



**CENTRE
FOR LAW
AND SOCIAL
JUSTICE**

3 July 2026

Submission to the Legislative Assembly Committee on Community Services of the NSW Parliament: Inquiry into the *Human Rights Bill 2025*

Members of the Centre for Law and Social Justice at the University of Newcastle thank the Committee on Community Services for conducting this inquiry into human rights protection for NSW.

The Centre for Law and Social Justice pursues research to create a socially just world. The Centre prioritises community engagement, access to justice, educating students for ethical practice, and influencing law reform. Centre research spans multiple fields including human rights, equality, restorative justice, environmental and climate law, and justice systems. Our members engage with communities, governments, legal agencies, and industry across the Hunter region, Australia, the Asia-Pacific, and globally to improve justice systems. We are particularly focused on community engagement, including with children and young people, as evidenced by our track record of convening annual Youth Forums on human rights issues for school students since 2022.

Endorsement of human rights protection under NSW law

The Centre for Law and Social Justice respectfully submits that the Parliament of NSW has a once in decades opportunity to deliver much-needed human rights law reform. The Parliament last inquired into human rights protection at the turn of the century. Since then, three other Australian jurisdictions have passed human rights statutes that provide substantial protections for the rights of their people – the ACT in 2004, Victoria in 2006 and Queensland in 2019. It is clear that NSW is lagging behind and now is the time for the Parliament to not only deliver a human rights law for NSW but to achieve best practice in relation to other Australian jurisdictions and internationally.

The Centre for Law and Social Justice recommends the enactment of a comprehensive Human Rights Act in NSW, similar to those currently operating in the ACT, Victoria and Queensland. These statutes protect the human rights and dignity of residents, build the capacity of governments to protect human rights and prevent breaches, and preserve parliamentary sovereignty. This reform would align with recommendations from the

Australian Human Rights Commission¹ and the Federal Parliamentary Joint Committee on Human Rights.² The operation of human rights frameworks in Victoria, the ACT and Queensland has demonstrated that statutory Human Rights Acts improve legislative scrutiny, administrative decision-making and public sector accountability by embedding human rights considerations into the exercise of public power while preserving parliamentary sovereignty under the dialogue model. The Australian Human Rights Commission has stated that effective human rights protection should not depend on a person's state or territory of residence.³ While such protection is jurisdiction dependent, however, we submit that NSW should join the other rights-protecting jurisdictions in Australia by passing a Human Rights Act.

There is strong community support for legislative human rights protection, as evidenced in an Amnesty International survey showing that 76% of people in NSW back this reform.⁴ Evidence from other jurisdictions with human rights statutes demonstrates clear community benefits and the growth of a preventive human rights culture in which rights violations are sometimes avoided because of legal protections working as they should.⁵ For example, the *Human Rights Act 2019* (Qld) provided the legal framework for Tenants Queensland to assist their client in avoiding eviction to homelessness when she was experiencing domestic violence. The *Human Rights Act 2004* (ACT) served to preserve the right of access to public school education for children seeking asylum.

Why New South Wales needs a Human Rights Act

People in Australia tend to believe that our laws provide stronger protections for our human rights than they actually do. Outside of Queensland, the ACT and Victoria, Australians have very limited legal protections for their rights. Rights essential to living a full and autonomous life in our society – like the right to education and the right to health – are not adequately protected in law. This means that when people in NSW experience breaches to such rights they have no cause of action. Further, public institutions and decision-makers in NSW do not have adequate frameworks in place to support them to act in rights-protecting ways.

¹ Australian Human Rights Commission, *Revitalising Australia's Commitment to Human Rights: Free and Equal Final Report*, 2023.

² Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, 2024.

³ Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) 9, 12–21. NB the Paper also includes case studies from jurisdictions that have adopted a Human Rights Act to demonstrate how they function to enhance rights protection.

⁴ Amnesty International Australia, 'Three in four Australians support a human rights act: new research' (26 January 2026) <<https://www.amnesty.org.au/three-in-four-australians-support-a-human-rights-act-new-research/>>

⁵ Human Rights Law Centre, '101 cases: How charters of human rights make our lives better' <<https://www.humanrightsact.org.au/101-cases>>

This submission does not attempt to cover all arguments in favour of legislative protection for human rights in NSW. Instead, we note some particular areas for improved human rights protection that relate to the research expertise of our members:

1. Anti-discrimination law and its interaction with human rights law
2. The right to freedom of assembly, association and expression
3. The right to education
4. The rights of LGBTQIA+ people
5. The rights of First Nations Peoples

Anti-discrimination law is reactive, individualistic and complaint-dependent

The foundational structural limitation of anti-discrimination law is well-documented. Australian anti-discrimination law is constructed around an individual complaints-based model in which the law is enforced by individual victims who lodge complaints at a statutory equality commission, with the commission's role limited to receiving, investigating and attempting to resolve complaints through ADR, generally unable to advise or assist the complainant and required to remain neutral.⁶ The consequences of this model are significant. Very few complaints reach the courts each year. Where courts award relief, it is predominantly compensation at modest amounts. Discrimination is framed as a one-off isolated event rather than a structural condition, and the non-binding nature of commission recommendations may account for persistently low success rates.⁷ As Thornton argues, anti-discrimination law is inherently limited by its reliance on individual complaints and protected attributes, making it ill-suited to addressing systemic and structural inequalities or broader exercises of public power.⁸

The President of the NSW Bar Association, Dominic Toomey SC, and the President of the Law Society of NSW, Ronan MacSweeney, jointly stated in March 2026 that "protecting human rights cannot be a legislative afterthought" and that "legal protections for human rights in NSW remain unacceptably fragmented and ad hoc" and of "particular concern for the most marginalised and disadvantaged members of our community."⁹ The *Anti-Discrimination Act 1977* (NSW) operates alongside the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth), and *Sex Discrimination Act 1984* (Cth). Together, these statutes comprise Australia's

⁶ See for e.g. Dominique Allen, 'Strategic Enforcement of Anti-Discrimination Law: A New Role for Australia's Equality Commissions' (2010) 36(3) *Monash University Law Review* 103, 103.

⁷ Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction* (Cambridge University Press, , 2017) chs 1, 7.

⁸ See for e.g. Margaret Thornton (2025). Anti-discrimination legislation in Australia: A reckoning. *International Journal of Discrimination and the Law*, 25(4), 388-413.

⁹ Law Society of NSW, 'A Public Inquiry into a NSW Human Rights Act', *Law Society of NSW* (Media Release, 17 March 2026) <<https://www.lawsociety.com.au/publications-and-resources/news-media-releases/public-inquiry-nsw-human-rights-act>>

patchwork anti-discrimination framework as it operates in relation to the residents of NSW. Despite significant overlap, protection remains uneven across jurisdictions because the Commonwealth and state regimes differ in their protected attributes, definitions of discrimination, exceptions, positive duties and enforcement mechanisms.

A Human Rights Act operates on a different logic: it imposes structural, prospective obligations that do not depend on an individual complainant identifying, navigating and sustaining a complaint. Anti-discrimination law is primarily concerned with regulating discriminatory treatment based on protected attributes. A Human Rights Act is concerned with regulating the exercise of public power, requiring rights to be considered whenever government acts, regardless of whether discrimination is alleged. A Human Rights Act for NSW is an important and necessary addition to the human rights protections in our legal system; not an alternative to discrimination law reform, but a complement to it.

The recent Parliamentary Joint Committee on Human Rights recommended that the Commonwealth re-establish Australia's Human Rights Framework, with a federal Human Rights Act as its centrepiece.¹⁰ Importantly, the Committee envisaged the Act as one component of a broader institutional framework embedding human rights into legislation, policy development, parliamentary scrutiny and public administration, rather than as a standalone complaints mechanism. Experience in Victoria, the ACT and Queensland demonstrates that statutory Human Rights Acts improve legislative scrutiny, administrative decision-making and public sector accountability by embedding human rights considerations into the exercise of public power while preserving parliamentary sovereignty under the dialogue model. Reflecting this experience, the Australian Human Rights Commission's *Free and Equal* report recommended a federal Human Rights Act, recognising that effective human rights protection should not depend on a person's state or territory of residence.¹¹

A Human Rights Act is needed in addition to reforming existing discrimination law

The *Anti-Discrimination Act 1977* (NSW) is widely recognised as requiring comprehensive reform. These structural limitations are compounded in NSW by the particular condition of its discrimination legislation. The *Anti-Discrimination Act 1977* (NSW) was groundbreaking when enacted as the first broad discrimination statute in Australia but has not kept pace with nearly half a century of social, legal and

¹⁰ Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, 2024, recommendation 1.

¹¹ Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) 9, 12–21. NB the Paper also includes case studies from jurisdictions that have adopted a Human Rights Act to demonstrate how they function to enhance rights protection.

institutional change. The Government's own referral of the Act to the NSW Law Reform Commission for review acknowledges as much.¹² The Commission's first consultation paper reveals the scale of the problem – the Act contains a complex web of exceptions, protects different attributes under different tests applicable to different duty-holders, and does not prohibit intersectional discrimination.¹³ Indeed, scholars increasingly question whether existing anti-discrimination laws can adequately respond to intersectional discrimination, exposing the limits of an attribute-based framework for addressing complex, overlapping forms of disadvantage.¹⁴ This reinforces the value of a Human Rights Act, which would regulate the exercise of public power rather than relying solely on claims framed by reference to protected attributes.

While the *Anti-Discrimination Act 1977* (NSW) requires significant reform, modernising discrimination law alone cannot address the broader need for comprehensive human rights protection. Given these recognised limitations, we note that the proposed Human Rights Bill utilises the definition of 'discrimination' as currently set out in the *Anti-Discrimination Act 1977* (NSW). The *Anti-Discrimination Act 1977* (NSW) provides protection against discrimination only on a closed list of attributes and does not extend to a number of grounds recognised under international human rights law (including language, religion, political or other opinion, social origin, property, health status and place of residence). It also adopts narrower formulations of some protected grounds, limiting protection to 'homosexuality' rather than sexual orientation, and to 'transgender' rather than gender identity (see further below). We recommend that the proposed Human Rights Bill be amended to include a wider definition of discrimination than that currently embedded in the Bill. The definition adopted should encompass all grounds protected under the *Anti-Discrimination Act 1977* (NSW), all grounds expressly or implicitly recognised under applicable international human rights treaties¹⁵ (including through the interpretation of "other status"), and an "or other status" clause to ensure the provision remains responsive to future developments. The precise formulation of protected grounds and the definition of discrimination should be finalised in light of the outcomes of the current Law Reform Commission review.

¹² NSW Government, "NSW Government Commissions Review of Anti-Discrimination Law" (Media Release, Attorney General, 20 July 2023).

¹³ NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful Conduct* (Consultation Paper No 24, May 2025) <https://lawreform.nsw.gov.au/documents/Current-projects/ada/cp24/ADA_CP24.pdf>

¹⁴ Alysia Blackham and Jeromey Temple, 'Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework' (2020) 43(3) *University of New South Wales Law Journal* 773.

¹⁵ Committee on Economic, Social and Cultural Rights, *General comment No 20: Non-discrimination in economic, social and cultural rights (art 2, para 2 of the International Covenant on Economic, Social and Cultural Rights*, 42nd sess, UN Doc E/C.12/GC/20 (2 July 2009).

Rights to Freedom of Assembly, Association and Expression

As a signatory to the UDR,¹⁶ the ICCPR¹⁷ and the ICESCR,¹⁸ Australia bears obligations to uphold the right to peaceful protest by preserving the right to freedom of assembly, freedom of association and freedom of expression. Regrettably, protestors in NSW have witnessed the incremental curtailment of these democratic freedoms and, without a Human Rights Act at State or Federal level, they have no cause of action to assert their rights. Indeed, in recent years, legal complexities in NSW have made it more difficult for NSW citizens to avoid criminal sanctions for engaging in protest activity.¹⁹ Statutory and common law limitations on the right to peaceful protest in NSW disproportionately impact First Nations' Peoples, the LGBTQIA+ community and other marginalized groups. A NSW Human Rights Act should include and protect the freedom to assemble peacefully, to ensure that NSW residents have the same protections as those available to the people of the ACT, Queensland and Victoria. A provision that recognizes Australia's human rights obligation to uphold and protect this fundamental democratic freedom is both necessary and overdue.

Right to education

It is a clear expectation of the people of NSW that all children and young people have a right to public education in primary and secondary schools. Indeed, the *Education Act 1990* (NSW) states that it is based in part on the principle that every child has the right to receive an education. Yet, for the children of NSW, there is no available cause of action under NSW law if their right to education is denied.

We have recent evidence of rights violations in this context. The COVID-19 pandemic response caused significant disruption to students' access to school education in 2020 and 2021. The sudden shift to remote learning for extended periods of time has now been shown to have caused disproportionate negative impacts for students from lower socio-economic backgrounds and students with disabilities.²⁰ Although responses to the pandemic were deeply informed by the important goal of promoting public health, they did not seek sufficient balance between the right to health and the need to ensure the right to education in a time of crisis. Many students suffered as a result but had no legal protection to call on.

¹⁶ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) arts. 19-20.

¹⁷ *International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 21.

¹⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) art 8(1)(a).

¹⁹ For a recent discussion of these complexities, see *Jarrett v State of New South Wales* [2026] NSWCA 62.

²⁰ Centre for Law and Social Justice and Human Rights Law Centre, *The Right to Education in Australia* (2024) <<https://hdl.handle.net/1959.13/1499057>>

A Human Rights Act for NSW would help prevent a similar outcome in future. In situations where rights goals come into conflict – for example when governments are challenged to make difficult decisions that impact the right to health and the right to education – a Human Rights Act offers the supportive framework to enable the best possible balancing of rights protections.

Rights of LGBTQIA+ people

LGBTQIA+ people are particularly vulnerable to human rights abuses, often through violence, harassment and discrimination.²¹ It has been reported that in NSW, LGBTQIA+ people experience high levels of distress and adverse impacts on mental health due to transphobia, discrimination, social stressors and isolation.²² Unfortunately, NSW – once a leader in protecting rights – has fallen behind other jurisdictions and international standards.²³ Since 1977, understanding of the LGBTQIA+ community has increased and more appropriate and rights-recognising terminology has come into common usage, but the law of NSW has not been reformed to comprehensively reflect these important social changes. For instance, in 2018, NSW introduced a new offence of publicly threatening or inciting violence (section 93z of the *Crimes Act 1900* (NSW)), which expanded protections to include sexual orientation, gender identity and intersex status. Yet, the NSW *Anti-Discrimination Act* is yet to be updated to reflect broader terminology than homosexuality, and 93z of the *Crimes Act* has not included ‘sex characteristics’ which is the language preferred by intersex advocates.²⁴ Legislating a Human Rights Act (with the inclusion of an “or other status” clause) could ensure NSW offers protections in line with Australia’s international human rights obligations, such as the right not to be discriminated against on any ground.²⁵

²¹ Australian Human Rights Commission, ‘Lesbian, Gay, Bisexual, Trans and Intersex Equality’, *Our Work LGBTQIA+* (Web Page) <<https://humanrights.gov.au/our-work/lgbti/lesbian-gay-bisexual-trans-and-intersex-equality>>; Australian Human Rights Commission, ‘Human Rights and Gay, Lesbian, Bisexual, Transgender and Intersex People’ (Information Sheet) <https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_GLBTI.pdf>.

²² NSW Ministry of Health, *NSW LGBTQIA+ Health Strategy 2022-2027* (2022) 12.

²³ Public Interest Advocacy Centre, *Leader to Laggard: The Case for Modernising the NSW Anti-Discrimination Act* (Report, 6 August 2021) <<https://piac.asn.au/wp-content/uploads/2021/08/PIAC-Leader-to-Laggard-The-case-for-modernising-the-NSW-Anti-Discrimination-Act.pdf>>; Alastair Lawrie, ‘Sydney may be Hosting World Pride but the NSW Anti-Discrimination Act is a Source of Shame’ *The Guardian* (Online, 18 November 2022) <<https://www.theguardian.com/commentisfree/2022/nov/17/sydney-may-be-hosting-worldpride-but-the-nsw-anti-discrimination-act-is-a-source-of-shame>>.

²⁴ Alastair Lawrie, ‘NSW Reforms Vilification Offences’, *Public Interest Advocacy Centre* (Online, 22 June 2018) <<https://piac.asn.au/2018/06/22/nsw-reforms-vilification-offences/>>.

²⁵ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 26.

First Nations Peoples' Rights

First Nations Peoples in Australia are significantly more at risk of human rights violations than people of other ethnicities in Australia.²⁶ Australia has international legal obligations to uphold the rights of First Nations Peoples, including their cultural rights, such as the right to self-determination.²⁷ The Uluru Statement from the Heart, gifted to the Australian community in 2017, continues to offer a pathway for the realisation of these rights, despite the setback from the referendum failure in 2023.²⁸ Victoria (notably one of the three jurisdictions with a Human Rights Act) has made significant progress towards the realisation of First Nations Peoples' human rights through implementing the pillars of truth and treaty.²⁹ NSW is currently conducting initial treaty consultation,³⁰ and the commitment to implementing the pillars of voice, truth and treaty must remain, because implementing a Human Rights Act will not negate the need for broader institutional reforms.

Legislating a Human Rights Act would complement these efforts and progress the systemic protection of First Nations Peoples' cultural rights. This is because a legislated Human Rights Act that includes cultural rights can propel the wider realisation and protection of rights. For instance, recently in Queensland, the *Environmental Protection Act 1994* (QLD) was found to afford complementary protection for cultural rights.³¹ The basis for this finding was the protection offered to cultural rights in section 28 of the *Human Rights Act 2019* (Qld) – that protection required (in this case and others) that the

²⁶ Thalia Kehoe Rowden, 'Aboriginal People and Torres Strait Islanders Suffer Human Rights Violations in Australia', *Human Rights Measurement Initiative* (Article, 19 July 2019) <<https://humanrightsmasurement.org/aboriginal-people-and-torres-strait-islanders-suffer-human-rights-violations-in-australia/>>.

²⁷ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Convention on the Elimination of all Forms of Racial Discrimination*, opened for signature on 21 December 1965, 2106 UNTS 1 (entered into force 4 January 1969); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature on 18 December 1979, 1249 UNTS 1 (entered into force 3 September 1981); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, UN Doc A/Res/61/295 (2007).

²⁸ *Uluru Statement from the Heart* (National Constitutional Convention, 26 May 2017); Josh Butler, 'An idea whose time will come': Megan Davis on the way forward after voice referendum loss' *The Guardian* (Online) (4 October 2024) <<https://www.theguardian.com/australia-news/2024/oct/04/an-idea-whose-time-will-come-megan-davis-on-the-way-forward-after-voice-referendum-loss>>.

²⁹ Yoorrook Justice Commission, 'The True Path Forward Starts Here' <<https://www.yoorrook.org.au/>>; Victorian Government, 'Treaty for Victoria' *First Peoples-State Relations* <<https://www.firstpeoplesrelations.vic.gov.au/treaty>>.

³⁰ ANTAR, 'Treaty in New South Wales' (7 March 2026) <<https://antar.org.au/issues/treaty/states-territories/nsw/>>.

³¹ *Chief Executive, Department of Environment, Science and Innovation v Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd* [2026] QCA 7.

cultural rights of First Peoples must be considered when decisions under other statutes require consideration of legal rights.

NSW should follow the example of other Australian jurisdictions and provide protection for the rights of First Nations Peoples through a Human Rights Act. Alongside cultural rights, a NSW Human Rights Act should protect and promote the right of First Nations Peoples to self-determination. Such protection would attend to the inequities faced by First Nations communities. When marginalised peoples have autonomy and decision-making power over their own lives, solutions can be tailored to their specific contexts, ultimately improving social and health outcomes.³² Given NSW has the largest population of Aboriginal and Torres Strait Islander people in Australia,³³ it is critical that NSW show leadership in this area of human rights reform. NSW has a crucial role to play in ensuring that Australia progresses towards meeting its international human rights obligations to First Nations Peoples.

Protections that should be included in a NSW Human Rights Act

With these examples in mind, and in solidarity with the advocacy of the Human Rights for NSW Alliance and its constituent organisations, the Centre for Law and Social Justice recommends that the NSW Parliament progress towards the passage of a Human Rights Act that protects all the rights included in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. We further recommend special protections for the rights of First Peoples in NSW, children and young people, people with disabilities, older people – including a duty of participation – and protection for a healthy environment. Protections along these lines are included in the *Human Rights Bill 2025* that is currently before Parliament.

Human rights cannot be adequately protected without remedies. The Centre for Law and Social Justice recommends a Human Rights Act for NSW that includes accessible complaints mechanisms for people to take low cost and effective action when their rights are breached. One means of ensuring this would be to establish a NSW Human Rights and Anti-Discrimination Commission (or similar) to combine human rights and equality functions in a single institution. This institution could build on the work of Anti-Discrimination NSW while also modelling from the complaints handling functions of like institutions around Australia.

³² Australian Human Rights Commission, ‘Australian Human Rights Assessment 2026: First Peoples’ <<https://humanrights.gov.au/know-your-rights/understanding-human-rights/Australian-Human-Rights-Assessment-2026/first-peoples>>

³³ Australian Bureau of Statistics, *Cultural diversity: Census 2021* available at <<https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/2021>>.

The Centre for Law and Social Justice thanks the Community Affairs committee for inquiring into human rights protection for NSW. Our members would be happy to expand on this submission at a public hearing should that be desirable.

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