to make decisions. It has significance for the disability community, particularly people with intellectual disability;
- Inclusive education: the CRPD sets standards for inclusive education to prevent the segregation of children with disability. A HRA may help to harmonise and modernise anti-discrimination laws, ensuring a uniform approach to the rights of students with disability;
- Positive duty: the current framework is reactive and reliant on a disabled person making a complaint, and there is no positive duty on institutions to promote rights. The creation of a positive duty would be proactive, promoting rights and ensuring that institutions must prevent harm and/or contravention of rights before they occur, taking some of the burden off disabled people.⁵

Why a national HRA?

Many people with disabilities experience compounded inequality and discrimination at the intersections of disability and other identities, attributes and experiences. A robust human rights framework needs to link the issues that impact people with disability with intersectional

⁴ Article 3, Article 4 and Article 12. See Supported Decision Making resource, Inclusion Australia, <https://www.inclusionaustralia.org.au/topic/supported-decision-making/>

⁵ Recommendation 4.12: Positive duty to promote disability equality and inclusion in the proposed DRA; Recommendation 4.27: Positive duty to eliminate disability discrimination as a standalone duty on duty-holders under the Disability Discrimination Act 1992 (Cth) (DDA). Volume 4: Realising the human rights of people with disability, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final Report.

identities, including First Nations people, culturally and linguistically diverse (CALD), LGBTIQ+, trans and gender diverse people, women and girls, children and young people.

The CRPD recognises the diversity of people with disability and the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination. Articles specifically refer to the intersectional discrimination that women (and girls) and children with disabilities experience. A separate DRA could inadvertently reinforce the perception of people with disability as a separate or special group (with the effect of othering), rather than promoting full integration and equality within the broader human rights framework.

A HRA would provide a more cohesive approach to implementing Australia's international human rights obligations. As stated by the Office of the High Commissioner of Human rights:

The Convention adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

Adopting this position within a national HRA reflects the fundamental principle that human rights are indivisible, interdependent and interrelated – they can't be viewed in isolation. It would also better recognise the rights of people with disabilities who experience intersectional discrimination. A HRA would enshrine the principle that a single action can constitute a breach of multiple, inseparable, human rights. In other words, a victim of an intersectional breach must not be required to 'choose' a single aspect of their personhood, or else prove two separate breaches.

A successful HRA will not need to focus on disability alone. For a broader human rights framework to succeed, legislation must be able to contain tailored and specific protections for each of the seven main human rights treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and Convention on the Elimination of Discrimination Against Women (CEDAW).

Furthermore, the existence of Volume 9 of the DRC ('First Nations people with disability') demonstrates the need for Australia to meet its obligations under the National Agreement on Closing the Gap, and meaningfully address the concerns, issues and past traumas that are specific to First Nations persons with disability. This will require a National HRA that incorporates the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

What would a national HRA look like?

In 2022 the Australian Human Rights Commission produced a position paper outlining a model for a national HRA and associated reforms. A national HRA would be focused on implementing all human rights obligations, including rights in relation to disability, into Australian law. It would also provide options for people to challenge and address actions and decisions that violate their

human rights. Critically, it should extend to the full range of civil and political rights and economic, social and cultural rights.

A comprehensive HRA would:

- incorporate obligations across a range of treaties, including the CRPD;
- support the development of legislation and policies that reflect all of Australia's international human rights obligations;
- recognise intersectional inequity and discrimination;
- promote an understanding of human rights as inalienable; and
- provide pathways for addressing breaches of intersecting human rights.

Furthermore, reforms must build upon the evidence-base from past consultations and reports, including the DRC Final Report, in addition to incorporating meaningful consultation with the disability community and sector at every stage, including DROs.

Other elements of the human rights framework must be strengthened urgently and alongside establishing the HRA. This includes taking urgent action to strengthen the DDA as set out in the DRC Final Report.⁶ Importantly, the DDA should be amended to introduce a positive duty on all duty-holders under the Act to eliminate disability discrimination, harassment and victimisation

Alongside legislative reform, it is important that there is a designated appropriate body that is adequately resourced to undertake adjudication and dispute resolution.

Evidence a national HRA can work

Although Australia does not have a National HRA, human rights legislation has been enacted in a number of Australian jurisdictions. This human rights legislation has had a positive impact on the experiences of people with disabilities in those states or territories.

The success of the state-based legislation demonstrates that disability rights can be protected effectively through broad human rights legislation. As discussed in detail in the December 2022 joint submission by Human Rights Law Centre, People with Disability Australia, and Children and Young People with Disability, Charters of Human Rights have made a difference to the lives of people with disability. By ensuring human rights are at the heart of our laws and that people can act when their rights are violated, state-based legislation has helped ensure that people are treated with greater fairness, dignity and respect. The impact has been far reaching, from stopping families from being evicted into homelessness, to ensuring people with a disability receive appropriate support and much more.⁴

⁶ Volume 4: Realising the human rights of people with disability, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). Final Report.

Position and recommendations

Our organisations support a national HRA that integrates specific provisions for disability rights within a broader HRA, ensuring both comprehensive coverage and targeted protections. A comprehensive and judicially enforceable HRA should be implemented which specifically:

- incorporates Australia's obligations under the CRPD and other human rights treaties;
- incorporates the full range of civil and political rights and economic, social and cultural rights;
- addresses the issues that would have been covered by a separate DRA; and
- creates a legislative obligation for public authorities to act compatibly with the human rights expressed in the HRA and to consider human rights when making decisions.

Our organisations agree that the following elements are essential for a national legislative framework to work:

- The DDA must be reformed and strengthened urgently, alongside steps towards the HRA;
- Reforms must consider and build upon the past significant consultation and findings, including the DRC, Parliamentary Joint Committee on Human Rights' Inquiry into Australia's Human Rights Framework and lessons from the existing state-based legislation;
- Any such law reform must be undertaken through meaningful consultation and codesign with the disability community and sector, including disability advocacy organisations like ours;
- The Australian Human Rights Commission (AHRC) should receive adequate resources to effectively support a disability rights mandate. This includes clearly defining the AHRC's role and function, ensuring they align with other legislative frameworks, such as the Quality and Safeguarding Commission, to achieve a cohesive approach;
- The Disability Rights Commissioner be established or the Disability Discrimination Commissioner be given remit to support the operation and ensure accountability for rights of people with disability alongside either a national HRA and/or DRA.

About our organisations

Disability Representative Organisations are funded by the Department of Social Services (DSS) to represent people with disability. The following organisations have contributed to and/or expressed their support for this joint position statement:

- Australian Autism Alliance
- Australian Federation of Disability Organisations
- Children and Young People with Disability Australia
- Community Mental Health Australia
- Disability Advocacy Network Australia
- Down Syndrome Australia
- First Peoples Disability Network Australia
- Inclusion Australia
- National Ethnic Disability Alliance
- People with Disability Australia
- Physical Disability Australia
- Women With Disabilities Australia

This position statement was a collaboration led by Women with Disabilities Australia and coordinated by Disability Advocacy Network Australia in their role as the National Coordination Function for the Disability Representative Organisations program.