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## Technological and societal changes make a Human Rights Act as important as ever

Human Rights Day provides a reminder of the urgent need for Australia to ensure all people are equal before the law and afforded the same rights.

“Under our current patchwork of human rights laws, there are gaps which result in some significant and unacceptable human rights breaches in this country, as well as putting us out of step with other nations and making it difficult for us to meet our international human rights obligations,” Law Council of Australia President, Mr Greg McIntyre SC said.

“The Law Council has long supported re-establishment of Australia’s National Human Rights Framework and adoption of a federal Human Rights Act. Today, this is as important as ever.

“One key driver is technological advancement. We have recently seen the risks posed to individual human rights by uptake of new technologies such as facial recognition.

“The Australian Government is currently considering how to best mandate guardrails on the development of AI in high-risk settings. A recently released discussion paper recognised the potential for artificial intelligence to improve social and economic well-being, but also highlights that Australia’s current regulatory system is not fit for purpose to respond to the distinct risks that AI poses.

“Importantly, the paper proposes that in designating an AI system as ‘high risk’, regard must be given to ‘the risk of adverse impacts to an individual’s rights in Australian human rights law without justification, in addition to Australia’s international human rights law obligations’.

“Yet we here in Australia lack the relevant federal human rights framework to make sense of this proposal. The paper itself recognises that ‘the EU, USA and Canada all have overarching legislative or constitutional instruments enshrining human rights in law. Australia does not have a similarly comprehensive instrument at a federal level’.

“This is not the only recent area in which our lack of federal human rights legislation has left us without the necessary guidance to properly understand or embed Australians’ rights.

“In the wake of the Aged Care Royal Commission, the Australian Government recently decided to implement a whole new, rights-based Aged Care Act. The Statement of Rights in the new Act will not be binding on aged care providers and risks raising expectations of human rights compliance among aged care residents without an enforcement mechanism to back it up.

“Similarly, after the Disability Royal Commission, the Government specifically promised to protect the human rights of Australians with disability. However, while welcome, the legislative response is currently limited to amending the *Disability Discrimination Act 1992* (Cth), rather than a more comprehensive response such as a Human Rights Act, Disability Rights Act, or even a consolidated, modernised single Anti-Discrimination Act.”

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# Media Release



There is one area in which the Government has seen fit to implement international rights protections – in the form of the *Modern Slavery Act 2018* (Cth). This admirable legislation has set up a reporting regime so that businesses can identify modern slavery and related exploitation risks in their value chains, and is a great example of authorities, civil society and business coming together to combat human rights abuses.

“However, a review of this Act by Professor John McMillan in 2023 recommended that the reporting regime be significantly expanded and strengthened, because compliance has been patchy and the regime’s impact limited,” Mr McIntyre said. “The Government recently announced stronger enforcement measures, which the Law Council welcomes, but more can and should be done.”

In May 2024, the Parliamentary Joint Committee on Human Rights released its report on Australia’s Human Rights Framework and resoundingly recommended that it be underpinned by a Human Rights Act.

“The Committee even provided a draft Human Rights Bill for discussion, based on proven elements of existing human rights legislation in other jurisdictions. We look forward to seeing a response from the Government to this review,” Mr McIntyre said.

“On this International Human Rights Day 2024 we should reflect on why we continually shy away from comprehensive legal human rights protection at the federal level, even though it is clearly needed in so many core and emerging areas of the law and could greatly benefit the lives of all Australians.”

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**Contact:** Kristen Connell, P. 0400 054 227, E. [kristen.connell@lawcouncil.au](mailto:kristen.connell@lawcouncil.au)

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