



# Inquiry into Australia's Human Rights Framework submission 2023

**Multicultural Disability Advocacy  
Association NSW Inc.**

Contact for this submission:

*David Skidmore* (Advocate)  
(02) 9891 6400

## **About this submission**

This submission is produced by the Multicultural Disability Advocacy Association of NSW Inc. (MDAA) in response to the *'Inquiry into Australia's Human Rights Framework submission 2023*.

MDAA is the peak body for all people in NSW with disability and their families and carers, with a particular focus on those from a culturally and linguistically diverse (CALD) / non-English Speaking (NES) background with disability.

Human rights are individual in nature. While rights have been accorded to states and other non-human entities, it is only human beings that have inherent rights. This means that the rights of a person with disability do not depend on the relationship with a parent, carer, or disability service. Governments and corporations cannot change the definition of human rights even if they try to circumscribe them.

This submission will address the points raised below.

### Inquiry into Australia's Human Rights Framework submission

- **Whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include (including by reference to the Australian Human Rights Commission's recent Position Paper).**

A federal Human Rights Act is not something MDAA has a clear position on either in favour or against. MDAA works within a human rights-based framework which means that human beings have dignity and worth that are inherent rather than conditional. People with disability, people from CALD communities and those who belong to both groups have human rights because they are human beings, and no other reason.

It is one thing to have a general understanding of human rights; legislation is quite another. This is where the issues can get complicated. According to the Australian Human Rights Commission (AHRC):

The key function of the Human Rights Act will be to coherently implement Australia's international obligations domestically, and to reflect and codify fundamental common law rights. It would provide the 'bedrock of rights' in Australian law (Australian Human Rights Commission [AHRC], 2022, p. 17).

Australia is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (United Nations [UN], n.d). That means Australian governments should be implementing the UNCRPD already. Violations often occur and are not adequately addressed. The Disability Royal Commission (DRC) has been one of the most notable outcomes in response to ongoing abuse of people with disability (Disability Royal Commission, n.d). It is the only Royal Commission to date dedicated to the issues of people with disability.

If the proposed Human Rights Act was to be more effective in countering violations of the UNCRPD in Australia than current arrangements, it would certainly be worthwhile. The UNCRPD should not be considered merely a document that sits in New York or Geneva but rather one that is effectively deployed in Australian jurisdictions.

There is also the problem regarding what constitutes a human right. The Australian Constitution is not a Human Rights Act even though it does specify certain rights such as the right of Australians from the state imposing a religion upon them (*Constitution Act 1901* s. 116).

The Australian Constitution has little to say about rights leaving them the subject of debate since its enactment at the turn of the Twentieth Century.

The US has its Bill of Rights known controversially for its inclusion of the right to own guns (U.S. Const. amend. II). Would a Human Rights Act in Australia include similarly problematic 'rights' or would they all be somehow non-controversial? And how easy would it be to remove particular rights if required? In Australia and elsewhere, euthanasia has been rigorously debated. One of the more troubling aspects of the debate is the negative impact on people with disability (Office of the High Commissioner Human Rights, 2021). Enshrining euthanasia as a human right may have unforeseen ramifications.

Aside from the UNCRPD referred to previously, MDAA supports elements in human rights legislation that improve the lives of people with disability especially those from CALD communities. However, it is crucial that such legislation involve a consultation process before it goes into effect.

- **Whether existing mechanisms to protect human rights in the federal context are adequate and if improvements should be made, including:**
  - **to the remit of the Parliamentary Joint Committee on Human Rights.**
  - **the role of the Australian Human Rights Commission.**
  - **the process of how federal institutions engage with human rights, including requirements for statements of compatibility.**

Human rights at federal level are not adequately protected. Asylum seekers have languished in detention for years and migrants and refugees with disability and their families are often denied Australian visas due to negative attitude and complex assessments related to an applicant's disabilities (NEDA Factsheets n.d.). People with disability are supposed to be protected by local laws and the UNCRPD but quite often have their rights violated. Racism and ableism take various forms but consistently serve to keep a substantial proportion of the population from enjoying basic rights.

Improvements to safeguard human rights are certainly required. Existing mechanisms such as legislation regarding disability-based discrimination, the Australian Human Rights Commission (AHRC), and the way the UNCRPD is currently applied are clearly inadequate. That said, the exist of the Parliamentary Joint Committee on Human Rights and AHRC have for some time played a key role regarding human rights. It is better to have imperfect mechanisms rather than to not have any mechanism at all.

MDAA's understanding is that the Parliamentary Joint Committee on Human Rights' role is to examine and report on legislation to do with human rights (Parliament of Australia, n.d). This is a crucial role and one which MDAA supports.

AHRC also has an important promotional and educational role to play in human rights. MDAA would like to see that continue. AHRC, however, is limited to conciliation processes and cannot exact penalties in the way a court of law can do. ARHC acts 'in the shadow of the law' but is not empowered to or expected to enforce any laws. Any improvements to AHRC should be suggested in the first instance so MDAA and other interested parties can have a chance to comment.

How human rights in Australia are upheld is a distinctly uneven process (Vidor Staub, n.d). It is often dependent on which political party is in power nationally or at state/territory level. Some politicians take human rights more seriously than others. Certainly, there is an argument for consistency.

MDAA's focus is on the human rights of people with disability, people from CALD communities, and the intersection of the two groups. The association always takes an interest in how the work of national institutions affects the cohort MDAA represents. This includes any improvements which of course are welcome.

Statements of compatibility and how they are formulated is of interest to MDAA and especially so regarding the UNCRPD. Australia has not only been a signatory to conventions such as the UNCRPD, but it has also assisted in its creation (Small, 2007). A statement of compatibility represents an attempt to connect UN conventions to what is happening in Australia - even if they are not legally binding (Attorney General's Department, n.d). After all, what is the point of Australian governments signing UN conventions if Australian laws diverge from them?

- **The effectiveness of existing human rights Acts/Charters in protecting human rights in the Australian Capital Territory, Victoria, and Queensland, including relevant caselaw, and relevant work done in other states and territories.**

The effectiveness of human rights legislation is only as good as the willingness of governments and legislators to enforce them. MDAA exists as an advocacy service in part because the human rights of people with disability (particularly those from CALD communities) continue to be violated.

Aside from enforcement, another major problem when it comes to defending the human rights of people with disability is the fact they are often segregated in society. They are put beyond the reach of scrutiny. They are left at home or kept in group homes that act as mini-institutions. The outcomes can be horrific. Violence including sexual violence affects both men and women with disability in greater numbers compared with everyone else (Australian Institute of Health and Welfare [AIHW], 2022). Segregation allows the perpetrator to get away with crimes more easily by allowing abuse and neglect to be hidden.

Other mechanisms besides human rights Acts play a key role in upholding the rights of people with disability. Disability advocacy is one obvious example. Having someone who takes the side of the person with disability when it comes to situations of abuse, neglect, and exploitation when nobody else will do so ensures disability rights will be taken into consideration. Disability services that genuinely aim to assist their clientele are also vital.

A community that respects and values people with disability is the key issue. Without that, human rights law is extremely limited.

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