



ADACAS

A D V O C A C Y

Free and Equal: **An Australian Conversation** **about Human Rights**

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Table of Contents

1.	About ADACAS.....	4
2.	Response to Free and Equal Issues paper	5
3.	Priorities for federal discrimination law reform	14
4.	A model for positive human rights reform in Australia.....	16
5.	Ensuring effective national accountability for human rights	17
6.	Conclusion	22

1. About ADACAS

The ACT Disability Aged and Carer Advocacy Service (ADACAS) is a human rights focussed organisation, which provides:

- Individual advocacy for and with people with disability, people experiencing mental ill health (or psychosocial disability), older people, and carers.
- Support to people making submissions to the Royal Commission into Aged Care Quality and Safety, and/or the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- Redress Scheme support services to people who are survivors of institutional child sexual abuse and
- NDIS support coordination to a small number of NDIS participants.

ADACAS additionally has a Policy and Projects team which engages in systemic advocacy, delivering projects to embed supported decision making approaches in service systems and exploring practical responses to issues arising through individual advocacy and supported decision making.

ADACAS staff work with individuals who are “falling through the cracks” in current service systems, and facing barriers to their rights being upheld, and to an experience of equitable access to services. ADACAS offers issues-based advocacy, and the topics of advocacy are multiple and varied, ranging from housing, to access to justice, to psychiatric treatment order hearings, to quality of service issues, to child protection processes, to restrictive practice/ restraint/ seclusion, to substitute decision-making, to aged care service issues, to NDIS and NDIS appeals etc.

ADACAS is based in Canberra and the ACT and has been providing individual advocacy in this region for 28 years. ADACAS has also recently commenced providing free advocacy and information to people with disability in parts of NSW: specifically, in set areas of Shoalhaven, the Eurobodalla Hinterland, Batemans Bay, Broulee – Tomakin, Moruya – Tuross Head.

ADACAS acknowledges the traditional owners of the various lands on which we work: the Ngunnawal communities for our work in the Canberra area, the peoples from Tharawal and Yuin communities for our work across on the South Coast), and pay our respects to their Elders, and to all Aboriginal and Torres Strait Islanders in our communities.

2. Response to Free and Equal Issues paper

1. What human rights matter to you?

As a human rights focused organisation, working with people who are all too often experiencing breaches of their human rights, entrenched disadvantage and inequitable access to services, in our opinion all of the rights listed in the issues paper are important and matter whether they are categorised with the Guiding principles, the Economic, Social and Cultural Rights or within Civil and Political Rights (or in other International human rights conventions such as the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)).

2. How should human rights be protected in Australia

To protect human rights, a combination of approaches are needed:

- In order for people to be able to protect human rights, there must firstly be an understanding of what human rights are, and an acceptance of and identification with the concepts. To assist with achieving this, it is imperative that there be ongoing education about human rights at schools, in vocational and tertiary education settings, in workplaces, and across all areas of the community.
- As much as possible, the upholding of rights needs to be embedded within the ways that policies and processes and systems and organisations and society works.
- Given that the upholding of human rights is an ongoing process, there needs to be a shared responsibility for and accountability to the upholding human rights between individuals, service providers, institutions, businesses, community and government.
- Human rights protections need to specifically be included in legislation. Whilst the ACT has a Human Rights Act, ADACAS supports the call for a Bill of Rights.
- Complaint and redress processes must be available to those who have experienced injustice/breaches of human rights. Redress processes involve the recognition of and compensation for injustice. We refer to commentary on restorative practice as outlined later throughout this paper.
- There must be leadership from government, businesses, community organisations and government, however it is also imperative that co-design occurs in relation to laws, policies, programs and systems (i.e. that there is full and active participation in the processes and completed design of any policy/procedure/program/law/system, by members of the groups who might be affected by that policy/procedure/program/law/system, thus embedding the principle: “Nothing about us without us”)
- Continued investment in community development and community leadership around human rights.

- Adequate funding for services and supports Social security needs to be set at appropriate levels. There needs to be adequate funding to enable anyone who needs to access legal representation to be able to do so. There also needs to be sufficient funding for refuges, for public housing, for mental health support programs for disability employment programs, for older people etc.
- Self-determination: principles supporting the self-determination and increased recognition of Aboriginal and Torres Strait Islander populations must occur.
- Strategic consideration and management of the perception of human rights and the sense of ownership that people have over concepts of human rights. Ongoing communications / public relations / advertising campaigns.

3. What are the barriers to the protection of human rights in Australia?

The exact barriers to the protection of human rights in Australia vary markedly depending on the specific rights being discussed and the situation/s of the people involved/affected. The interplay that can occur between multiple barriers can have an extra devastating impact.

Types of barriers can include one or more of the following, amongst others:

- Legislative barriers, including the lack of an Australian Bill of Rights
- Knowledge/educative barriers, e.g. a lack of knowledge or information about human rights and how to uphold them, misinformation or ignorance about various topics;
- Financial/economic barriers, either for individuals, for organisations or for systems.
- Organisational, time or system based barriers:
 - *“This just isn’t my priority, I don’t have time to help you” from a nurse to a patient with an intellectual disability who needed information presented differently in relation to a proposed procedure,*
- Attitudinal barriers, both those based in fear and stigma as well as other attitudes:
 - *From residential aged care staff to a resident in an aged care facility: “Yes we appreciate that you want to leave the residential aged care facility to go to the bank, and that due to your health and mobility that you need a support person to go with you. We recognise that your hearing issues mean you can’t hear to talk with the bank staff or others by phone, and that the bank staff won’t set up internet banking for you unless you go and see them in person. We know you do not have family or friends or support services who can help, and that you are willing to pay us to go with you – but it is just not our job to go with you or to arrange someone to go. Sorry. You’ll have to find another way.”*
- Experiential barriers, derived from a lack of experience in upholding human rights;

- Lack of political will to commit to a robust rights framework for Australian citizens;
- Apathy/cynicism or disagreement about the concepts and value of respecting, promoting and upholding human rights for all;
- Barriers arising from the speed of change in technology and human interactions;
- The trauma/grief cost for individuals of seeking justice:
 - From a client to an advocate: “I know you want there to be criminal charges against him for hurting me – but I tried that once before and it didn’t work. I can’t put myself through that again – I wouldn’t survive it”;*
- Other systemic, structural or policy/procedural barriers

The impacts of some of these barriers can be exacerbated by the way that particular topics are framed in public discourse, especially if people in prominent positions or with a media or other platform, are fanning the flames of ignorance, misinformation or fear. Any or all of the above list can affect whether organisations, systems or governments are responsive to the needs of the community and acting in line with best practice.

4. How should the government address the situation where there is conflict between different people’s rights?

There need to be models outlined to lead through a transparent and equitably accessible process of decision-making that balances rights, whilst prioritising outcomes that are just, and the prevention of harm to the people whose rights are being balanced. These models need to be able to be tailored to individual circumstances. There may sometimes need to be mediation, conciliation and/or legal processes available for people whose rights are intersecting, and supported decision making support available for individuals or organisations when needed to make processes equitable.

5. What should happen if someone’s human rights are not respected?

There should be adequate opportunity for redress and, if applicable and wanted, compensation. Additionally, there should be education for the person/organisation/system that violated someone’s rights, and systemic change to seek to embed human rights approaches, and ensure that human rights violations are not repeated.

6. What can the community do to protect human rights? How should the government support this?

Communities and individuals can

- Listen to people who have had their human rights breached, seek to understand the impacts, and to support them.
- Learn about human rights and learn the skills involved in standing up for themselves and how to stand up for others as needed, in a way that supports the decision-making of the individual concerned and upholds human rights and equitable experiences of systems and processes.

- Question community organisations, businesses, and government about human rights and the impacts of proposed policies or practices, and seek to exert influence in ways that are supportive of rights being upheld, including by taking their business dollars elsewhere if they are unhappy with the actions of a particular business in upholding human rights.
- Take proactive action to seek to embed human rights principles in the ways that community organisations, educational institutions, businesses, workplaces and government operate.
- Encourage the development of critical thinking and analysis skills
- Individual community members can also lobby, protest and seek to influence the government of the day.
- For those for whom it is financially feasible - individuals and businesses can contribute to philanthropy in support of civil society organisations and systemic advocacy initiatives.

In terms of the role of government in supporting the community to protect human rights, we encourage the following actions:

- Make human rights and advocacy skills education initiatives more readily available in schools, vocational and tertiary education, and in employment and community settings.
- Make resources available to assist and encourage individuals and organisations seeking to embed human rights approaches in their education, community or business setting or workplace.
- Conduct an ongoing and positive education campaign about human rights, structured in a way that is designed to engender a sense of connectedness with the concept of human rights as a shared approach for all people across the political spectrum and no matter their political views.
- Introduce national human rights legislation to make it clearer to the community the rights that they have and the processes that occur when rights need to be balanced.
- Encourage all businesses and institutions to embed concepts of corporate social responsibility and to report publicly on a triple bottom line:
 - Economic impacts and outcomes,
 - Social impacts and outcomes and
 - Environmental incomes and outcomes
- Increase funding to community organisations that take a human rights approach, such as systemic and individual human rights advocacy agencies, to work even more closely together with people with lived experience, community organisations, businesses and government to seek address the implementation gap between the principles and theories of human rights and the experience of rights not being upheld.
- Fund co-design processes with groups of individuals whose rights are not being upheld, with community, business and government organisations working directly with them, to establish meaningful pathways forward, and commit to funding these pathways. Note that

groups and individuals participating in such processes must be financially recompensed for the lived experience expertise that they bring to such a process.

- Increase the funding to Legal Aid organisations to a level commensurate with need so that any vulnerable person in need of legal advice or representation can access sufficient legal advice and representation to assist in having their rights upheld.
- Increase the funding to individual non-legal advocacy organisations, such as those providing advocacy support to people with mental ill health, or disability, or to older people or to carers and to others from communities who experience identity-related discrimination to a level commensurate with need such that any eligible person in need of individual advocacy support can access it. Groups who experience identity related discrimination include but are not limited to) people who identify with one or more of the following: as members of Aboriginal and Torres Strait Islander communities, as being from a culturally and linguistically diverse background, as one or more of LGBTQIA plus (Lesbian, gay, bisexual, transgender, queer, intersex, asexual plus) etc.
- Provide continued and increased funding and support for Aboriginal controlled community organisations.
- Fund universities to conduct research and gather evidence and data on situations where rights are not being upheld, and what would assist in preventing breaches of human rights from occurring, and in resolving systemic and organisational issues.
- Create and implement national plans that are strategic, aspirational and actionable to address human rights issues.
- Continue to call Royal Commissions into pressing issues.
- Provide positive leadership and work with communities to seek to resolve social issues.

7. How should individuals, businesses, community organisations and others be encouraged and supported to meet their responsibility to respect human rights?

Governments should provide on-going information campaigns about what individual rights are, and what businesses and community organizations' responsibilities and rights are. There needs to be continued efforts toward promoting and explaining Human Rights law. Targeted promotions to different sectors, e.g. Business responsibilities through Business Council Forums etc. Individuals, businesses, community organizations must know explicitly what their rights and responsibilities are.

Targeted and applied education within schools and to young people early on about Human Rights and how they are applied, so that children grow up with clear understandings about their rights and the rights of others, an approach which will have an impacts in workplaces, communities of the future.

Develop and provide further resources/information to assist individuals, businesses, community organisations and others to embed human rights approaches in all instances where it would be appropriate.

We recommend also the careful exploration of a range of possible extrinsic incentives, while emphasising the need for care with exploration of such approaches as we are conscious of the need to avoid unintended negative consequences, and also to manage risks that the introduction of any such approaches could become politicised and induce unwanted backlashes against human rights initiatives.

8. What should the Australian Human Rights Commission and the government do to educate people about human Rights?

Eleanor Roosevelt stated that Human Rights '*carry no weight unless the people know them, unless the people understand them, unless the people demand that they be lived*'¹. Given this, it is important to:

- Embed applied information about human rights at multiple levels in the education system, and also in community, business and workplace settings.
- Conduct on-going explanatory and future-oriented focused education campaigns e.g. What are Human Rights? Where did they come from? Why are they important? Programs could be constructed speaking to the historical basis of human rights and likely or desired future direction. These programs would place human rights in context for the consumer or individual and would be accessible through already existing communication mediums. Any such programs would need to take account of how these programs would be received.
- There should be an additional set of targeted human rights education approaches for individuals whose rights are not currently being upheld especially those who are experiencing entrenched disadvantage. The purpose of these education approaches would be for individuals to have more information about what they can and should expect in the delivery of their rights. This includes awareness of legislative parameters, awareness of government channels to address breaches of human rights, and the nature of the advocacy support available to help people have their rights addressed. In offering this information/education, it should be clear that the responsibility to change the system to be more responsive rests predominantly with the people with the power to change it. Note – this education must be accompanied by funding that will help rectify the situations in which rights are not being upheld. It is also the role and responsibility of government to take co-design approaches: to listen to the most marginalised, understand their requirements for learning, and fund them to lead the design of the way in which they communicate issues of rights which are of most concern to them.

We acknowledge that human rights approaches largely arose from countries which ascribe to individualistic views of the world and that human rights approaches may not resonate equally with people who identify more strongly with collectivist views of the world or experiences or hold other contrasting

¹ Australian Human Rights Commission (2019), Free and Equal: an Australian conversation on human rights: accessed via <https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-australian-conversation-human-rights-2019> in November 2019.

views. It is imperative that there be thorough consideration of the unintended negative impacts of introducing human-rights-based legislation and policies in addition to intended positive impacts.

Information alone is unlikely to be sufficient to change the views of those who do not consider human rights approaches worthwhile or worth supporting. We ask also whether the Free and Equal conversations have managed thus far to adequately engage with and gain input from people who are critical of and disagree with the premises of current human rights approaches: engagement beyond potential echo chambers. We ask about the insights that these engagements have brought.

We encourage active and continued outreach to, engagement with and learning from people who critique human rights approaches/ methodologies/hold alternative views, noting that active engagement with dissenting views could strengthen and alter the approaches that the Human Rights Commission might take. We envisage that active outreach would also be valuable. This might involve reaching out to people who might otherwise find it more difficult to contribute by arranging interpreters and/or connection with rural or remote communities.

We seek added information about the populations for whom human rights approaches and worldviews do not resonate, and ask what new areas of research need to occur to further inform the future of human rights' discourses and paradigms such that there is continued learning from diverse views and such that the outcomes/implementation strategies are the stronger for having considered and responded to robust critique.

9. What actions are needed to ensure that the government meets its obligation to fulfil human rights – for example, in addressing long standing inequalities in the community?

At present - as has been outlined in the Free and Equal discussion papers: there are a combination of structures, focuses and approaches which promote and seek to protect Australia's obligation to fulfil human rights. Despite continued and ongoing effort from many, however, at the present time, the available mechanisms, and/or the combined impact of them, are insufficient to ensure that human rights are being upheld in a consistent, transparent and equitable way.

As such – as part of a range of responses: the Australian government should be ensuring that Australia's international human rights obligations are being reflected in Australian domestic law (this could occur via the introduction of an Australian Bill of Rights). Obligations include but are not limited to those agreed to according to: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT), the Convention on the Elimination of All

Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD). The Sustainable Development Goals is an example of another commitment that could be operationalised by inclusion within domestic laws. Australia also needs to support a United Nations Convention on the Rights of Older Persons.

In terms of other actions that are needed to ensure that the government meets its' obligations to meet human rights: at the present time - some primary factors that could serve to safeguard human rights are missing:

To progress human rights agendas, it is imperative that a sense of ownership over concepts of human rights is developed throughout the entire community: an understanding that human rights belong to all of us and should be respected, promoted, protected and upheld accordingly.

Suggested actions:

- Generate and maintain a sense of ownership of the concepts of human rights across the entire Australian community. This might mean: public campaigns, improved education in schools, communities, workplaces etc.
- Add political pressure, in prelude to a national human rights bill. Having a community that is more informed about and attuned to human rights helps to keep politicians and political parties accountable.

Recognise that certain structures can be conducive to improved human rights. Ensure that:

- Civil society organisations are valued and enabled to speak up freely without concerns that speaking up result in threats of funding cuts or of charity status being removed.
- Public servants are able to give frank and fearless advice to the government of the day
- Research/evidence based approaches are implemented

10. How should we measure progress in respecting, protecting and fulfilling human rights?

Due to the breadth and complexity of concepts of human rights, we envisage that there would need to be a broad array of /combinations of measures needed.

Measures should adequately measure and capture the impacts for people who are the most vulnerable: those that the Productivity Commission would describe as people experiencing long-term entrenched disadvantage² and those who are “falling through system gaps” in terms of not having their rights

² Productivity Commission (2018), *Rising Inequality: a Stocktake of the Evidence*, accessed via: <https://www.pc.gov.au/research/completed/rising-inequality> in November 2019.

upheld. Measures could be looking at levels of inequality and whether people have access to adequate standard of living etc.

Measures might also take account of: rates of homelessness, direct feedback from mental health consumers / people with disability / carers, increased health, wellbeing and lifespans for Aboriginal and Torres Strait Islanders, improved policy/practice with regards to people seeking asylum/ refugees etc.

It is important that measures be multidimensional and that there is adequate consideration of impacts on a human level for individuals and groups - the amount of trauma generated or avoided; the levels of distress/ grief generated or avoided; whether people with disability or mental ill health have had access to support if needed to enable equitable access to processes and systems.

The reports that Australia makes to the United Nations in relation to how well Australia is meeting or not meeting our international obligations should be considered, along with reports from civil society organisations within and outside of Australia.

11. How should we hold government to account for its actions in protecting human rights?

One of the best ways would be to have a national (constitutionally enshrined) Bill of rights, and also by strengthening existing Commonwealth agencies, such as AHRC and Ombudsman, to have powers that enable oversight and enforcement of rights.

It is additionally important to generate a sense of ownership across the community about human rights concepts and processes: with the expectation that government will then be being held to account by voters, organisations, businesses, in addition to human rights activists and statutory bodies.

Additional approaches that are important:

- Individual and Systemic advocacy
- Lobbying
- Media
- Analyse and find ways to counter tactics that are used to excuse or avoid commentary on human rights abuses and educate the community about how to respond
- Establish strategies to counter specific tactics that are causing harm: de-personalisation, blaming the victim, dividing and separating responses to human rights topics, weaponising fear tactics, exploiting ignorance, apathy or cynicism etc.
- Work together with media, businesses and civil society organisations to change the political agendas
- Find pro-active ways to step in in advance of legislation that might be used to curtail human rights.

12. Are there other issues in which you wish to comment?

We highlight the importance of co-design and co-implementation: working directly with people with lived experience whether one or more of

homelessness, child protection processes, disability, mental ill health, family carer status, discrimination, older person etc.

3. Priorities for federal discrimination law reform

1. Do you agree that the above principles should guide discrimination law reform? Are there other principles that should be identified?

ADACAS agrees that the principles: clear, consistent, comprehensive, intersectional, remedial, accessible and preventative should guide discrimination law reform. We strongly agree that discrimination law should be accompanied by other protections and mechanisms to promote equality and respect for human rights.

2. What are the key factors relevant to the need for federal discrimination law reform? Please provide any comments on the commission's observations in the six dot points above?

ADACAS absolutely agrees with the reasons articulated as to why reform is needed.

3. Are there other major challenges that exist with federal discrimination law that require reform?

We do not have additional comments to make at this stage, but would welcome opportunity to be involved in further conversations as they arise.

4. What, if any, changes to existing protected attributes are required?

ADACAS endorses the need for improved protection for carers who experience discrimination, and also the need for volunteers and interns and employees of state government to be consistently protected. Given that it disproportionately affects vulnerable populations, we agree that irrelevant criminal record should also be a fully protected attribute under federal discrimination law.

5. What, if any, new protected attributes should be priorities?

ADACAS agrees that a new protected attribute on the grounds of thought, conscience or religion should be added. ADACAS also recommends that federal discrimination legislation incorporate the attributes which are currently covered in the Discrimination ACT (1991) of the ACT – accommodation status and subjection to domestic or family violence. We would encourage all three of these attributes to be prioritised.

6. What are your views about the Commission's proposed process for reviewing all permanent exemptions under federal discrimination law?

ADACAS agrees with the proposed review process.

7. Are there particular permanent exemptions that warrant particular scrutiny? Given the especial vulnerability and life experiences of many people with disability, ADACAS considers that the views of people with disability and mental ill health would need to be carefully considered if it is proposed that there be any changes to the level of control that people with disability have in relation to the people that come into their home and offer care: most of our clients with disability and/or mental ill health are seeking added as opposed to less control over who offers their care/ who comes into their home. E.g. It is not unusual for there to be requests for staff of the same gender especially experienced abuse or violence from a person of a different gender. We acknowledge this as an area of competing rights, and we encourage careful consideration accordingly.

8. How can existing compliance measures under federal discrimination law be improved?

ADACAS agrees with the suggestion in the Free and Equal discussion paper on discrimination, that any reform of federal discrimination law should involve the introduction of additional measures that can assist people and organisations to understand their responsibilities under the law and to provide increased certainty to them when seeking to comply.

9. What additional compliance measures would assist in providing greater certainty and compliance with federal discrimination law?

ADACAS supports the position of the Australian Human Rights Commission in the suggestion that the following should be introduced:

- voluntary audits to assess compliance with human rights and federal discrimination laws,
- a general inquiry function which allows for inquiry into issues of systemic discrimination and
- positive duties which require proactive measures to eliminate discrimination and harassment.

10. What form should a positive duty take under federal discrimination law and to whom should it apply?

ADACAS agrees that there should be a positive duty to require proactive measures to eliminate unlawful discrimination, harassment and to advance equality should occur.

We do not have a comment at this stage as to what form it should take: although would welcome further involvement in discussions on this topic at a later stage when potential options are being considered.

11. What, if any, reforms should be introduced to the complaint-handling process to ensure access to justice?

Support for decision-making should be more readily available to people who need it to enable equitable access to the complaint-handling processes.

12. What, if any, reforms should be introduced to ensure access to justice at the court stage of the complaints process?

Individual non-legal advocacy and also legal representation must be made more widely available to assist complainants as needed.

13. Is there a need to expand protections relating to harassment and vilification on the basis of any protected attributes?

Yes

14. Are there other issues that you consider should be a priority for discrimination law reform? If so, please describe the issue and your thoughts on proposed solutions.

At the present time, people who are being discriminated against will frequently opt not to lodge discrimination complaints. This can be for a variety of reasons including: fear of reprisal, or the impact of the complaint on relationships in the workplace, or education setting, or community).

We would encourage consideration of initiatives (such as positive duties and general inquiries and more) to promote the analysis of policy/procedure/practice and promote positive change/ discrimination being addressed without specific affected individuals needing to make a complaint about their specific circumstances, such that it is possible to examine topics that individuals might not feel able to raise:

- Could there be structural discrimination whether direct or indirect that is adversely affecting the number of women entering politics- if so – what policies/practices need to change?
 - What updates are needed to the sex discrimination act to ensure that men who wish to take parental leave are encouraged to do so?
- Etc.

4. A model for positive human rights reform in Australia

1. Do you consider the options proposed are the most important reforms that could be undertaken to better protect human rights?

Yes: although we reiterate the need to

2. Do you have comments about how the options identified might work in practice?

Achieving passage of a strong and comprehensive Human Rights bill is important and worth the extensive effort it is likely to take. There is a growing body of literature critiquing human rights agendas: it is imperative that there is critical engagement with these critiques with a view to ensuring a more robust and useful paradigm with which to proceed.

Whilst ADACAS would prefer a robust constitutional amendment due to protections offered under the constitution being more secure, we are supportive still of the Australian Human Rights Commission's position in support of an Australian Human Rights Act.

5. Ensuring effective national accountability for human rights

1. How should Australia set national priorities on human rights? What is the evidentiary basis required to ensure such decision-making is robust and what does a participatory decision-making model look like?

In seeking to reach national priorities in terms of human rights, our views:

- The voices of the people most affected must be and remain central to any priority criteria/prioritisation exercise. People who experience entrenched disadvantage should be included as part of a prioritising exercise, and processes must involve genuine co-design. Carers/families, advocates and those responsible for carrying out the priorities must also be involved.
- Whilst acknowledging that efforts to rank impact can be subjective, we contend that priority should be given to issues where the individuals whose rights are being breached are experiencing the most harm and where the long term impacts are greatest. Harm should be defined to include psychological, emotional or physical harm.
- Especial attention should be paid to situations where people are experiencing multiple simultaneous breaches of rights resulting in compounding impacts. *For example: a person with disability forced to leave home to escape family violence, who then finds themselves homeless and experiencing very poor mental health*
- National priorities must be planned and designed for intersectionality and responses must be able to be tailored and individualised, and connected together to assist a person experiencing multiple breaches of rights simultaneously.
- There is extensive literature, both national and international, on human rights that should inform the approaches to setting national priorities.
- There must be careful consideration of the theoretical underpinnings of frameworks designed to outline, implement, measure and monitor human rights.
- Both proactive and reactive mechanisms are needed to respond to the issues being experienced by individuals and communities.

It is imperative also that there is a robust and critical engagement with critiques of concepts/frameworks/theoretical underpinnings of human rights to ensure that power relations are adequately accounted for, and that any human rights instruments developed are supportive of pluralist democracy.

In terms of participatory decision making models: we encourage:

- Different ways and opportunities for people to respond and meaningfully participate (e.g. surveys, in person, over phone)
- Having voices represented (multiple from different and intersecting communities- e.g. not just one person with disability, one woman, one indigenous Australian etc.)

- Providing all support that is needed for people to fully participate (including decision-making support if required)
- Involving the people who are impacted at the beginning and be guided by them rather than just seeking feedback on a system/solution that has already been designed, and where approval only is being sought.
- Reaching out to those who cannot or do not actively participate due to structural/societal barriers. As a society, we are aware of the groups that are disenfranchised: it is imperative to find suitable and sensitive ways to reach out to people in these situations and to find ways to support their meaningful participation. It is also important to provide feedback to individuals and communities who are engaged as to what was gained as a result of their participation in the process.
- Asking questions that invite people to dream for a better future and not think within the constraints of how things usually function: actively engage with people's ideas (do not dismiss things out of hand if they might seem impossible in the current context – are there aspects that could still be implemented?)
- Implementation of restorative practice principles, such as those trialled in Hull, the world's first restorative city and outlined at: <https://www.iirp.edu/news/world-s-first-restorative-city-hull-uk-improves-outcomes-of-all-interventions-with-young-people-saves-resources>

2. How do you measure actions / outputs as well as outcomes in human rights protection? What sort of indicators, targets and benchmarks are required to measure progress in human rights protection and violations over time?

Given the breadth and range of human rights issues, there must necessarily be also a series and breadth of indicators, targets and benchmarks. Some of the indicators will be quantitative such as the numbers of people experiencing homelessness, extent to which people with a disability are over-represented within the justice and court systems, the extent of health inequalities between Aboriginal and non-Aboriginal communities, etc. We would also expect indicators in a variety of areas of public life relating to education, employment, health and health care, the justice systems, food and water security etc. The same indicators which demonstrate existing issues, may be able to show progress (reduction in numbers of people homeless etc.). It is imperative that a combination of both quantitative and qualitative measures be considered.

We ask also that extra attention be paid to topics where the data that is available/reporting mechanisms may be being affected by topics such as shame, and stigma and discrimination (for example: attitudes to family violence might mean that reports made are not reflective of the extent of the issue that is occurring in the community), and the extent to which support is required.

An initial tasks could be to ask government, stakeholders, people whose rights are being breached, family/carers etc. to use existing lived experience and systemic knowledge to identify existing system gaps and barriers and to use literature, existing data and research to generate solutions accordingly.

Given the extent to which experiences of human rights abuses can be intersectional and interrelate, we encourage the development of more nuanced evaluation systems which are able to recognise and respond to complexity (to be able to ascertain when perhaps a housing intervention has positive impacts on mental health hospitalisation rates). We emphasise however the need to act with the extensive data that is already known whilst planning for any additionally needed measures/indicators/mechanisms.

3. What mechanisms could be utilised to ensure a proactive, effective approach to decision making about human rights? Different approaches might include a National Action Plan on Human Rights; indicator frameworks tracking progress on human rights; other national frameworks on a thematic basis (e.g. child protection; violence against women; women's economic inequality etc).

We consider all of these approaches could be useful in seeking to ensure proactive and effective approaches to decision making about human rights. We re-iterate the need to ensure that all thematic responses each compulsorily take account of intersectionality, and of the need for active and ongoing effort to ensure that actions do not become siloed thematically.

We endorse the feedback within the 15 August 2019 Accountability workshop summary, referenced in the Free and Equal Discussion paper on ensuring national accountability for human rights.

4. What lessons can we take from existing national frameworks and approaches to discrete, thematic social policy issues? •

Some brief thoughts:

- From the implementation of the NDIS, it is imperative that we learn that market mechanisms alone are unable to respond adequately to the needs of vulnerable populations, and that a variety of approaches, including government regulation are needed.
- Further lessons from the transition to the NDIS are outlined in the Mental Health Community Coalition publication: "When the NDIS came to the ACT: A story of Hope and Disruption in the Mental Health Sector"³.
- From the Disability Strategy 2010-2020, we must learn that: Implementation must be explicitly planned for, and funded.

³ Mental Health Community Coalition of the ACT (2008), *When the NDIS came to the ACT: A story of Hope and Disruption in the Mental Health Sector*, accessed online in November 2019 via: https://static.wixstatic.com/uqdl672a33_7ac3cd4b1e774808b30258e0fb94cfe6.pdf

- From many initiatives: that intersectionality must be expected and explicitly planned for: that responding issue by issue is not as effective as responses that expect and cater appropriately and responsively to complexity, that implementation has to be adequately planned for and funded, and that action plans must involve action (not be a list of what is currently already occurring), and must be the correct balance between achievable and aspirational.

5. Would an Australian Human Rights Act make implementing, measuring and monitoring human rights easier? Is compliance with human rights best measured against legal standards, such as in an Australian Human Rights Act?

Yes. An Australian Human Rights Act could make implementing, measuring and monitoring human rights easier. However, it must be embedded within the Constitution to protect against it from being easily amended by the Government of the day to alleviate them of their obligations.

An Australian Human Rights Act could conceivably also bring risks, as concepts of human rights have been used at times to seek to legitimise humanitarian or military intervention (including in non-western cultures or other situations when different frameworks/conceptions of rights more suitable to the context, would have been more usefully applied). There is a risk that an Australian Human Rights Act could be used to justify further ‘interventions’ in Indigenous communities in Australia. The Bill must be sensitive to this risk, including by acknowledging Aboriginal and Torres Strait Islander Australians’ rights to self-governance.

As outlined in the Free and Equal papers: Australian citizens are currently reliant on aspects of administrative law and judicial discretion to protect many rights: and the coverage is insufficient. Consequently: it is envisaged that an Australian Human Rights Act would increase the protections available.

An Australian Human Rights Act would need to be accompanied by appropriate mechanisms of redress to ensure accountability. One option is to legislate for (minimum) tortious liability where a breach of the Act has occurred by the Government. Civil and criminal liability for corporate involvement in human rights abuses may also be legislated.

Any liability provisions will need careful consideration of a range of issues, including whether the Government can be sued for torts committed by employees. Australia could look internationally to other jurisdictions for guidance on how to deal with these questions.

It is noted that an Australian Human Rights Act could also be applied in a prejudicial manner, even where it has legislative accountability mechanisms. The application of the Act may be influenced by individual prejudices which manifest in the assessments of credibility of witnesses, the composition of

juries and the Bench, and in discrepancies in damages awarded. These issues are widely noted and require legal and non-legal responses.

Given this – it is necessary to introduce innovative mechanisms outside of and beyond traditional accountability mechanisms. This is because an adversarial legal system which operates on principles of punishment and retribution is not necessarily the most appropriate mechanism for deciding whether there has been a breach of human rights. The adversarial system can (re)traumatise individuals and trap people in destructive cycles of violence, power and punishment.

These values are not consistent with a human-rights based approach to governance. Consequently, Australia's framework for human rights must be innovative in providing for alternative accountability, decision making and dispute resolution mechanisms, and for fostering new avenues of engagement between the State, citizens and non-citizens.

A potential option is national government engagement in restorative practice in situations where the State breaches the Human Rights Act. "The term 'Restorative Practices' was coined to summarise all the processes originally developed to deal with an event after the fact- to repair harm and bring resolution to victims and offenders in crimes and anti-social behaviour for example."⁴ The benefits of restorative approaches include the repair of the relationship between parties. In the context of State-Citizen relations the benefits would include repairing relationships between the citizen and the State, and the facilitation of participation in present and future government decision-making.

6. What data sources should be relied on to measure human rights compliance? How is qualitative data best presented, and in a digestible form for the public?

As mentioned earlier – data will need to be a nuanced combination of both qualitative and quantitative. It is also essential to reflect carefully on how data is communicated to different audiences, to ensure that communications engage particular values which foster social justice. Common Cause Research provides useful resources for presenting information to various audiences in a manner which strengthens expressions of concern about social and environmental inequality⁵.

⁴ International Institute for Restorative Practices (2012), *World's First "Restorative City": Hull, UK, Improves Outcomes of All Interventions with Young People, Saves Resources*, accessed online via <https://www.iirp.edu/news/world-s-first-restorative-city-hull-uk-improves-outcomes-of-all-interventions-with-young-people-saves-resources> in November 2019.

⁵ Chilton, Paul et al. (2012) '*Communicating bigger-than-self problems to extrinsically-orientated audiences*' Common Cause Research, accessed in November 2019 via: https://valuesandframes.org/resources/CCF_report_extrinsically_oriented_audiences.pdf

- 7. Should there be a mix of government and independent led monitoring processes? For example, the UK Equality Reporting framework is conducted by the UK human rights institution which is independent of the government?** We agree that a mix of government and independent led monitoring processes are required.

6. Conclusion

We welcome the Australian Human Rights' Commission's Free and Equal: An Australian Conversation on Human Rights, and would welcome further opportunities to engage as needed. May this conversation continue to engage a wide range of stakeholders, especially those who might experience barriers to participation, and those with differing perspectives/understandings of human rights and their impacts.

We hope too that this national conversation generates robust discussion and debate on theories and concepts underpinning human rights; that the knowledge gained from this consultation is galvanising, and leads to improved rights-based cultures, and strong action to improve the promotion, protection and fulfilment of rights for all.