

Mr Josh Burns MP  
Chair - Parliamentary Joint Committee on Human Rights  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email [human.rights@aph.gov.au](mailto:human.rights@aph.gov.au)

Dear Mr Burns

## Re: Inquiry into Australia's Human Rights Framework

The Australian College of Nursing (ACN) would like to thank the Parliamentary Joint Committee on Human Rights for the opportunity to comment on enacting a federal **Human Rights Act**.

As a national leader of the nursing profession, ACN maintains that the role of nurses within the profession is shaped by human rights as a core principle to care. Nurses provide care to all members of the community, spanning across all demographics, including those most vulnerable members of our society and those who are marginalised. ACN strongly advocates for access and health equity for all people through expert-informed and person-centred care across the lifespan.<sup>1</sup>

As a leading nursing organisation, ACN's response to this inquiry will focus on issues and concerns that directly impact nurses and the people for whom they care. ACN cannot provide comment on matters of the law; however, as a leading nursing organisation, we can provide feedback and potential solution options on the issues that contravene fundamental human rights.

ACN strongly supports the enactment of a Federal **Human Rights Act**. To underpin the development of the Human Rights Act, ACN supports the intention of the 2010 Human Rights Framework<sup>2</sup> and its pillars: Reaffirm, Educate, Engage, Protect, and Respect. As the framework was to be reviewed in 2014, ACN suggests that this review be updated as a priority to ensure the framework applies to the current Australian context.

The implementation of the **Human Rights Act** is long overdue in Australia. Notably, Australia is the only English-speaking country without a Bill of Rights<sup>3</sup> and the only liberal democracy in the world that does not have a federal act or charter of rights that explains people's basic rights and how they can be protected.<sup>4</sup> Australia's lack of a Bill of Rights enables continued violations of the rights of

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<sup>1</sup> Australian College of Nursing (ACN). 2019. '[Person-Centred Care](#)', ACN, Canberra.

<sup>2</sup> Commonwealth of Australia. 2010. [Australia's Human Rights Framework](#). Australian Government, Canberra.

<sup>3</sup> Campbell, T. Goldsworthy, J. Stone, A. (eds). 2020. *Protecting Rights Without a Bill of Rights: Institutional Performance and Reform in Australia* Oxfordshire, Routledge.

<sup>4</sup> Australian Human Rights Commission. 2023. [A National Human Rights Act for Australia](#).

those who do not possess a voice to argue against unfair or inhumane treatment and significantly deprives those living in Australia of a domestic avenue for appeal.

As nurses, ACN members see first-hand the impact of health inequities imposed on members of the community. ACN recommends including in the **Human Rights Act** all rights listed on page 18 of the Free & Equal-Position Paper: A Human Rights Act for Australia.<sup>5</sup> ACN's policy and advocacy role is to respond to issues impacting nurses, the nursing profession, and the healthcare consumer. ACN has made public statements regarding issues that contravene basic human rights.<sup>6 7 8 9</sup> ACN, therefore, urges the Committee to consider the following human rights issues for inclusion in the Human Rights Act.

1. **The incarceration of children from 10 years of age**<sup>10</sup>, particularly not in detention centres designed for adult offenders. This treatment contradicts the United Nations Convention on the Rights of the Child and the Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules').<sup>11</sup> Currently, Australia's children are not protected. There are children in custody with extensive mental health and trauma morbidities.<sup>12</sup>

The Royal Commission into the Protection and Detention of Children in the Northern Territory<sup>13</sup> states that 'youth detention centres were not fit for accommodating, let alone rehabilitating, children and young people'.<sup>14</sup> ACN advocates strongly for changes to Australia's inhumane treatment of children and, in 2020, wrote to all attorney generals expressing these concerns. ACN anticipates that establishing the Human Rights Act will enable changes to how we rehabilitate young offenders. There is an intrinsic link between the social determinants of health and incarceration rates in young people.<sup>15</sup> The impact of the social determinants of health on human rights and the quality of life of young people in detention must be considered.

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<sup>5</sup> Australian Human Rights Commission. 2022. [FREE AND EQUAL](#) A Human Rights Act for Australia December 2022.

<sup>6</sup> Letters sent to all attorney generals across Australia stating ACN's position and calling for urgent reform. 2020.

<sup>7</sup> ACN made a public submission to the Parliamentary Inquiry into the extent and nature of Poverty in Australia

<sup>8</sup> Australian College of Nursing (ACN). 2019. ['Quality health care for all refugees and asylum seekers'](#), ACN, Canberra.

<sup>9</sup> Australian College of Nursing (ACN). 2021. ['Modern Slavery-- Position Statement'](#), ACN, Canberra

<sup>10</sup> Amnesty International. n.d. Australia: [Raise the Age to 14](#).

<sup>11</sup> United Nations. 1985. [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \("The Beijing Rules"\)](#)

<sup>12</sup> Royal Australian College of Physicians. 2019. [RACP submission to the Council of Attorneys General Working Group reviewing the Age of Criminal Responsibility](#)

<sup>13</sup> White, M. & Gooda, M. 2017. The Royal Commission into the Protection and Detention of Children in the Northern Territory, [Report Overview](#).

<sup>14</sup> Ibid

<sup>15</sup> Fix, R. L., Vest, N., & Thompson, K. R. 2022. Evidencing the Need to Screen for Social Determinants of Health Among Boys Entering a Juvenile Prison: A Latent Profile Analysis. *Youth Violence and Juvenile Justice*, 20(3),

2. **The inhumane treatment of refugees and asylum seekers**, including the deportation of minors, some of whom were born in Australia. ACN does not support offshore detention.<sup>16</sup> Our organisation is vocal in protecting the safety and well-being of all children. ACN believes that all refugees and asylum seekers are entitled to the basic human right of accessing and receiving **quality** holistic care. ACN 'considers that the nursing profession has a moral obligation to protect refugees' and asylum seekers' human rights, including their right to quality health care'.<sup>17</sup> Detention in immigration centres contravenes Australia's responsibilities under the United Nations Convention on the Rights of a Child.<sup>18</sup> At the minimum, children of refugees and asylum seekers must be provided with positive social and physical environments that eliminate trauma and prevent re-traumatisation. A Human Rights Act will provide a framework for the High Court to declare illegal the detention of children in harsh and inhumane conditions.<sup>19</sup>

A recent example of the importance of strengthening the protection of human rights is the well-publicised case of the Sri Lankan refugee family of Biloela, Australia. The family included two young daughters who are Australian born. The decision to remove the family from Biloela was criticised in a report by Special Rapporteur Juan Mendez. Mendez wrote that child detention, violence in offshore detention centres, and the deportation of two groups of asylum seekers breached Australia's international obligations, violating the rights of asylum seekers under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As stated in the 39<sup>th</sup> session of the Human Rights Council Global Update:<sup>20</sup>

**Australia**, a member of this Council, should join the consensus of the global community, adopt the Compact and revise the country's policies concerning people arriving at its borders without a visa. The current offshore processing centres are an affront to the protection of human rights.

3. **Any laws that enable modern slavery to continue in this country**. ACN acknowledges the lack of tangible support available for victims of modern slavery. This includes the hurdles those smuggled to Australia without documentation papers face when attempting to report themselves as victims of slavery.<sup>21</sup> ACN supports strengthening reporting systems and appropriate care pathways for victims of modern slavery. It is imperative that all care planning includes an avenue of escape

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187–205. <https://doi.org/10.1177/15412040221096359>

<sup>16</sup> Australian College of Nursing (ACN). 2019. ['Quality health care for all refugees and asylum seekers'](#), ACN, Canberra.

<sup>17</sup> Ibid

<sup>18</sup> Australian College of Nursing (ACN) and Maternal, Child and Family Health Nurses Australia (MCAFHNA). 2014, Submission to the Australian Human Rights Commission: National Inquiry into Children in Detention, Australian College of Nursing, Canberra

<sup>19</sup> See page 51 of the Australian Human Rights Commission's [FREE AND EQUAL](#) A Human Rights Act for Australia December 2022.

<sup>20</sup> United Nations Human Rights Office of the High Commissioner. 2018. [39th session of the Human Rights Council | OHCHR](#)

<sup>21</sup> Australian College of Nursing (ACN). 2021. ['Modern Slavery– Position Statement'](#), ACN, Canberra.

from the situations victims are trapped in. Acknowledging that nurses are a key primary contact profession exposed to the impact of modern slavery, ACN supports the development of procedures that enable nurses to report suspicions of modern slavery in a manner that is safe for both the nurse and victim while providing real avenues of situational release.

ACN commends the positive step the government has taken in the appointment of an Anti-slavery Commissioner in New South Wales.<sup>22</sup> ACN notes that implementing a Human Rights Act will require lines of integrated communication between those appointed to uphold the Human Rights Act and other Commissioner roles responsible for the oversight of identified vulnerable groups established across jurisdictions. Integrated communication is essential to enable the Human Rights Act to be the powerful tool it is intended to be in targeting and resolving inequities across all jurisdictions.

**4. The denial of basic needs to many Australians is the result of inadequate government payments.** Due to poverty, an increasing number of people do not have homes, access to good food, transport, medical treatments, education, clothing, and services such as electricity. Two risk factors for poverty in Australia are the reliance on income support payments and experiencing housing stress where rental or mortgage payments exceed 30% of income.<sup>23</sup> With many people accessing government payments, the Human Rights Act must protect their interests and ensure that the system treats those people accessing it with dignity and fairness. The Robodebt Scheme is a crucial example of the need to ensure human rights are considered in government systems.<sup>24</sup> The unintended and severe consequences of the Robodebt Scheme may have been averted had a Human Rights Act been in place.

In early 2023, ACN submitted to the Parliamentary Inquiry into the Extent and Nature of Poverty in Australia. ACN's recommendations included options to address the social determinants of health and redress poverty levels. ACN reiterates the urgent need for all people in Australia to access adequate and affordable health care. ACN advocates investment in advancing the scope and practice of nurses within the current healthcare system to enable this basic requirement. The increased establishment of more nurse-led and multidisciplinary health clinics, particularly in remote and rural areas, plus better access for nurse practitioners and registered nurses to Medicare Benefits Scheme (MBS) item numbers were a core recommendation of the submission. Those experiencing poverty must have access to adequate health care. Lack of access to appropriate medical treatment, medicines, and care results in tangible harm to the community and increases the costs of hospital stays that could have been prevented had medical treatment been sought.<sup>25</sup>

Young adults with mental health issues are particularly impacted by poverty when faced with the decision between food or medication. Their conditions worsen without medication, potentially resulting in disruptive behaviours often misinterpreted by schools, police, and healthcare workers.

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<sup>22</sup> Department of Communities and Justice. n.d. [Anti-slavery Commissioner](#). NSW Government.

<sup>23</sup> Australian Institute of Health and Welfare (AIHW).2021. [Housing affordability](#). Australian Government, Canberra.

<sup>24</sup> Royal Commission into the Robodebt Scheme. n.d. [News & Media](#). Australian Government.

<sup>25</sup> Taken from ACN's submission to the Parliamentary Inquiry into the extent and nature of Poverty in Australia

This example highlights the impact the lack of money can have on families. Social, financial, and clinical supports in medication management are key to supporting individuals in achieving good mental health.<sup>26</sup>

ACN continues to advocate for increasing nurse-led clinics across urban, rural, and remote areas and stresses that improvements in good health and well-being can only be achieved through better access to liveable income support for all. A Human Rights Act will confirm the expectation that the community has a right to access quality and affordable health care. ACN advocates that increased nurse-led clinics are an intrinsic element of realising this expectation.

**5. The incarceration of a disproportionate number of Aboriginal and Torres Strait Islander peoples.** Australia accepted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2009. However, inequities towards our First Nations peoples persist. A more consistent approach to UNDRIP's principles would make a significant positive impact in remedying inequities faced by First Nations people. Principles such as self-determination, autonomy and non-discrimination, consultation, and consent should form the basis for changes to Australia's over-policing and detention of Aboriginal and Torres Strait Islander peoples.<sup>27</sup> The UN Special Rapporteur on the Rights of Indigenous Peoples wrote that Australia's Indigenous incarceration rate is a 'major human rights concern'.<sup>28</sup>

Aboriginal and Torres Strait Islanders represented 50% of young people incarcerated in 2021,<sup>29</sup> despite calls for a more culturally appropriate solution that will enable people to stay on country and allow children to remain at school. Funding for Aboriginal and Torres Strait Islander legal services has been reduced, leaving more people without representation in court.<sup>30 31</sup>

As of 30 June 2022: Aboriginal and Torres Strait Islander prisoners accounted for 32% of all prisoners. 91% (11,744) of Aboriginal and Torres Strait Islander prisoners were male. 9% (1,156) were female.<sup>32</sup> Many Aboriginal and Torres Strait Islander prison populations have experienced significant trauma, including domestic, family, and sexual violence. This is additional to the generational trauma of colonisation.

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<sup>26</sup> Ibid.

<sup>27</sup> Allison, F. Daylight, D. Duncan, T. 2023. [‘Too much money is spent on jails and policing’: what Aboriginal communities told us about funding justice reinvestment to keep people out of prison](#). The Conversation.

<sup>28</sup> See page 48 of the Australian Human Rights Commission’s [FREE AND EQUAL](#) A Human Rights Act for Australia December 2022.

<sup>29</sup> Holland, L. Toombs, M. 2022. [Raising the age of criminal responsibility is only the first step. First Nations kids need cultural solutions](#). The Conversation

<sup>30</sup> Dansie, M. Mounter, B. 2023. [Fears for increased First Nations incarceration grow as Indigenous legal services cut](#). ABC News

<sup>31</sup> Howard-Wagner, D. Brown, C. 2021. [Increased incarceration of First Nations women is interwoven with the experience of violence and trauma](#). The Conversation

<sup>32</sup> Australian Bureau of Statistics. 2023. [Prisoners in Australia](#).

As a nursing organisation, ACN strongly advocates for a culturally safe healthcare system with nurses and healthcare workers engaging with people in a culturally safe and respectful way.<sup>33</sup> ACN's CEO, Adjunct Professor Kylie Ward FACN, is a member of the Allies for Uluru Coalition, representing ACN and its members. ACN believes that the implementation of a Human Rights Act will include the protections stated in the UNDRIP principles, giving Aboriginal and Torres Strait Islanders people a voice in decisions that concern them.

6. **Education and Training.** ACN supports the intention of the 2010 Human Rights Framework<sup>34</sup> and its pillars, Reaffirm, Educate, Engage, Protect and Respect. ACN is an accredited Higher Education Provider and Registered Training Organisation (RTO), graduating 100,000 nurses in the past 15 years with post-graduate qualifications in addition to providing hundreds of thousands of clinicians with Clinical Professional Development training in all settings. Therefore, providing students with adequately informed and culturally safe training is a core component of ACN's strategic intent.

7. **Discrimination of LGBTQI+ and Gender Diverse Australians.** ACN has always advocated for the inclusion of the LGBTQI+ community and acknowledges the importance of inclusion and recognition of all people to achieve healthcare equity through tailored patient-centred care.<sup>35</sup> Although there have been recent changes to the rules surrounding plasma donations for Australians, including the removal of the sexual activity questionnaire and allowance for plasma donations regardless of sexual activity (in conjunction with other eligibility criteria), these changes are still yet to be approved and adopted by the government.<sup>36</sup> Current laws in Australia stipulate that 'men (or transgender women) who have sex with men' (MSM) must abide by a 12-month deferral period in order to be eligible to donate blood. Due to significant improvements in detection technology, many countries have opted to review the 12-month guideline or reduce the deferral period to four-to-six months. These technologies are available in Australia and can detect blood-borne diseases and infections, reducing the window period in which these infections can be detected.<sup>37</sup> ACN believes that there must be a review of these guidelines and notes that there is a possible breach of Article 2 of the Universal Declaration of Human Rights.<sup>38</sup>

ACN acknowledges that this is a changing landscape and commends the Queensland government for passing a motion calling the Federal Labor Government to remove all blood bans on gay and bisexual men and trans women. Queensland Labor called for "continued progress towards the removal of the (whole)blood donation ban and the adoption of a system whereby all donors are assessed for their individual risk".<sup>39</sup> ACN urges other jurisdictions follow suit to support this legislation.

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<sup>33</sup> CATSINaM, NMBA, ACM, ACN, ANMF. 2018. [Cultural safety: Nurses and midwives leading the way for safer healthcare.](#)

<sup>34</sup> Commonwealth of Australia. 2010. [Australia's Human Rights Framework.](#)

<sup>35</sup> Australian College of Nursing (ACN). 2019. ['Person-Centred Care'](#), ACN, Canberra.

<sup>36</sup> Red Cross Australia. 2023. [Update on sexual activity blood donations – 30 May 2023.](#)

<sup>37</sup> Australian College of Nursing (ACN). 2020, ['Blood Donation in Australia – Issues Brief No.1 2020-21'](#), ACN, Canberra.

<sup>38</sup> United Nations.

<sup>39</sup> Let Us Give (2023). Qld Labor Conference backs gay blood ban removal. Media Release – 22 June 2023.

This is one example of the inequities that the LGBTQI+ community face in their healthcare journeys. LGBTQI+ people have the highest rates of suicide attempts and suicidal ideation in Australia.<sup>40</sup> This psychological toll can be seen as an accumulation of trauma surrounding prevalent societal biases towards sexual orientation. ACN notes the grave psychological harm that pseudo-medical care interventions, including conversion therapy, have on this community. There is no significant medical evidence to support these practices, and ACN supports calls for these practices to be banned on a federal level.

Establishing a Bill of Rights will require the education of all Australians and specific training for all frontline workers who encounter people whose basic human rights are not being met. ACN advocates training on the Human Rights Act for all frontline professionals, including healthcare workers, law enforcement, educators, and social and community workers. ACN urges the Australian government to consider the importance of making information, resources, and training materials readily available. ACN is well equipped and able to develop training material specific to the nursing profession for online access once the Bill is established.

ACN suggests that if the Parliamentary Joint Committee on Human Rights were given greater authority, it could be expected that determinations made by parliament that contravened the Human Rights Act would be challenged in a timely fashion. ACN believes that the Human Rights Act for Australia is long overdue. Protecting such governmental decisions that do not consider the fundamental human rights of all of us who live in Australia is essential. The establishment of a human rights framework in Australia will make a significant positive impact on the lives of all Australians and ensure that Australia is meeting targets for access and equity.

#### ACN recommends that:

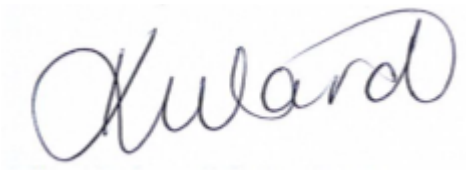
- Support for the Human Rights Act to be enacted for Australia
- Supporting mechanisms and support be established to ensure that the Act is upheld across all jurisdictions
- Government to fund \$100K to develop and promote education for:
  - Frontline workers on understanding the Human Rights ACT and how it is implemented in the Australian Health Care System
  - Trauma-informed care delivery
- Development of an implementation plan to ensure processes and procedures are developed for putting into practice the Human Rights Act and establish actions in instances where the Act is contravened.

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<sup>40</sup> Beyond Blue. N.d. [Statistics](#). Beyond Blue Australia.

Should you or your team have any questions, please do not hesitate to contact me at 0412 410 011 or [officeoftheceo@acn.edu.au](mailto:officeoftheceo@acn.edu.au).

Yours sincerely,



Adjunct Professor Kylie Ward  
Chief Executive Officer  
RN, MMgt, FACN, FCHSM, Wharton Fellow, GAICD

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