

30 June 2023

Committee Secretariat  
Parliamentary Joint Committee on Human Rights  
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Kingsford Legal Centre (

studies in this submission, names and identifying information have been changed to protect client confidentiality.

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KLC is a community legal centre providing free legal advice, casework, and community legal education to people in south/ ( pe .0(/)4((.).i73(it)BT/G34(i)4( )] TJETQq0.\*(n.d/F1 Wep)3()4(ati))9(n))6(v beep)3(\* npr

in advocating for a federal Human Rights Act. This submission echoes and endorses this important



Human Rights Act is needed to help ensure that government decisions and actions meet human rights obligations and are guided by values like fairness, equality, and dignity.<sup>12</sup>

Australia must not continue to lag behind other countries in its human rights record. Australia must enact a federal Human Rights Act that fully incorporates all its international human rights obligations into domestic law.<sup>13</sup> In doing this



in relation to having social housing providers find and secure safe accommodation for her and her family. Such a right could support Donna in accessing a new home or, at a minimum, obtaining more information about the social housing transfer list and the steps that social housing is taking to find suitable accommodation.

*Need for the right to freedom from disability discrimination, rights in criminal proceedings, and right to healthcare*

Mark\* is a long-term KLC client who lives with epilepsy, mental illness, and cognitive impairments. One day at the bank he was 'behaving erratically' and was asked to leave the premises. When Mark refused, the bank called the police. Mark repeatedly explained to the police that he was having an epileptic fit and required medical assistance. Despite this, Mark was arrested and charged.

With KLC's assistance, Mark's charges were dismissed on mental health grounds, with the condition that he engage in ongoing treatment.

Mark's experience shows how an unmet need for healthcare can escalate into a criminal justice issue. Instead of being offered appropriate medical treatment, Mark was discriminated against and arrested.

*Need for the right to freedom of movement and the right to freedom from discrimination*

Tommy\*, a Pacific Islander man, was approached by police in Maroubra. They formed a suspicion he was going to assault two women who were in the street nearby. The police approached Tommy and he told them he was just looking at a bus timetable and that they should leave him alone. The police asked Tommy for his name and address, which he gave them. Tommy then became agitated at the presence of three police officers and was told he was being placed under arrest for offensive language and intimidating a police officer. The police eventually used capsicum spray on Tommy to subdue him. The charges against Tommy were later dismissed by a magistrate, who was highly critical of the conduct of the police.

Multiple human rights breaches often occur within a single incident. In the above case study, Tommy's freedom of movement was impinged upon because of racial discrimination. Australia requires an overarching human rights framework that recognises the interconnectedness of human rights.

Beyond the interconnectedness of all human rights, our client experience shows how economic, social, and cultural rights are just as important as civil and political rights for clients living dignified, safe and meaningful lives. In particular, as Australians face cost of living crises and global challenges such as the COVID-19 pandemic, climate change, and growing inequalities, the protection of economic, social, and cultural rights is vital.<sup>19</sup> KLC has countless examples of the importance of economic, social, and cultural rights to our clients and how a failure for these rights to be recognised in law and policy has led to adverse outcomes.



Education was a common theme in KLC's 2009 consultations with our community about human rights. Like Jimmy, many of our clients reported being unable to access education, including affordable childcare services.

*The right to an adequate standard of living, the right to adequate housing, protection of families*

David\* is an Aboriginal man who, since the break-up of his marriage has been homeless. He has a disabled son who he would like to share the parenting of with his ex-wife. He attempted to apply for public housing and was told that he could not ask for the extra bedroom or the special requirements his son needs until a parenting arrangement was confirmed by a parenting order. David and his ex-wife had not commenced any proceedings in the Family Court. David did not apply for housing as he couldn't show through an order that he would be sharing the parenting of his son. David remained homeless and tried to obtain a parenting order without luck, as he could not show that he had appropriate housing for his son- this was despite the fact that David's wife faced difficulty caring for their son on her own.

David came to KLC as he was desperate to obtain housing so he could re-commence regular parenting of his son. This case highlights that decision-making which adopts a "one size fits all approach" and that does not consider cases on an individual basis can result in human rights breaches. A Human Rights Act could have required the decision maker in this case to consider the right of David to adequate housing and an adequate standard of living, the right of David and his son to a family life, and the right of David's son to adequate care.

*Need to meet minimum core obligations with progressive rights realisation*

In advocating for economic, social, and cultural rights, we recognise that many of these rights will need to be progressively realised over time.<sup>20</sup> However, we encourage the Federal Government to fully implement commentary of the Committee on Economic, Social and Cultural Rights on the need for States to meet minimum core obligations for satisfying minimum essential levels of each right.<sup>21</sup> In this way, we submit that many economic, social, and cultural rights should be and can be recognised immediately, with the aim of more progressively realising these rights over time.

Any Human Rights Act will be ineffective without the ability for victims of a breach of human rights to litigate matters. We acknowledge that the need to piggy-back human rights causes of actions onto existing claims has been a key barrier d42 reW\* nBrier



Further, like the Australian Human Rights Commission, we submit that any federal Human Rights Act must include protections against adverse costs orders.<sup>23</sup> This is vital to ensure that any remedies under the Act are accessible to those who need them most. KLC has written about this issue extensively in the context of costs orders in federal discrimination law cases. We refer to our submission where we have argued that an equal access costs model for legal costs in these matters is vital to encourage applicants to enforce their rights while enabling them to claim legal costs against respondents when they succeed in matters.<sup>24</sup> This approach has been endorsed by

