



Australian Human Rights
Framework submission
June 2023



The Ethnic Communities Council of Queensland acknowledges the Aboriginal and Torres Strait Islander peoples of this state and nation. We acknowledge the Traditional Owners of the lands on which we live, learn and work.

We pay our respects to ancestors and Elders past, present and future. We honour Aboriginal and Torres Strait Islander peoples' unique culture and spiritual connection to the land, waters and seas and their contribution to enriching Queensland and Australia's communities.

About the Ethnic Communities Council of Queensland

The Ethnic Communities Council of Queensland (ECCQ) is the peak body representing culturally and linguistically diverse (CALD) communities in Queensland. We have a membership base of over 450 individuals, ethno-specific organisations and multicultural owned businesses. We have been pioneering this work for over 45 years, since 1976.

Our work focuses on strengthening and advocating for the needs of CALD communities throughout Queensland. We do this by building their capacity through the delivery of leadership training, strengthening community associations as well as through the delivery of culturally tailored healthcare programs.

We believe that Australia's systems should allow for every Australian, irrespective of their background, to be able to participate and contribute in all aspects of Australian society. We know that the diversity of our multicultural society is one of Australia's greatest strengths.

For further information on this submission please contact:

Lisa Ward
Chief Executive Officer
07 3844 9166
lisaw@eccq.com.au

Introduction

Australia is a multicultural country, a nation which has been built on migration and in 2020, we were ranked ninth internationally for the percentage of migrants we had, with 7.7 million migrants in our population (29.8%).¹

In “Our Common Bond” the document that shares all the information a person who is to become a citizen needs to know before taking the Australian Citizenship test, it states that:

“All Australians are expected to treat each other with dignity and respect, regardless of their race, country of origin, gender, sexual orientation, marital status, age, disability, heritage, culture, politics, wealth or religion.”

and “Australians value equal opportunity in our society”².

Currently, Australian laws are not ensuring that this occurs for many migrants, refugees and asylum-seeker background people who reside in Australia or those living in Australia on temporary visas. To ensure that all people in Australia can get a ‘fair go’, Ethnic Communities Council Queensland (ECCQ) support the implementation of a Human Rights Act for Australia and adoption of a strengthened Human Rights Framework.

Culturally and linguistically diverse (CALD) people are experiencing breaches to their human rights at a far higher rate than reported. ECCQ held a number of consultations with individuals and groups on this topic and those we consulted and surveyed express a loss of trust in the law and systems in place to protect and support. ECCQ welcome the review into the Human Rights Framework and the proposal which has been developed by the Australian Human Rights Commission (AHRC). This has given hope to vulnerable and marginalised Queenslanders.

We believe a positive future is possible through implementation of a Human Rights Act, inclusive reporting processes and a co-designed lived-experience education and communication strategy. A proactive and preventative Human Rights Act can bring the needed change in the legal norms which shape social and systemic relationships and practices so that culture and attitudes are changed.

Throughout the consultation process which guided the development of this response, ECCQ identified five key messages to respond to the questions posed by the inquiry into Australia’s Human Rights Framework:

¹ Australian Bureau of Statistics. (2021). *Australia's Population by Country of Birth*. ABS. <https://www.abs.gov.au/statistics/people/population/australias-population-country-birth/2021>.

² Australian Government. (2020). *Australian Citizenship: Our Common Bond*. Retrieved 19 June, 2023 from <https://immi.homeaffairs.gov.au/citizenship-subsite/files/our-common-bond-testable.pdf>

1. A Human Rights Act for Australia should be enacted, so that migrants, refugees and asylum-seeker background people, international students and others in Australia on temporary visas are protected
2. The current systems and mechanisms protecting human rights at a federal level are not sufficient to protect all migrant, refugee and asylum-seeker background people
3. ECCQ supports the model proposed by the AHRC for a new Human Rights framework
4. A broad-reaching, layered and robust communication and education strategy should be implemented when the Human Rights Act is confirmed, with targeted sections for multicultural communities
5. The complaints process for alleged breaches of Human Rights needs to be flexible and inclusive to allow for all people, including multicultural communities, to access it.

A Human Rights Act

All those we spoke with throughout our consultation process agreed that a Human Rights Act should be put in place at a federal level in Australia. Those we consulted considered, in agreement with the AHRC proposal, that by implementing a Human Rights Act at a federal level in Australia we could ensure that the rights of all people, especially vulnerable groups, can be protected and that all people who interact with government services and agencies should be able to have their rights protected.

In Canada, having a “Canadian Charter of Rights and Freedoms” within their law has provided redress for migrant health workers who have successfully been able to challenge the breach of their rights, due to their qualifications being unrecognised if obtained from overseas medical colleges without an avenue of demonstrating the equivalency of their qualifications³.

ECCQ recommend that the definitions of the proposed 23 rights be reviewed after consultation with leaders of a wide range of multicultural communities, so that their voices can be included as this legislation is prepared. This will further serve as an education and informative opportunity for the most vulnerable members of our community to be included in a legislative piece that directly impacts them daily. Through our consultations and engagements ECCQ has consistently heard that many people who identify as culturally and linguistically diverse were not aware of all these rights available to them.

Those we consulted supported the 23 rights proposed, particularly as a number of them have experienced a breach of at least one of these rights. By ensuring that these rights are legislated, those who have had their rights breached will have a cause of action they can follow.

³ Breakey, H., Ransome, W., & Sampford, C. (2021). Migrant health professionals’ systemic human rights vulnerabilities. *International migration*, 59(5), 197-215. <https://doi.org/10.1111/imig.12816>

One example is someone who was not allowed their right to health, as multiple medical professionals did not take the individual or their family members seriously when reporting a health concern, causing a long delay in diagnosis and resulting in a lack of appropriate health care received.

Recommendation: That a Human Rights Act be implemented at a federal level covering migrants, refugee and asylum-seeker background people, international students and others in Australian territories on a temporary visa.

Recommendation: That a wide range of multicultural community leaders be consulted regarding definitions of the 23 proposed rights to be included in the Human Rights Act.

Insufficient systems

The current systems in place to protect rights of individuals in Australia leaves gaps, which mean that a large number of migrants, refugees, asylum seekers, international students and those on various temporary working visas do not have their rights sufficiently protected. As there is currently no federal Human Rights Act, there is a lack of accountability or consequence when a person's human rights are breached. The current limitation on the AHRC when processing complaints against Australian government agencies means that complaints which cannot be resolved through conciliation have a limited response and there are no expectations that a resolution is achieved, in particular no avenue to take the complaint to court.⁴ Those who met with ECCQ to discuss the current systems shared their knowledge of many migrants who have had their right to work and work-associated rights breached on a regular basis. They further reported the significant barriers to these people. Some of the barriers include: the complicated system of making a complaint, the limited number of migrants who access unions or other support mechanisms, language barriers and the limited power people feel they have within the current system.

Farbenblum and Berg (2017) researched the various groups of people who are temporary visa holders with work rights in Australia, but lack residence and citizenship. They found that in a survey of more than 4000, 30% reported being paid \$12 or less per hour and 45% paid \$15 or less per hour. Due to court-based remedies being inaccessible for most of these low-wage migrant workers there is extremely limited, if any, opportunity to have these rights restored.⁵ Many of these claims of exploitation of workers fall within the jurisdiction of the Fair Work Ombudsman to respond, however, out of those who completed the survey and knew they were underpaid, less than 3% (62 individuals) contacted the Fair Work Ombudsman.

⁴ Australian Human Rights Commission (2023). *Free and Equal: A National Human Rights Act for Australia*. Retrieved 14 May, 2023 from <https://humanrights.gov.au/human-rights-act-for-australia>

⁵ Farbenblum, B., & Berg, L. (2017). Migrant workers' access to remedy for exploitation in Australia: the role of the national Fair Work Ombudsman. *Australian journal of human rights*, 23(3), 310-331. <https://doi.org/10.1080/1323238X.2017.1392478>

Outside of these, there is a large fear that many migrants hold; that any complaint will impact on their employment or their visa. This fear is sustained as their need for any income is greater than their need to make a complaint. One example of this was shared with us regarding an elderly man who was born in Holland. He had a fall and needed surgery and had mild dementia. After surgery (anaesthetic) he reverted to speaking Dutch. After surgery those providing his health care did not engage interpreters, only requesting family and friends to provide interpreting support. Shortly after this survey this man passed away. This demonstrates the lack of supports within the current systems to ensure people's right to health are being met.

We heard many stories of people from culturally diverse backgrounds who are residing in aged care facilities where they do not provide culturally appropriate foods for those they are caring for. Lack of access to cultural foods not only breaches a person's cultural rights, but impacts on their physical and mental wellbeing⁶.

The significant number of people who arrived in Australia seeking asylum who have lived on back-to-back temporary visas, at times without access to required healthcare, in some cases work and education rights have been unprotected within the current legal system⁷. The indefinite, arbitrary detention of asylum seekers has been recognised as breaching human rights by many worldwide⁸. For many asylum seekers, the current system is not just insufficient, but is causing significant damage to their mental and physical wellbeing⁹.

Recommendation: Ensure supports are embedded in the model for a new system, which includes support for those wanting to submit a complaint and the ability to submit complaints in languages other than English.

Recommendation: Adjust the role of the Australian Human Rights Commission, so that there is accountability on Australian government agencies which breach human rights and accessibility to court in cases where conciliation does not resolve an alleged breach of human rights.

⁶ Wright, K. E., Lucero, J. E., Ferguson, J. K., Granner, M. L., Devereux, P. G., Pearson, J. L., & Crosbie, E. (2021). The impact that cultural food security has on identity and well-being in the second-generation U.S. American minority college students. *Food security*, 13(3), 701-715. <https://doi.org/10.1007/s12571-020-01140-w>

⁷ Zomignani Barboza, J. (2022). Between a rock and a hard place: A human rights assessment of the fate of excluded asylum-seekers and criminal refugees in Australia. *Refugee survey quarterly*, 41(4), 725-745. <https://doi.org/10.1093/rsq/hdac024>

⁸ Sanggaran, J.-P., & Zion, D. (2016). Is Australia engaged in torturing asylum seekers? A cautionary tale for Europe. *Journal of medical ethics*, 42(7), 420-423. <https://doi.org/10.1136/medethics-2015-103326>

⁹ Campbell, E. J., & Steel, E. J. (2015). Mental distress and human rights of asylum seekers. *Journal of public mental health*, 14(2), 43-55. <https://doi.org/10.1108/JPMH-06-2013-0040>

Australian Human Rights Commission proposed model

ECCQ supports the proposed model in the 'Free and Equal' position paper¹⁰ delivered by the AHRC. Some of the key aspects which are included which we agree are essential include:

- The implementation of a Human Rights Act which protects all people within Australia's territory and is applicable to all people without discrimination, including offshore immigration detention centers
- That the federal Human Rights Act be restricted to federal laws and federal public authorities and that the existing Queensland Human Rights Act remain in place
- That regular reports on the progress of this model by the AHRC be delivered to ensure best practice is achieved and the model is reviewed once implemented
- That Human Rights impact statements be required for all new legislation that is being proposed within parliament and any restriction on people's rights be justified
- That public servants be trained to recognize human rights breaches and consider this when developing policies
- That two pathways for complaints include administration review and direct complaints to the AHRC, which can provide conciliation and have the option to continue to the appropriate court if required and
- That any incompatibility of human rights with legislation that is identified through the court be referred by the Attorney General to Parliament for consideration.

A few areas for consideration within the model that ECCQ proposes include accountability for government departments and parliament when alleged breaches have been recognised by the AHRC and the conciliation process identifies remedies.

Individuals who spoke with us and those who completed our survey on breaches of human rights shared the significant emotional impact of these instances and often long-term implications. Words used in our survey to describe the impacts include "distraught", "discouraged" and "I suffer with chronic anxiety including panic attacks, I do not feel safe, and am triggered by any thing that smells, looks, or reminds me of that day, I lost my ability to engage at school". By ensuring that government departments and parliament have a requirement to respond, community members are more likely to engage with the system, feel that they have a voice and be able to reconcile the circumstances they have faced.

Recommendation: That the proposed model put forward by the Australian Human Rights Commission be implemented.

Recommendation: That accountability for government departments and parliament be incorporated into the model.

¹⁰ Australian Human Rights Commission (2023). *Free and Equal: A National Human Rights Act for Australia*. Retrieved 14 May, 2023 from <https://humanrights.gov.au/human-rights-act-for-australia>

Communication and Education strategy

In the implementation phase of this work, there is a need for targeted communications and education sessions, designed for the specific needs of culturally and linguistically diverse communities. ECCQ members identified that spaces, such as through social media, at bus stops and other public spaces should be used to communicate these messages once this act has been approved. It would be necessary for this act to be available in multiple languages and for infographics and explainers to be made available in easy English.

Recommendation: A communication strategy be implemented once the Human Rights Act is approved, targeting migrant and refugee-background populations.

Recommendation: The Human Rights Act should be available in multiple languages once approved.

Recommendation: Infographics and explainers on the rights included in the Human Rights Act should be advertised through social media and in public spaces.

Importantly, education specifically for migrant populations would be needed to ensure that communities are proactively aware of what their rights are and that they have a cause of action that they can follow, if their rights are breached. Ideally the education strategy would target community leaders, international students, refugee and asylum-seeker background individuals and school students. Education should include lived-experience stories from migrant or refugee-background individuals so as to be more effective¹¹.

Recommendation: An education strategy be implemented once the Human Rights Act is approved, targeting migrant and refugee-background populations.

Recommendation: Education should include lived-experience stories from migrant or refugee-background individuals.

Recommendation: Education on human rights should be embedded in the curriculum across all schools.

¹¹ Eastmond, M. (2007). Stories as Lived Experience: Narratives in Forced Migration Research. *Journal of refugee studies*, 20(2), 248-264. <https://doi.org/10.1093/jrs/fem007>

Complaints process

All those we consulted expressed support for the new model of complaints directly to the AHRC, as opposed to the process in Queensland, which requires a complaint to the public agency about whom you are complaining prior to a complaint to the Queensland Human Rights Commission.

English is often an additional language for people from culturally diverse backgrounds and dependent on an individual's migration journey and settlement experience and individuals may not have the comprehension of English to understand the complaints process. In addition, spoken and written English are different skills. ECCQ recommends that in implementing the proposed Human Rights model, alternatives to completing forms in English be provided. If complaints are only being accepted in written form the system is adding a layer of complexity which inadvertently further discourages people from diverse backgrounds from acting when they have experienced a breach of human rights.

We recommend that complaints can be submitted and accepted through audio and visual means, including through face-to-face transcribing. However, when translating or interpreting a complaint accredited interpreters must be used, with a secondary quality check and confirmation of the translation by the person making the complaint. Also, that the complaints form is available in multiple languages and able to be completed in multiple languages with the same translation quality check implemented when assessing the complaint.

Recommendation: Complaints should be accepted if audio-visual modes and also by having accredited translators transcribe alleged human rights breaches.

Recommendation: Complaints forms should be available in multiple languages and able to be submitted in multiple languages.

Migrant and refugee-background individuals often have a general mistrust in systems support is required to submit a complaint process. Only one of those who shared their experiences with us on breaches of human rights had made any effort to report the incident. One person commented,

"I would be worried, if I was going to make a complaint, being a multicultural person that I wouldn't be heard, so would complaint to the ombudsman or my local MP as well".

Additionally, we know that the Sikh Nashkam Society of Australia have stated that a lack of awareness of laws and reporting mechanisms, the long complaint processes and "limited faith in favourable outcomes following lodging a complaint" are some of the barriers keeping people from reporting rights breaches. One example they shared of a breach was that school students were not allowed to "have articles of faith on them". These included :

- the kara (iron/steel band on dominant wrist).
- the uncut hair and the wearing of a turban or a patka (smaller turban) and

- male students cannot remove facial hair.¹²

We spoke with some from the Sikh community who have been attacked by people attempting to remove their turbans.

“To me if you remove my turban, it’s like me being murdered”.

When they reported this loss of cultural rights and attacks to police, they were not taken seriously. Beyond this, these people do not feel able to take these complaints any further, due to the lack of a system response.

Overwhelmingly, all respondents support the statement that the Commission should be allowed to provide reasonable help to those who require assistance to lodge a complaint. This may include free legal advice, explanations of the complaints process, interpreter support and a support person when making a complaint. If a complaint progresses to a court, access to Legal Aid would be necessary, to ensure equitable access to the court system, especially due to this being related to human rights.

Recommendation: Complaints should be supported by the AHRC and other agencies, such as Legal Aid, with free legal advice, information on the complaints process and interpreters / translators.

Recommendation: Complaints that proceed to court should be eligible for free legal support through Legal Aid.

¹² Sikh Nishkam Society of Australia (2022) Submission to the Human Rights Commission Qld: Review of Queensland’s Anti-Discrimination Act 1991. Accessed 15 June, 2023 from: https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0008/38618/Sub.067-Sikh-Nishkam-Society-of-Australia_Final.pdf