

Our ref: HRC/IIC:RMsb060726

6 July 2026

The Hon. Clayton Gordon Barr MP
Chair, Legislative Assembly Committee on Community Services
Parliament House
SYDNEY NSW 2000

By email: communityservices@parliament.nsw.gov.au

Dear Chair,

HUMAN RIGHTS BILL 2025 (NSW)

The Law Society of New South Wales is grateful for the opportunity to provide a submission to the inquiry of the Legislative Assembly Committee on Community Services (**Legislative Committee**) on the Human Rights Bill 2025 (NSW) (**Bill**). The Law Society's Human Rights and Indigenous Issues Committees contributed to this submission.

From a rule of law perspective, the Law Society has long supported the enactment of standalone human rights legislation in Australia and NSW.¹ We are pleased that the Bill has been referred to this inquiry, noting that such a process provides a valuable opportunity for Parliament to engage with representatives across the community on the value of such legislation to our democracy.²

While the terms of reference of this inquiry are directed to the Bill itself, we consider that the inquiry also represents an opportunity to galvanise understanding within the community, and across the political divide, about the nature of human rights legislation, its relationship to the Westminster system of parliamentary democracy, and the common law tradition which informs the rule of law in Australia. We also emphasise the practical ways in which a Human Rights Act can improve legislation and the culture of decision-making within public entities.

The current political environment is, in many respects, one of increasing polarisation and heightened tension. Ongoing global conflict, major structural disruptions to the way in which our societies operate, and economic pressures are creating uncertainty across the community. In such a context, it is conceivable that legislators may wish to delay consideration of, or avoid, the enactment of human rights legislation on the basis that more pressing issues demand parliamentary attention. We respectfully suggest that such an approach may be misconceived. As outlined in our submission, the value of standalone human rights legislation is the way it embeds a process to consider human rights when making legislation, policies, and decisions that are of critical importance to citizens' lives and those of their families and communities, in a manner consistent with international law obligations Australia has ratified.

¹ The Law Society of New South Wales, '[Human Rights Legislation for NSW](#)' (Publication, September 2025).

² The Law Society of New South Wales, '[Human Rights Inquiry can and should lead to positive reform](#)' (Media Release, 18 March 2026); The Law Society of NSW and the NSW Bar Association, '[NSW's peak representative bodies for solicitors and barristers have called for a public inquiry into human rights legislation in NSW](#)' (Media Release, 6 November 2025).

The Law Society notes that this consultation will provide a range of individuals and organisations the opportunity to articulate the potential value of human rights legislation. Taking the time to receive and meaningfully engage with submissions across the community, including those based on lived experience, is critical, given that human rights abuses are often directed towards individuals who historically have been excluded from full and equal participation in civil life. This is perhaps most pointedly exemplified by the history of human rights abuses and the continuing over-policing and over-incarceration of Aboriginal people, particularly young people.

We do not seek to suggest that standalone human rights legislation, in and of itself, would provide a panacea for every complex human rights issue within NSW. We do suggest, however, that such legislation could, over time and with concerted leadership and stewardship, create a culture within public institutions to promote respect for, and consciousness of, human rights and thereby reduce the number and scale of human rights abuses. It may also present an opportunity to promote social cohesion through its focus on the rights that all persons share within our community.

We anticipate there will be differences of opinion among supporters of human rights legislation in NSW on the framing of this Bill, including debates as to which rights arising from the human rights instruments to which Australia is a signatory should be incorporated into state-based human rights legislation. This is not a justification, however, for deferring consideration of the enactment of standalone human rights legislation. Instead, respectful debate on the framing of human rights should be encouraged as a way to strengthen engagement with contemporary democratic processes in NSW.

The purpose of the NSW Parliament is to make laws for the “peace, welfare, and good government” of the state, as authorised by the *Constitution Act 1902* (NSW).³ For the reasons outlined in this submission, it is our view that formal legal protection for human rights through a NSW Human Rights Act would support this constitutional purpose.

1. Human rights in the Australian federal and state contexts

1.1 Australia as a long-standing supporter of the value of human rights

Human rights, as they are understood in the contemporary sense, were first articulated as an instrument of international consensus when the Universal Declaration of Human Rights (**UDHR**) was adopted on 10 December 1948.⁴ The UDHR was the response of the international community to World War II and the “barbarous acts which... outraged the conscience of mankind”.⁵ Australia was a founding member of the United Nations and one of eight nations on the drafting committee for the UDHR.⁶ Further, Dr HV Evatt, Australia's representative to the then United Nations Organization, was Chair of the General Assembly at the time of voting to adopt this landmark treaty, which insisted upon the “inherent dignity and the equal and inalienable rights of all members of the human family”.⁷

In a 2024 speech, Professor Rosalind Croucher AM, then President of the Australian Human Rights Commission (**AHRC**), described the way in which the UDHR paved the way for Australia's future engagement with the key instruments of international human rights:

The UDHR provided the foundation stone for a pair of binding conventions in the 1960s – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – and the combination of rights guaranteed in these two covenants ‘represent the

³ *Constitution Act 1902* (NSW) s 5.

⁴ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) (‘UDHR’).

⁵ *Ibid.*, Preamble.

⁶ See generally James Cotton and David Lee, ‘[Australia and the United Nations](#)’ (Publication, Department of Foreign Affairs and Trade, 2012).

⁷ UDHR (n 4), Preamble.

most authoritative universal minimum standard of present international human rights law'. Together with the UDHR, these three instruments are known as the 'International Bill of Rights'.

Australia was a founding signatory to each of these instruments and, as a nation, we stepped forward in embracing the commitments of these great documents. Australia has signed and ratified each of the key international treaties since then – and it has not been a party-political exercise. Both sides in our system of Westminster government – and in equal measure – have signed and ratified them, undertaking obligations to the world.⁸ [Footnotes from original text omitted]

We briefly mention this history to demonstrate two important considerations relevant to an inquiry taking evidence on stand-alone human rights legislation for the state of NSW.

First, contemporary understandings of human rights did not arise from an academic exercise, nor were they confined to the values of any one political party. Rather, their articulation through the foundational international human rights instruments was a direct response to the devastation of war and the Holocaust. Human rights at that time were agreed as a project of “freedom, justice and peace in the world”.⁹ We suggest that these values continue to be ones shared by the overwhelming majority of people living in NSW today.

Second, engagement with and commitment to human rights legislation is a longstanding Australian tradition. Successive Australian governments at the federal level have ratified core international human rights instruments in addition to the International Bill of Rights (which includes the International Covenant on Civil and Political Rights¹⁰ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights¹¹ (ICESCR)) in recognition of the fact that human rights should be enjoyed by all persons without distinction, including the following:

- International Convention on the Elimination of All Forms of Racial Discrimination¹²
- Convention on the Elimination of All Forms of Discrimination against Women¹³
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴
- Convention on the Rights of the Child¹⁵
- Convention on the Rights of Persons with Disabilities¹⁶

While under the Australian Constitution, the power to enter into international treaties and agreements is vested solely in the Commonwealth executive,¹⁷ state and territory governments have a necessary role to play in implementing the rights contained in these instruments. This is due to the way in which the plenary powers of the states under the Australian Constitution, which permit them to legislate with respect to any matter other than

⁸ Rosalind Croucher, '[The AHRC's model for a Human Rights Act for Australia](#)' (Speech, ANU and Amnesty International, 24 May 2023). Australia has continued to play a key role in human rights advocacy at the international level, including serving a three year term from on 1 January 2018 on the United Nations Human Rights Council.

⁹ UDHR (n 4), Preamble.

¹⁰ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

¹² *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

¹³ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981).

¹⁴ *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).

¹⁵ *United Nations Convention of the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

¹⁶ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

¹⁷ *Australian Constitution* s 61.

those matters over which the Commonwealth has exclusive power, mean that they make laws in respect of many areas which directly affect citizen's lives.¹⁸

While we consider human rights legislation at both federal and state levels would offer the most comprehensive coverage, we emphasise that state-level legislation should not be deferred pending any Commonwealth Human Rights Act that may be enacted at a future time. The NSW Parliament makes laws with respect to, and the NSW Government administers, areas such as health (including hospitals), education (including schools), the majority of the criminal justice system, transport, infrastructure, the majority of policing and corrective services, mental health facilities and the child-care and protection system. The fact that the state of NSW therefore carries responsibility for many services, systems and decisions that most directly impact peoples' rights necessitates state-based human rights legislation.

1.2 Existing sources of rights

A position in favour of the enactment of stand-alone human rights legislation (both at the federal and at the state level) does not preclude acknowledgment of other legitimate and important ways in which principles of human rights are given expression in Australian law. These include the protection of a limited number of rights in the Australian Constitution¹⁹ and the democratic safeguards afforded by our system of parliamentary sovereignty and responsible government.

Further, the common law, which is based on a tradition of judicial interpretation and legal precedent, is, in many respects, informed by what may, in a modern sense, be conceptualised as human rights principles. This is evidenced in the so-called "common law rights and freedoms", for example, the right to liberty (writ of habeas corpus), the right to a fair trial, the right to the presumption of innocence, and the privilege against self-incrimination. It is also important to mention the presumption which underpins any exercise of statutory interpretation, as expressed by the High Court in *Coco v The Queen* as follows:

The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakable and unambiguous language.²⁰

The rights of groups that have faced injustice have often been advanced through decisions of the common law. The most notable decision in this respect would probably be the common law recognition of native title in *Mabo v Queensland (No 2)* and, later, *Wik Peoples v Queensland*.²¹ However, the common law has shaped Australian understandings of a range of rights, including the interpretation of the freedom of political communication,²² key administrative principles of natural justice and procedural fairness,²³ and other pillars of a fair and just legal system, such as procedural rights in criminal law (i.e. the right to silence and the right to a fair trial),²⁴ that cannot be abrogated or displaced by executive action.

At the same time, we note the common law does not offer comprehensive protection in the same way that could be provided by a Human Rights Act. Common law protections are more aligned with civil and political rights and are mostly unable to remedy abuses or infringements of economic, social and cultural rights. In addition, the

¹⁸ *Constitution Act 1902* (NSW), s 5.

¹⁹ See, for example, the *Australian Constitution*, including compensation on just terms for the Commonwealth's compulsory acquisition of property (s 51 (xxxii)); trial by jury on indictment (s 80); freedom of religion (s 116); and freedom from discrimination on the basis of interstate residence (s 117). The High Court has also implied what are sometimes described as "rights" into the Constitution, for example the implied freedom of political communication or "the right not to be detained otherwise than by judicial order".

²⁰ (1994) 179 CLR 427 at 437.

²¹ *Mabo v Queensland (No 2)* (1992) 175 CLR 1; *Wik Peoples v Queensland* (1996) 187 CLR 1.

²² See, eg, *Australian Capital Television Pty Ltd & New South Wales v Commonwealth* (1992) 177 CLR 106.

²³ See *Kioa v West* (1985) 159 CLR 550. See also *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252.

²⁴ *Tuckiar v The King* (1934) 52 CLR 335. For a helpful discussion of the intersection between human rights and the common law, see Lucy Geddes and Hamish McLachlan, *50 Human Rights Cases that changed Australia* (Federation Press, 2023).

parliament, both at the federal level and within NSW, has also legislated what can be described as positive rights, including through anti-discrimination laws, that give effect to certain human rights principles, albeit in a piecemeal manner that cannot be said to bring Australia into full compliance with key international human rights instruments.²⁵

We mention these other sources to emphasise that human rights values should not be considered as something as separate to the current system of law that has developed in modern Australia. Many of the rights that may be included in stand-alone human rights legislation, particularly those civil and political rights found in the ICCPR, have been given expression through the existing legal tradition in Australia and NSW, and reflect obligations that Australia has already accepted under international human rights law. We suggest, therefore, that it is helpful to situate any understanding of human rights legislation in an Australian context as complementary to our existing legal tradition, as well as a way to reinforce and build upon existing rights protections.

2. Stand-alone human rights legislation from a rule of law perspective

There have been numerous inquiries directed to the benefits of Human Rights Acts at the federal and state/territory levels.²⁶ The submissions to these inquiries have put forward many similar arguments in support of stand-alone human rights legislation. For example, the submissions highlight high levels of public support for human rights, the need to protect democratic freedoms and vulnerable populations, the existence of human rights instruments in comparable jurisdictions and the failures of current mechanisms to prevent sometimes egregious abuses of basic rights. These same arguments can be well-made in the NSW context.

In this submission, we have chosen to focus on the value of stand-alone human rights legislation from a rule of law perspective. Recent years have seen a deterioration in rule of law standards globally; so much so that the World Justice Project has declared a “rule of law recession”.²⁷ While the causes of this decline are manifold and complex, the evidence suggests that human rights are often compromised in such an environment. We suggest that one way to promote the rule of law in this state is through a Human Rights Act. We draw particular attention to the matters below.

2.1 The value of a coherent articulation of human rights

A recognised advantage of standalone human rights legislation of the kind proposed in the Bill is the way in which its enactment could lend coherence to the protection of human rights in NSW. This would help to complement, in a comprehensive and principled manner, what has sometimes been described as the “patchwork” of rights arising from Australia’s constitutional and legal traditions and statutory protections enacted by various governments.²⁸

Articulation of core human rights in a single statute is important to allow the community to understand the human rights that are protected, the manner in which they are protected, and any avenues to seek redress in the instance of abuses of human rights. The benefit of such clarity is significant. A key principle of the rule of law is that it is accessible, certain and clear. We suggest that a Human Rights Act could, to a significant extent, provide a unifying anchor in NSW for a shared understanding of the basic minimum rights held by all members of the community.

²⁵ NSW historically was seen as a forerunner in enacting key pieces of human rights legislation, such as its *Anti-Discrimination Act 1977* (NSW) which sought to give expression to the right to non-discrimination.

²⁶ See, most recently, Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Report, May 2024); Social Development Committee, Parliament of South Australia, *Inquiry into the Potential for a Human Rights Act for South Australia* (Final Report, 29 April 2025).

²⁷ World Justice Project, ‘[Global Rule of Law Recession Accelerates as Authoritarian Trend Deepens, WJP Index Finds](#)’ (Media Release, 28 October 2025).

²⁸ Melissa Castan and Paula Gerber, ‘Taking the Temperature of Human Rights in Australia’ in Paula Gerber and Melissa Castan (eds), *Critical Perspectives on Human Rights Law in Australia* (Thomson Reuters, 2021) vol 1, ch 1.

2.2 The promotion of human rights compliant legislation through a “dialogue” model

In our view, the way in which a Human Rights Act can ensure that legislation introduced to the Parliament is compliant with human rights would significantly enhance law-making in this state. This model, adopted in the ACT,²⁹ Victoria,³⁰ and Queensland³¹ (as well as in the Bill under consideration), preserves parliamentary sovereignty and involves a “dialogue” between the three arms of government. The concept is succinctly explained in the Explanatory Memorandum to the *Human Rights Act 2019* (Qld) (**Queensland Act**), which notes that “each of the three arms of government will have an important role to play: the judiciary through interpretation of laws and adjudicating rights; the legislature through scrutinising legislation and making laws; and the executive through developing policy and administrative decision-making”.³²

For example, the Queensland Act requires:

- a statement of compatibility to be prepared for all bills introduced to Parliament and tabled when a bill is introduced (s 38).
- a statement of compatibility to state whether, in the opinion of the member who introduces a bill, the bill is compatible with human rights and the nature and extent of any incompatibility (s 38).
- the Minister responsible for subordinate legislation to prepare a human rights certificate to accompany the legislation (s 41).
- the portfolio committee responsible for examining a bill to report to Parliament about any incompatibility with human rights (s 39).
- in exceptional circumstances, Parliament is able to expressly declare via an “override declaration” that an Act or a provision of an Act has effect despite being incompatible with one or more human rights or despite anything else in the Queensland Act (ss 43-44).

We note that the Bill contains all these elements in some form, with the exception of the so-called “override” declaration contained in the Queensland Act³³ and *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Victorian Charter**).³⁴

While these elements may, on the surface, appear procedural in nature, they perform an important role in ensuring that legislation is human-rights compliant from the outset. The fact that the statement of compatibility is required for all legislation (and a certificate for all subordinate legislation) means that the Member introducing the Bill and, following this, the Parliament, turns its mind to the human rights impacts of all laws, even those which may not obviously raise human rights concerns.³⁵

2.3 The opportunity to build a human rights culture in the NSW public sector

Human rights legislation is a useful starting point from which to further develop what is sometimes described as a “human rights culture within the public sector”.³⁶ Such an approach aims to embed “attitudes, values and behaviours” within public sector entities so that such entities understand their obligations under stand-alone

²⁹ *Human Rights Act 2004* (ACT).

³⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic).

³¹ *Human Rights Act 2019* (Qld).

³² Explanatory Note, Human Rights Bill 2018 (Qld) 6.

³³ *Human Rights Act 2019* (Qld) ss 43-44.

³⁴ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 31.

³⁵ We note evidence provided by the ACT Human Rights Commission in its submission to the inquiry conducted by South Australia’s Social Development Committee on stand-alone human rights legislation in South Australia, where it was noted that the process in the ACT, where human rights scrutiny processes are integrated at the earliest possible opportunity (including by the seeking on independent advice from human rights advisers on cabinet proposals) helps to ensure compatible legislation. See ACT Human Rights Commission, [Submission No 111 to Social Development Committee](#), Parliament of South Australia, *Inquiry into the Potential for a Human Rights Act for South Australia* (21 February 2024).

³⁶ ‘[Human rights culture](#)’, Victorian Equal Opportunity and Human Rights Commission (Webpage).

human rights legislation and apply human rights principles consistently across the range of their operations, including in their decision-making processes and service design and delivery.³⁷

We note that the respective Human Rights Commissions of Victoria and Queensland have developed detailed guidance for public entities on building a human rights culture within their respective jurisdictions.³⁸ The development of a “human rights culture” is not an ephemeral task, but rather a targeted, ongoing project of continual improvement for which each entity takes responsibility and embeds training and processes to ensure public servants of all levels have the understanding and tools to consider human rights principles as they relate to their actions (or decisions not to act) in terms of the identification of relevant rights, including the limitation principles contained within the relevant legislation.

We suggest that developing this culture within NSW could helpfully enhance the relationship between government entities and the citizens they serve. It is also compatible with the values of integrity, trust, accountability and service that are intended to guide the work of the public sector in this state. In our view, a healthy democratic society puts people and their communities at the centre of its operations. Requiring a human rights culture within public entities would, we suggest, support a transition from what might be described as transactional, to relational modes of operating, which has been identified in recent research as central to building partnerships and effective policy.³⁹

2.4 A new way to engage the NSW community with issues of civics, citizenship and the rule of law

A clear articulation of rights also carries educative value, and may promote confidence in the rule of law and democracy by strengthening the relationship between the government and the fundamental rights of the people that it serves. The community is generally supportive of human rights legislation, with recent polling by Amnesty International indicating that three in four Australians support the enactment of stand-alone human rights legislation at the federal level.⁴⁰

We suggest that promoting such confidence is highly relevant to young people. Recent studies have pointed to the way in which Australian students’ understanding of civics is declining.⁴¹ The experience of other jurisdictions underscores how critical it is that the democratic project not be taken for granted in NSW. A human rights instrument is one way to engage the next generation and build on the democratic traditions of our state by a document centred around the rights of all, including the rights of children and young people.

2.5 Australia’s international human rights obligations should be implemented in domestic legislation

When Australia becomes party to international treaties, including those dealing with human rights, it enters into binding agreements under international law to fulfil the obligations contained therein by implementing them into the laws of the country at all levels. As noted above, while the Constitutional power to enter into treaties resides with the Commonwealth executive, their full implementation cannot be realised without the cooperation of the states and territories.⁴²

We suggest that it is proper for NSW to commit to its own Human Rights Act, even if a Bill of Rights has not been enacted at the federal level. We note that standalone human rights legislation has been enacted in the ACT, Victoria and Queensland in a practical and workable way that has led to changes in practice and culture,

³⁷ Ibid.

³⁸ Ibid; Queensland Human Rights Commission, [Public entities guide](#) (Publication, 2019).

³⁹ Susan Goodwin et al, *All together: A new future for commissioning human services in New South Wales* (Report, Sydney Policy Lab, University of Sydney, April 2020).

⁴⁰ [Three in four Australians support A Human Rights Act](#), *Amnesty International Australia* (Media Release, 29 January 2026).

⁴¹ Conor Duffy, [‘Australian students record worst ever civics result with 72 per cent not understanding the basics of democracy’](#), *ABC News* (online, 18 February 2025).

⁴² *Australian Constitution* s 61.

particularly within public entities in those specific jurisdictions. Leadership by NSW in this area would also reinforce the commitment of Australian jurisdictions to the protection and promotion of human rights and may assist in building momentum for broader national reform.

There is also precedent for NSW not waiting for the Commonwealth on matters of government and human rights. For example, NSW was the first jurisdiction to enact privacy laws for the public sector, and the first jurisdiction to pass a Modern Slavery Act, which was subsequently followed by the Commonwealth Modern Slavery Act.⁴³ Further, there is existing High Court authority to suggest that provisions contained in a typical “dialogue” model, such as the “interpretive obligation”, can be drafted to withstand constitutional challenge.⁴⁴

3. The collection of human rights to be included in a Human Rights Act

3.1 Human rights as universal, indivisible, interdependent and interrelated

As a general principle, the Law Society supports the incorporation of all civil, political, economic, social and cultural rights in a NSW Human Rights Act, noting that, under international law, all rights are universal, indivisible, interdependent and interrelated. These are rights that Australia has undertaken to implement through its ratification of the relevant international instruments, and it is therefore appropriate that governments, both at the federal and state/territory levels, commit to the task. NSW, as the most populous state in Australia, has a key role to play, particularly given its law-making in areas such as health and education, which often intersect with human rights issues.

In recent inquiries on federal and state-based human rights legislation, there has been valid criticism from human rights organisations regarding artificial attempts to separate civil and political rights from social, cultural and economic rights. We acknowledge there may be practical difficulties involved in the inclusion of all rights, and we note that other Australian state-based human rights legislation has included a primary focus on civil and political rights, with the inclusion of a more select number of economic, social and cultural rights. The benefit of a Human Rights Act being a standard legislative instrument means that it is capable of amendment by Parliament. This has been exemplified in the *Human Rights Act 2004* (ACT) (**ACT Act**), which, since its enactment, has added certain economic and social rights, namely the right to education, right to work and right to a healthy environment.⁴⁵

We note that concerns that are sometimes cited in relation to social, cultural and economic rights can be unfounded. In terms of international law, two complementary obligations typically arise in relation to any such social or economic rights i.e., parts of the right that are immediately realisable, and parts of the right that may require progressive realisation. We suggest this should quell the concern that such rights are impossible to implement in the same way as civil and political rights, which are more obviously justiciable.

3.1 Human rights arising from the United Nations Declaration on the Rights of Indigenous Peoples

We encourage the Legislative Committee to engage thoroughly with Aboriginal and Torres Strait Islander people on the inclusion of rights arising from the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), noting the emphasis that this international instrument places on the right to self-determination, the right to culture, and the right to free, prior and informed consent. It is important that Aboriginal and Torres Strait

⁴³ *Privacy and Personal Information Protection Act 1998* (NSW); *Modern Slavery Act 2018* (NSW); *Modern Slavery Act 2018* (Cth).

⁴⁴ In *Momcilovic v The Queen* (2011) 280 ALR 221 (*‘Momcilovic’*), key provisions in the Victorian Charter were upheld by majority, namely the ‘interpretive obligation’ which requires all statutory provisions to be interpreted in a way that is compatible with human rights, and the ‘declaration power’, which empowers the Supreme Court of Victoria to make a declaration that a statutory provision cannot be interpreted consistently with a human right, were held to be constitutional. See further discussion at Appendix A to this submission.

⁴⁵ *Human Rights Act 2004* (ACT) ss 27A-C.

Islander peak bodies and community organisations are consulted directly on the definition of these rights and other rights under consideration (for example, a “right to housing” may be understood in a broader sense and interact with other rights, such as right to culture). The inclusion of such rights could complement the NSW’s formal commitment to carry out the priority reforms contained within the National Agreement on Closing the Gap. We also refer the Legislative Committee to the Australian Human Rights Commission’s recent report, *A Fair and Just Future for First Peoples: Social Justice Report 2025 (Report)*,⁴⁶ which sets out a comprehensive roadmap for reform to address systemic injustices experienced by Indigenous people, and was informed by consultation with over 1,600 Aboriginal and Torres Strait Islander people. The Report considers and makes recommendations with respect to mechanisms for promoting the full enjoyment of rights by Aboriginal and Torres Strait Islander peoples, including through the introduction of a national human rights framework and proper implementation of the UNDRIP.⁴⁷

4. Impact of human rights legislation in other Australian states and territories

It was twenty-five years ago, in 2001, that the Legislative Council Standing Committee on Law and Justice published a report on its inquiry into an NSW Bill of Rights, and recommended that the introduction of such legislation was not in the public interest.⁴⁸ At that time, the Committee was concerned primarily with the way in which human rights legislation could undermine the relationship between Parliament and the courts. It also expressed concerns about a rise in “litigation of a speculative nature” and the difficulty of arriving at a specific list of rights for protection. In our view, the experiences in the ACT, Victoria and Queensland have, for the large part, illustrated such concerns to be unfounded.

We refer the Legislative Committee to existing published case studies of instances where dedicated human rights legislation in the ACT, Victoria and Queensland has led to tangible improvements to the lives of individuals and communities. We highlight in particular the case studies cited in these documents where public entities responded proactively to the human rights principles in the relevant Act to make their procedures, decision-making matrices and actions in line with human rights principles: See, for example, the Victorian DPP citing children’s rights under the Victorian Charter, in seeking an extension of time to allow a child, who was the victim/survivor of sexual assault, to give evidence via audio-visual recording, reviews undertaken by the Victorian Department of Health around the delivery of mental health services in line with the obligations of the Victorian Charter, and changes in policy around the provision of interpreters at the ACT Civil and Administrative Tribunal.⁴⁹

5. Concluding remarks

The Law Society considers that a NSW Human Rights Act could be a significant legislative development supporting the rule of law in this state. As outlined in this submission, we consider one of the strongest arguments in favour of state-based human rights legislation is that it has the potential to improve the quality of parliamentary, executive and public entity decision-making. It is important that human rights are not simply an afterthought, but a central consideration from the outset of the legislative or decision-making process.

Even if there are differences in opinion as regards the provisions of the Bill before this Legislative Committee, we nevertheless encourage more general support for the enactment of human rights legislation. Such legislation would promote and protect basic human rights. At the same time, it would send an unambiguous message from the Parliament about the relevance of human rights to democracy and people-centred governance in NSW and Australia more broadly.

⁴⁶ Australian Human Rights Commission, [A Fair and Just Future for First Peoples: Social Justice Report 2025](#) (Report, 2026).

⁴⁷ Ibid, Chapter 4.

⁴⁸ Standing Committee on Law and Justice, Parliament of New South Wales, [NSW Bill of Rights](#), (Report No 17, 3 October 2001).

⁴⁹ See ‘[101 Cases on How Human Rights Make Out Lives Better](#)’, *Human Rights Law Centre* (Webpage).

A compilation of high-level comments directed to various provisions contained in the Bill are attached at Appendix A. Should the Legislative Committee, in the course of its inquiry, seek advice from the Law Society about any particular provisions of the Bill, we would be pleased to respond further.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ronan MacSweeney'.

Ronan MacSweeney
President

APPENDIX A: Human Rights Bill 2025 – Considerations for the attention of the Legislative Committee

We make the following comments with respect to the Bill, noting that we do not seek to provide an in-depth analysis of the legislation, but rather briefly raise some of the debates arising from the drafting choices of standalone human rights legislation that may assist the Legislative Committee in its deliberations.

We also encourage the Legislative Committee to refer to the analysis and draft bill prepared by the Australian Human Rights Commission for the purpose of the Parliamentary Joint Committee on Human Rights' *Inquiry into Australia's Human Rights Framework*, coupled with the modified draft contained in its report published in May 2024.⁵⁰ While that inquiry was directed to the Commonwealth framework, many of the recommendations pertaining to the possible legislative features of a federal instrument are equally applicable in the state context.

General comments

The Bill, if passed, would be a regular piece of legislation capable of amendment by the NSW Parliament i.e., it would not be constitutionally entrenched. We consider this to be appropriate and in line with the models adopted in the ACT, Victoria and Queensland.

The title of the Act may require consideration, noting that the Victorian Charter is framed as the *Charter of Human Rights and Responsibilities Act 2006* (Vic), whereas the ACT and Queensland have chosen "Human Rights Act". On one view, the title of the Victorian Charter may more accurately express the intent and effect of the legislation, and importantly, introduces the idea that rights give rise to duties owed by the State as well as individuals. However, the titles of the ACT Act and Queensland Act reflect the titles of the similar legislation in the United Kingdom and New Zealand.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act. We suggest that it would be desirable for this type of legislation to commence on a day to be fixed by proclamation. This would recognise that all public entities would need to prepare, including by training their staff and updating relevant policies and procedures, for the commencement of human rights legislation. We note, for example, that there was a delayed commencement in Queensland, where entities were prepared for commencement through a process coordinated by the Queensland Department of Justice and Attorney-General.

The use of a "parliamentary" model of human rights legislation

The Bill under consideration adopts the general structure of a so-called "dialogue" or "parliamentary" model found in Queensland, Victoria and the ACT.

The Law Society prefers this type of model, which engages the three arms of government in the task of human rights protection. We also prefer the dialogue model on account of its ability to address the prevention of human rights abuses in a "front-end" way, rather than a model directed exclusively to the litigation of breaches of human rights. We consider the "dialogue" model compatible with our political tradition, which is premised on the separation of powers and parliamentary sovereignty, in the sense that courts cannot overrule legislation that is incompatible with human rights (clause 45(4) of the Bill). Further, parliament is empowered to legislate in a manner contrary to human rights, if it so chooses (Please refer to discussion of the absence of an override declaration in this Bill below).

Part 2 – Choice of Human Rights

In addition to the discussion in our letter to the Legislative Committee under Heading 3 regarding the incorporation of Australia's core human rights obligations, we make the remarks below.

⁵⁰ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024).

Throughout history, a number of communities have been vulnerable to human rights abuses for myriad reasons, including on account of historical prejudices, systemic discriminatory practices and unchecked power dynamics. This has been particularly apparent in relation to Aboriginal and Torres Strait Islander people. The Law Society notes that this inquiry, and any subsequent inquiry that Parliament is minded to commence into human rights legislation, must ensure, to the greatest extent possible, that groups are given the opportunity to speak to the importance of a range of human rights for their particular community or situation. This will lend legitimacy to any Human Rights Act.

We suggest that a comprehensive Human Rights Act which contains the broadest range of rights (from the ICCPR, ICESCR and other core treaties) is desirable, noting that human rights should be conceived as being universal, inalienable and indivisible (as opposed to being pitted against each other or cherry-picked).

We note that Schedule 1 of the Bill expressly lists the sources of human rights enumerated in Part 2, Division 2. Further, the “interpretation provision” at cl 45(3) requires courts to consider international human rights law and the judgments of domestic, foreign and international courts and tribunals, and treaty monitoring bodies relevant to the right under judicial consideration. We consider this to be appropriate and desirable. It informs the public about the treaties entered into by the Australian Government and the sources of the rights at international law contained within the domestic legislation.

Definition of public authority

Clause 8 of the Bill defines public authority to include “tribunals” (cl 8(1)(vi)) and “courts when acting in an administrative capacity, and if the Act applies to the court’s own procedures” (cl 8(1)(vi)). Clause 8(2) states that the courts are not a public authority “except when acting in an administrative capacity, or if the Act applies to the court’s own procedures”.

In our view, the approach in s 9(4)(b) of the Queensland Act is to be preferred, which clearly sets out that both courts and tribunals are not public entities, except when acting in an administrative capacity. We consider it appropriate that this exclusion is preserved in any NSW Human Rights Act. We do not consider it appropriate, for example, that a Human Rights Act could be used to challenge the practice notes/procedures of courts, given the courts’ inherent authority to regulate their own proceedings. Similarly, we consider this to be undesirable for the operation of tribunals (outside of administrative matters).

Limitation provision (clause 12)

While we consider limitations on rights should not be lightly inferred, we support the inclusion of a limitation provision in any piece of stand-alone human rights legislation, noting its importance as an analytical tool when a restriction on qualified rights is required (for example, in an emergency such as the COVID-19 pandemic).

The limitation provision at cl 12 of the Bill, like the Queensland limitation provision at s 13 of the Queensland Act, explains what “reasonable and proportionate” restrictions may entail. It also offers even further guidance than the Queensland Act in terms of providing examples of different types of rights limitations.

Interpretive provision (clause 45)

We suggest that expert advice is taken by the Legislative Committee in relation to the interpretive provision contained within the Bill and their interaction with the limitations provision. The leading authority on the interpretive provision of a state-based human rights instrument is the High Court’s consideration of s 32 of the Victorian Charter in *Momcilovic*.⁵¹

⁵¹ *Momcilovic* (n 44).

We note, however, that the Bill (like the Queensland Act) differs to the Victorian Charter vis-à-vis the interpretive provision in two respects. First, it defines “compatible with human rights” under cl 7 as follows:

7 Meaning of “compatible with human rights”

An act, decision or statutory provision is compatible with human rights if the act, decision or statutory provision—

- (a) does not limit a human right, or
- (b) limits a human right only in accordance with section 12.

Clause 12 is what is typically described as a “limitations clause”, which sets out when a limit on a right is reasonable and justified. In this way, the Bill (like the Queensland Act) sets out in the statute the interpretive methodology mandated of the court at cl 45, and imports the proportionality analysis found in cl 12 into the methodology. Some scholars have noted that the clarification achieved by linking the interpretive obligation and the limitations clause is helpful in providing a “clear, coherent and workable approach to the assessment of compatibility”.⁵² Other reviews have suggested further refinements to the interpretive clause as it is expressed in the Queensland Act.⁵³

Second, cl 45 of the Bill requires the relevant statutory provision to be interpreted in a way that is the most compatible with human rights, if the provision cannot be interpreted in a way that is compatible with human rights. A similar provision can also be found in the Queensland Act (but not the Victorian Charter or ACT Act).⁵⁴

We support the way in which cl 45 requires that international human rights law and the judgments of domestic, foreign and international courts and tribunals, and treaty monitoring bodies are considered in interpreting a statutory provision. The way in which such materials would be used in the interpretive task is elucidated by the analysis of French CJ in *Momcilovic* in relation to s 32 of the Victorian Charter:

Section 32(2) does not authorise a court to do anything which it cannot already do. The use of comparative materials in judicial decision-making in Australia is not novel. Courts may, without express statutory authority, refer to the judgments of international and foreign domestic courts which have logical or analogical relevance to the interpretation of a statutory provision. If such a judgment concerns a term identical to or substantially the same as that in the statutory provision being interpreted, then its potential logical or analogical relevance is apparent. The exercise by a court of its capacity to refer to such material does not require the invocation of principles of interpretation affecting statutes giving effect to international treaties or conventions or specifically adopting their terminology. Nor does it involve the application of the common law principle that statutes should be interpreted and applied, so far as their language permits, so as not to be inconsistent with international law or conventions to which Australia is a party. Section 32(2) does not create a mechanism by which international law or interpretive principles affecting international treaties become part of the law of Victoria. On the other hand, it does not exclude the application of common law principles of interpretation relevant to a statute which adopts, as the Charter has, the terminology of an international convention.⁵⁵

We further note that there is nothing revolutionary in what might be described as a “rights protective” approach adopted by the judiciary in their task of interpretation. The High Court has applied the presumption in a number of cases since 1904 that Parliament intends any statute, so far as its language admits, to not be inconsistent with the comity of nations or established rules of international law.⁵⁶

Duties on Public Authorities

As noted in our letter to the Legislative Committee, we consider that the duties placed on public authorities should form a cornerstone of any piece of standalone human rights legislation.

⁵² Pamela Tate, Submission 61 to Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (29 June 2023).

⁵³ Susan Harris Rimmer, [Placing People at the Heart of Policy: First independent review of the Human Rights Act 2019 \(Qld\)](#) (Final Report, 30 September 2024).

⁵⁴ *Human Rights Act 2019* (Qld) s 48(2).

⁵⁵ *Momcilovic* (n 44) at 221, [18].

⁵⁶ Susan Kiefel, ‘Human Rights Without an Enacted Statement of Rights’ in Simon Mount and Max Harris (eds), *The Promise of Law: Essays Marking the Retirement of Dame Sian Elias as Chief Justice of New Zealand* (LexisNexis, 2020) 437, 444. See also *Jumbunna Coal Mine v Victorian Coal Miners' Association* (1908) 6 CLR 309.

Clause 49(4)-(5) of the Bill is set out in the following terms:

49 Obligations on public authorities

(4) For subsection (1)(b), giving proper consideration to a human right in making a decision includes, but is not limited to the following

- (a) identifying the human rights that may be affected by the decision, and
- (b) considering whether the decision would be compatible with human rights, and
- (c) ensuring the participation of—
 - (i) First Nations peoples in decisions that directly or disproportionately affect First Nations peoples,
 - (ii) children in decisions that directly or disproportionately affect children,
 - (iii) people with disability in decisions that directly or disproportionately affect people with disability,
 - (iv) women and girls in decisions that directly or disproportionately affect women and girls,
 - (v) older people in decisions that directly or disproportionately affect older people,
 - (vi) LGBTIQ+ people in decisions that directly or disproportionately affect LGBTIQ+ people,
 - (vii) victim survivors in decisions that directly or disproportionately affect victims, and
- (d) where relevant, realising access to justice principles.

As a general principle, the Law Society supports the participation of groups in decisions that directly or disproportionately affect them. The concept of a right to participation can be sourced from principles of international law.⁵⁷ Its importance to the Australian context has also been raised in previous inquiries: See, for example, the recommendation of the AHRC that, in addition to a positive duty to act in accordance with human rights, an overarching “participation duty” be included in a federal Human Rights Act where a decision disproportionately affects the rights of Aboriginal or Torres Strait Islander people, people with disability, or children.⁵⁸ However, we expect evidence would need to be taken by peak bodies and the public service about the impacts of this type of duty, who would be consulted from within the relevant protected groups, and how such a duty could operate effectively in practice without impeding the day-to-day decision-making prerogative of government.

We note that such a duty may be particularly important for Aboriginal communities in NSW, noting that Priority 1 of the National Agreement on Closing the Gap is directed to partnerships. We also refer the Legislative Committee to the analysis contained within the AHRC’s submission to the Parliamentary Joint Committee on Human Rights’ Inquiry on how participation is inextricably linked to the human rights of Aboriginal and Torres Strait Islander people.⁵⁹ In this context, we note that a right to participation would not, in and of itself, preclude inclusion of the right to self-determination as a standalone right in a human rights instrument.

Parliamentary Joint Committee on Human Rights

Part 4 of the Bill envisages the establishment of a Parliamentary Joint Committee on Human Rights with the following functions:

- to examine Bills for Acts and statutory rules that come before either House of Parliament for compatibility with human rights and to report to both Houses of Parliament on that issue;
- to examine Acts for compatibility with human rights and to report to both Houses of Parliament on that issue;
- to inquire into any matter relating to human rights which is referred to the Committee by the Attorney General and to report to both Houses of Parliament on that matter, at the Committee’s discretion, and on the

⁵⁷ See, eg, Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service* (Art. 25), 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 (12 July 1996). We also note that the right of Indigenous peoples to participate in decisions that directly or disproportionately affect them can be sourced from Arts 18 and 19 of UNDRIP (see also Arts 10, 29(2) and 32(2)). The duty of participation has also been examined closely in the context of Art 12 of the Convention on the Rights of the Child, including in immigration, family law and juvenile justice matters before the UN Committee on the Rights of the Child, as well as being incorporated in a limited way into various pieces of legislation across Australia.

⁵⁸ Australian Human Rights Commission, Submission No 1 to Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (5 May 2023) 50.

⁵⁹ Ibid.

Committee's own motion, to inquire into any matter relating to human rights and to report to both Houses of Parliament on that matter.

The Law Society strongly supports the need for this type of Committee, noting that there is no NSW equivalent to the Commonwealth Parliamentary Joint Committee on Human Rights. While the NSW Legislation Review Committee considers Bills and proposed regulations to the extent that they trespass unduly on personal rights and liberties, we note this is more limited in scope than what is proposed.

We suggest that, in addition to the proposed functions, it may also be useful for such a Committee to examine and report on comparative international legal developments in international human rights law. This would be particularly useful, given that international law forms the basis of a statute of this nature and, in this Bill, is mandated as part of the interpretive task demanded of the judiciary.

Statements of compatibility

The Law Society supports the way in which the Bill provides for the making of statements of compatibility in relation to bills and statutory rules: cll 56 and 57. As noted in our letter to the Legislative Committee, we consider this a core element of any Human Rights Act in line with the dialogue model. It helps to ensure that human rights are considered at the outset/design stage.

Absence of an override declaration

The Bill, in contrast to the Victorian Charter and Queensland Act, does not include an express provision for the making of "override declarations" by Parliament.⁶⁰

We note that there may be differences of opinion about the desirability of an override declaration. The Queensland Human Rights Commission in its 2023-24 review criticised the override clause in s 43 of the Queensland Act, particularly the reliance by the Queensland Government on the provisions in the context of youth justice.⁶¹

We suggest that it is not the statutory mechanism of the override itself which allows Parliament to pass legislation which is not rights-compatible. Rather, we concur with the view expressed by the AHRC in the Commonwealth Inquiry Report that there is nothing to prevent Parliament passing legislation incompatible with human rights by indicating, in the statute itself, a clear intention to do so, regardless of whether an "override" is expressly provided for in the legislation.⁶² In this sense, it is arguable that an override may be a useful tool of parliamentary accountability as it requires a statement, upon introduction of the relevant legislation, explaining the exceptional circumstances that justify the inclusion of the override declaration.

Human Rights Complaints

Clause 49 of the Bill makes it unlawful for a public authority to:

- act or make a decision in a way that is not compatible with human rights, or
- in making a decision, to fail to give proper consideration to a human right relevant to the decision.

⁶⁰ See *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 31 and *Human Rights Act 2019* (Qld) s 43, which provides that Parliament may expressly declare in an Act that the Act or another Act, or a provision of the Act or another Act, has effect despite being incompatible with 1 or more human rights or despite anything else in this Act. It further provides 'It is the intention of Parliament that an override declaration will only be made in exceptional circumstances'.

⁶¹ Queensland Human Rights Commission, *Annual report on the operation of Queensland's Human Rights Act 2019* (Report, 2023/24). See discussion of the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld) at 18 1–19.

⁶² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024)

Clause 49 does not apply to an act or decision of a private nature (see cl 49(3)). Clause 65 allows an individual the subject of a public authority's alleged contravention of cl 49 (or their agent/another authorised person) to make a complaint.

We draw the Legislative Committee's attention to the fact that the Bill therefore provides for a direct cause of action for human rights contraventions by public entities. A direct cause of action is currently provided for by s 40C of the ACT Human Rights Act. By contrast, the Victorian Charter and Queensland Act adopt what has been described as a "piggybacking" approach, whereby a human rights claim must be attached to a separate independent cause of action (for example, judicial review proceedings or a discrimination complaint) to file a human rights complaint in a court.⁶³

We suggest that Human Rights Acts with a direct cause of action (as is provided for by cl 49) can be understood more readily by the community. By contrast, it is conceivable that many people would fail to grasp the legal technicality of "piggybacking" a complaint as occurs in Victoria and the ACT. The nature of human rights legislation requires that it is readily understood by the layperson as far as possible. We suggest that a "piggybacking" provision would obscure this requirement.

Such concerns around the lack of a direct cause of action were acknowledged in the 2015 independent review of the operation of the Victorian Charter, which recommended changes to the remedies provisions, which it described as giving rise to "confusion and uncertainty" and "undermining the effectiveness" of the Victorian Charter as a human rights instrument.⁶⁴ This included a recommendation to amend the Charter "to make it clear that a person who claims that a decision of a public authority is incompatible with human rights, or was made without proper consideration of relevant human rights, can seek judicial review of that decision on the ground that the decision is unlawful under the Charter, without having to seek review on any other ground".⁶⁵

Clause 50(2) of the Bill provides for the manner in which an individual may lodge a complaint or bring proceedings against a public entity as follows:

50 Legal Proceedings

(2) The individual or representative applicant may—

- (a) lodge a written complaint with the Human Rights Commission against the public authority, or
- (b) bring proceedings against the public authority under this Act in the original jurisdiction of the Tribunal, or
- (c) bring proceedings against the public authority under this Act in the Court, or
- (d) rely on the human rights under this Act in other legal proceedings, but only if the individual has standing in those other proceedings.

Clause 50(3) provides that the Tribunal or the Court may, in a proceeding under subclauses 50(2)(b) or (c), grant the relief the Tribunal or Court considers appropriate. In this respect, the Bill goes further than current remedies under the ACT, Victorian and Queensland Acts in that it does not expressly preclude monetary damages.

We consider it important that any NSW Human Rights Commission and Court have discretion to grant a wide range of remedies, noting that the "right to an effective remedy" is an important principle of human rights law more generally. We note that monetary damages are available under NSW anti-discrimination law and can be important in circumstances where a procedural/administrative law remedy such as injunctions, declarative relief or the referral of a decision for remaking may be inappropriate or fail to recognise the severity of the breach by the public entity.

⁶³ *Human Rights Act 2019* (Qld) s 59; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 39.

⁶⁴ Michael B Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Final Report, 1 September 2015), 126–27.

⁶⁵ *Ibid* viii.

New South Wales Human Rights Commission

If a Human Rights Act was enacted in NSW, the establishment of an independent New South Wales Human Rights Commission would be highly desirable. It is evident from other states that such institutions play a vital role, not only in the handling of human rights complaints, but in their key educative functions directed to public sector entities and the broader community. There would need to be adequate funding of such a Commission, noting that the introduction of stand-alone human rights legislation is a whole-of-government commitment that demands concerted leadership and investment over an extended period.