

Human  
Rights  
Law  
Centre.

Submission to 2025-26 Federal Budget  
consultation

31 January 2025

# Human Rights Law Centre.

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## Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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# 1. Introduction

Thank you for the opportunity to make a submission to the upcoming 2025-26 Federal Budget.

Working in partnership with people and communities, the Human Rights Law Centre challenges Australian laws and policies which stand in the way of justice and equity for all. We work across a range of issues which have implications for the 2025-2026 budget process, including campaigning for a federal Human Rights Act, migration justice, Aboriginal and Torres Strait Islander peoples' rights, dignity for people in prison, protecting democratic freedoms, whistleblower protections and preventing modern slavery.

The Federal Treasury's implementation of the recommendations below would put human rights at the heart of government policies and budgeting, and significantly improve the dignity, equality and fair access to justice of all people in Australia no matter where they live or who they are. Allocating resources in this way would also enable Australia to progress meeting its existing legal obligations under international human rights law.

# 2. Recommendations

The Human Rights Law Centre recommends that the Federal Treasury should:

- 1) Implement in full the Parliamentary Joint Committee on Human Rights suggested action 2.23 in its Scrutiny Report 8 of 2023 on statements of compatibility with human rights;
- 2) Ensure funding to fully resource the implementation of all recommendations in the Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework final report, including recommendation 1 on establishing a Human Rights Act, recommendation 5 on human rights education, recommendation 8 on public service human rights training, and recommendation 7 on ensuring effective and sustainable funding for the Australian Human Rights Commission;
- 3) Increase funding for Aboriginal and Torres Strait Islander Legal Services, including proper resourcing to run and expand legal assistance relating to children and young people, people at risk of imprisonment, people in prison and family violence, guided by service mapping and regular surveys of all unmet legal need;
- 4) Provide appropriate funding for specialised legal assistance for temporary migrants:
  - a. including (but not limited to) services to support access to 'visa protections' for temporary migrant workers;
  - b. to be allocated amongst community legal centres and Migrant Workers Centres, established in each state and territory;
- 5) Provide dedicated funding for legal assistance for migrants, refugees and people seeking asylum, including funding for specialist migration and refugee community legal centres;
- 6) Provide dedicated funding for legal assistance for whistleblowers;
- 7) Properly fund the establishment of robust National Preventive Mechanisms (NPMs) in every state and territory as required by Australia's obligations under the

- Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT);
- 8) Increase funding for Aboriginal and Torres Strait Islander Community Controlled Organisations, including to support children and young people with unmet needs and provide health care for Aboriginal and Torres Strait Islander people in prison;
  - 9) Increase funding for access to health and disability supports in prison, focusing on Aboriginal and Torres Strait Islander Community Controlled Organisations;
  - 10) Allocate funding to lower the age for Aboriginal and Torres Strait Islander people to access the Age Pension;
  - 11) Resource the Australian Electoral Commission to fund programs that remove barriers to voting for Aboriginal and Torres Strait Islander people – particularly those living on homelands, people with disability, and people in prisons. This should include expanding mobile polling services, ensuring full accessibility of voting infrastructure, providing culturally safe and language-accessible resources, and conducting targeted outreach to uphold the right to vote for all eligible voters;
  - 12) Expand the current budget for the office of the Anti-Slavery Commissioner to ensure it can carry out its functions effectively and meet stakeholder expectations;
  - 13) Provide appropriate funding for the establishment of an independent Whistleblower Protection Authority (WPA) to oversee and enforce federal whistleblower protections and for the provision of support to whistleblowers and other agencies with respect to whistleblowing disclosures.

## 3. Human rights-based budgeting

### 3.1 Budget processes and decisions should reflect human rights standards

Budgetary decisions can have materially different impacts on different parts of our society. Public finance is one of the most powerful tools that can either exacerbate or ameliorate systemic inequalities which impact peoples' lives. The allocation and distribution of federal resources is one of the primary ways, alongside legislative and policy frameworks, in which Australia can ensure it meets its legal obligations to uphold agreed minimum standards for equality, dignity and fairness for all. When people's human rights are respected and protected, they are also better able to contribute socially and economically to their full potential. The Human Rights Law Centre endorses the Australian Council of Social Services' submission recommendations.

This submission urges Treasury to take a human rights-based approach to budgeting, which means thinking through how people's rights are impacted by the way that money is raised, allocated, and spent. There is already a clear legal basis for taking this approach, although this could be significantly strengthened, as described below.

### 3.2 The Federal Budget and statements of compatibility

Under section 8 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, legislation introduced to Federal Parliament must include a Statement of Compatibility that makes an assessment of the Bill's compatibility with human rights. Section 3 defines "human rights" as meaning the rights and freedoms recognised or declared by the following international instruments:

- the International Covenant on Economic, Social and Cultural Rights;

- the International Covenant on Civil and Political Rights;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of all forms of Discrimination Against Women;
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Convention on the Rights of the Child; and
- the Convention on the Rights of Persons with Disabilities.

With respect to the October 2022 Federal Budget, the Parliamentary Joint Committee on Human Rights (PJCHR), tasked with scrutinising proposed legislation under sections 4 - 7 of the *Human Rights (Parliamentary Scrutiny) Act*, made the following comment:

*The committee considers that proposed government expenditure to give effect to particular policies may engage and promote, or limit, a range of human rights. The committee acknowledges that appropriations bills may present particular difficulties given their technical and high-level nature, and as they generally include appropriations for a wide range of programs and activities across many portfolios. As such, it may not be appropriate to assess human rights compatibility for each individual measure. However, the committee considers that the allocation of funds via appropriations bills is susceptible to a human rights assessment that is directed at broader questions of compatibility, namely, their impact on progressive realisation obligations and on vulnerable minorities or specific groups.<sup>1</sup>*

Unfortunately, there was no change in approach in the 2023-24 Federal Budget. The PJCHR scrutinised the 2023-24 Federal Budget Appropriation Bills and after considering the Minister's response to initial concerns raised by the parliamentary committee made the following recommendation:

*The committee's expectation is that statements of compatibility with human rights accompanying appropriations bills should address the compatibility of measures which directly impact human rights and which are not addressed elsewhere in legislation. In particular, the committee expects that where the appropriations bills propose a real reduction in funds available for expenditure on certain portfolios or activities that may impact human rights, the statement of compatibility should identify this and explain why this is a permissible limit.<sup>2</sup>*

The 2024-25 Federal Budget continues the pattern, with the PJCHR scrutiny of the 2024-25 Federal Budget Appropriation Bills stating:

*The committee reiterates its long-held view (set out most recently in Report 8 of 2023) that the appropriation of funds facilitates the taking of actions which may promote, or fail to fulfil, Australia's obligations under international human rights*

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<sup>1</sup> Parliamentary Joint Committee on Human Rights, Report 6 of 2022; [2022] AUPJCHR 44, pages 14 – 15 on Appropriation Bills 2022-2023.

<sup>2</sup> Parliamentary Joint Committee on Human Rights, Report 8 of 2023; [2023] AUPJCHR 68, page 109 on Appropriation Bills 2023-24.

*law, which is not recognised in the statements of compatibility accompanying these bills. The committee's expectation is that statements of compatibility accompanying appropriations bills should address the compatibility of measures which directly impact human rights. In particular, the committee expects that if appropriations bills propose a real reduction in funds available for expenditure on certain portfolios or activities that may impact human rights, the statement of compatibility should identify this and explain why this is a permissible limit.<sup>3</sup>*

We recommend that the 2025-26 Federal Budget adopt the approach put forward by the PJCHR with respect to how the budget is prepared, and the Budget Bills presented to Parliament for enactment, by addressing the compatibility of measures which directly impact human rights that are not addressed elsewhere in legislation. In our view, the approach to human rights-based budgeting in the Federal Budget would be vastly facilitated by a clear legal elaboration of what human rights are protected and how this applies to public decision-making, which a Human Rights Act would provide, as outlined next.

### **3.3 The need for an Australian Human Rights Act**

To better embed human rights principles into the budget process, we need a clearer shared understanding of human rights in Australia. No matter who we are or where we are, our lives are better when we all treat each other with fairness and respect and when we can all enjoy our rights and freedoms.

A Human Rights Act would ensure the actions of our governments are guided by values of freedom, equality, compassion and dignity. It would foster respect for human rights and help everyone, from school children to people who decide to call Australia home, to understand the rights and freedoms that we all share. A Human Rights Act reflects our values and help to articulate the kind of society we all want to live in. A Human Rights Act prevents human rights violations by putting human rights at the heart of decision making when governments are developing laws and policies and delivering services.

Importantly, Human Rights Acts also provide a powerful tool to challenge injustice, enabling people and communities to take action and seek justice if their rights are violated.

Yet, Australia is the only Western democracy which does not comprehensively protect people's human rights in law across the entire country.

There are three Human Rights Acts operating successfully at the state and territory level; in the Australian Capital Territory (ACT) since 2004, Victoria since 2006 (called a Charter), and Queensland since 2020. These Human Rights Acts have been quietly improving people's lives, in small and big ways. They have helped to ensure that people are treated with greater fairness, dignity and respect, stopping families from being evicted into homelessness, ensuring people with a disability receive appropriate support and so much more.

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<sup>3</sup> Parliamentary Joint Committee on Human Rights, Report 5 of 2024; [2024] AUPJCHR 32, page 1 on Appropriation Bills 2024-2025.

The Victorian Charter and the Queensland and ACT Human Rights Acts all work in a similar way. They protect and promote people's rights when dealing with governments; the Victorian Government, Queensland Government and the ACT Government respectively. They also promote transparency in the way the governments and parliaments deal with human rights issues.

They require public authorities, including government departments, public servants, local councils, police and other agencies, to:

- Properly consider human rights when making laws, developing policies, delivering services and making decisions; and
- Act compatibly with human rights.

They require that new laws must be assessed in Parliament against human rights standards. In some circumstances, a parliament can expressly choose to override human rights.

In some instances, they allow governments to limit or restrict human rights. Governments can only do this if they have a good reason for restricting the right and they do it in a reasonable way that is justified in a free and democratic society. In assessing whether a government has lawfully restricted a right, a court will look at things like the nature of the right, the reason for the restriction and any reasonably available less restrictive ways to achieve the purpose for the restriction. In broad terms, to lawfully restrict a right, a government must have a good reason for the restriction and must use the lowest level of restriction to get the job done.

If a government doesn't act compatibly with human rights or properly consider human rights, the Charter and Human Rights Acts give people the power to take action in the courts. There are different ways of doing this in each state or territory that has a Human Rights Act.

By taking legal action, people can stop governments from breaching their human rights. However, people can't get money as compensation if a government breaches their human rights. Also, courts can't invalidate laws that breach human rights. Parliaments have the final say on whether laws can breach human rights. The Charters and Human Rights Acts require courts to interpret laws consistently with human rights.

If someone thinks their rights have been breached or may be breached, they can make a complaint about the issue directly with the relevant government agency. They can also make a human rights complaint to the Victorian Ombudsman in Victoria, Queensland Human Rights Commission in Queensland, and ACT Human Rights Commission in the ACT.

The Human Rights Commissions in Victoria and Queensland each monitor and report on the operation of the Human Rights Act or Charter in their relevant state or territory. The Human Rights Acts and Charters in Victoria, Queensland and the ACT don't apply to the Federal Government or other state and territory governments.

Human Rights Acts have:

- Helped governments to identify and address human rights issues affecting people at an early stage of policy development;

- Ensured transparency around how governments and parliaments have considered people’s human rights;
- Promoted better understanding of human rights;
- Prevented human rights issues from escalating;
- Provided a way for people to resolve human rights issues by raising them with government and other agencies; and
- Given people the power to take action and address human rights issues affecting them through complaint mechanisms and in the courts.

There is growing experience overseas of applying human rights in the budget process to achieve better outcomes for everyone in the community. In 2017 the Office of the United Nations High Commissioner for Human Rights released a report called ‘Realising human rights through government budgets.’<sup>4</sup> Scotland provides a practical example of human rights principles being put into budget action, as outlined by the Scottish Human Rights Commission in their September 2019 ‘Human Rights Budget Work’ briefing papers.<sup>5</sup> A more direct local example is gender-based budgeting, an element of which is already put into practice by the Australian Federal Government through the Women’s Budget Statement.

A Human Rights Act embeds human rights into the DNA of government, and provide a bedrock for additional processes such as human rights budgeting. These put people at the heart of all aspects of government decision making including allocation of public resources. Protecting people’s human rights is in all our interests as a Human Rights Act helps to make life better for everyone. On that basis, we recommend that the Federal Government support an Australian Human Rights Act.

## **Recommendation**

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***The Federal Treasury should:***

***Implement in full the Parliamentary Joint Committee on Human Rights suggested action 2.23 in its Scrutiny Report 8 of 2023 on statements of compatibility with human rights; and***

***Ensure funding to fully resource the implementation of all recommendations in the Parliamentary Joint Committee on Human Rights Inquiry into Australia’s Human Rights Framework final report, including recommendation 1 on establishing a Human Rights Act, recommendation 5 on human rights education, recommendation 8 on public service human rights training, and recommendation 7 on ensuring effective and sustainable funding for the Australian Human Rights Commission.***

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<sup>4</sup> Realising human rights through government budgets, Office of the United Nations High Commissioner for Human Rights, 2017.

<sup>5</sup> Human Rights Budget Work: What, Why, How? Collected Briefing Papers, Scottish Human Rights Commission, September 2019.

## 4. Ensuring access to legal assistance for all

The Human Rights Law Centre acknowledges the new National Access to Justice Partnership (NAJP) which will commence on 1 July 2025, and welcomes its focus on communities in need, including people experiencing family, domestic and sexual violence,<sup>6</sup> and the importance of the recognition of the role played by Community Legal Centres. However, funding through the new NAJP remains insufficient, and falls short of the funding recommended in Dr Warren Mundy's independent review of the current National Legal Assistance Partnership. While recognising the funding announcement is a step in the right direction, the Federation of Community Legal Centres Victoria remains concerned about the sustainability of the sector and the impact this will have on communities.<sup>7</sup> There are several areas where further budget attention is warranted given the disproportionate impact on communities due to systemic racial and socio-economic inequalities persisting. In particular, we call on the Federal Treasury to provide further funding for legal assistance to Aboriginal and Torres Strait Islander people, migrants, refugees and people seeking asylum, and whistleblowers.

### 4.1 Funding for Aboriginal and Torres Strait Islander Legal Services

Increased funding for Aboriginal and Torres Strait Islander Legal Services is essential. We echo calls in Change the Record's submission for increased funding for Aboriginal and Torres Strait Islander Legal Services as well as Aboriginal and Torres Strait Islander Community Controlled Organisations more generally (see also sections 6 and 7).

Due to a toxic combination of the ongoing impacts of colonisation, discriminatory policing and systemic racism, Aboriginal and Torres Strait Islander people are over-criminalised and over-incarcerated. Aboriginal and Torres Strait Islander Legal Services are best placed to undertake both individual and systemic advocacy to address this grave injustice, having unparalleled knowledge and expertise in representing Aboriginal and Torres Strait Islander people in a broad range of legal matters. Importantly, they are representative of, and accountable to, First Nations communities.

Aboriginal and Torres Strait Islander Legal Services require more funding to meet both significant existing demand and compounding demand over coming months and years as a result of various punitive and regressive laws enacted in the last 12 months, most recently in Queensland and the Northern Territory.

It is particularly critical for the Federal Government to properly resource Aboriginal and Torres Strait Islander Legal Services to run and expand legal assistance relating to children and young people (such as Balit Ngulu, provided by the Victorian Aboriginal Legal Service), people at risk of imprisonment, people in prison and family violence. To

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<sup>6</sup> Attorney-General's Department, *National Access to Justice Partnership 2025-30*, <<https://www.ag.gov.au/legal-system/legal-assistance-services/national-access-justice-partnership-2025-30>> accessed 6 February 2025.

<sup>7</sup> Federation of Community Legal Centres Victoria, *Community Legal Centres recognise funding announcement as a step in the right direction but are concerned it will only scratch the surface of legal need*, <[https://www.fclc.org.au/legal\\_assistance\\_funding\\_announcement](https://www.fclc.org.au/legal_assistance_funding_announcement)> (accessed 6 February 2025).

inform ongoing budget setting the Federal Government must commit to service mapping and regular surveys of all unmet legal need, including unmet need in these critical areas.

## **4.2 Funding for legal assistance for migrants, refugees and people seeking asylum**

Migrants, refugees and people seeking asylum face particular barriers to accessing legal assistance, compounded by their precarious visa status. Despite the significant consequences of migration processes that could result in a person being detained or deported, there is very limited federal funding for this group. In recognition of the unmet legal need, we welcome the NAJP inclusion of “vulnerable migrants, including asylum seekers and refugees” as priority groups.<sup>8</sup> However, dedicated funding for legal assistance for migrants, refugees and people seeking asylum remains insufficient to meet the significant legal need and the expanding complexity of migration laws.<sup>9</sup>

There are also no federally-funded specialist legal assistance to assist temporary migrants with their unique legal problems, which include contractual and other disputes with education providers engaging the *Education Services for Overseas Students Act 2000*, visa-related matters and disputes in relation to the provision of migration services by education and migration agents. This represents an extraordinary gap in access to justice for a significant segment of the working population in Australia. The effects of that gap have been well documented – reports suggest that temporary migrants do not act to recover their stolen wages in part due to lack of access to legal assistance to advise both on employment rights and migration law.<sup>10</sup> This has flow on consequences for all workers across the economy. If we tolerate wage theft from and mistreatment of migrant workers, we compromise the working conditions of all.

We welcome the Labor government’s introduction of co-designed visa protections for temporary migrant workers in 2024.<sup>11</sup> The Human Rights Law Centre has been at the forefront of designing these protections, that rely on certification of employment claims by specialist employment lawyers. That certification entitles temporary migrants to access either a protection against visa cancellation or a temporary visa.

As early data from the pilot is already revealing, there needs to be a significant allocation of dedicated funding to the provision of employment and immigration legal assistance to

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<sup>8</sup> National Access to Justice Partnership (Nov 2024), Schedule A. See also Independent Review of the National Legal Assistance Partnership Final Report (March 2024), Recommendation 8.

<sup>9</sup> See for example, the laws passed late last year: *Migration Amendment (Removals and Other Measures) Act 2024* (Cth), the *Migration Amendment Act 2024* (Cth) and *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Act 2024* (Cth).

<sup>10</sup> Migrant Justice Institute, *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia* (October 2018)

<<https://static1.squarespace.com/static/593f6d9fe4fcb5c458624206/t/62621a72d737a96241d7cdae/1650596473879/Wage%2Btheft%2Bin%2BSilence%2BReport.pdf>> accessed 1 February 2024.

<sup>11</sup> Department of Home Affairs, Australian Government Endorsed Events (Workplace Justice Pilot) <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/temporary-activity-408/australian-government-endorsed-events-workplace-justice-pilot>> accessed 30 January 2025. See also Ministers Media Centre, ‘Fixing Australia’s Broken Migration System’ 11 December 2023

<<https://ministers.dewr.gov.au/oneil/fixing-australias-broken-migration-system>> accessed 30 January 2025.

temporary migrants in order for these protections to work in practice. This is particularly the case given the well-documented reluctance of temporary migrants to approach generalist legal assistance.<sup>12</sup> As well as community legal centres, temporary migrants are far more likely to seek legal assistance through their union or union-affiliated legal assistance.

Accordingly, we recommend dedicated funding for legal assistance for migrants, refugees and people seeking asylum including funding for specialist migration and refugee community legal centres, alongside substantial, dedicated funding for legal assistance to temporary migrants, to be allocated across community legal centres and Migrant Workers Centres, established across the states and territories and modelled on the version now in operation in Victoria.

### **4.3 Funding for legal assistance for whistleblowers**

There is a persistent power asymmetry between employers and persons who wish to speak up against wrongdoing. There is also a significant public interest in ensuring that whistleblowers are properly and appropriately advised and represented, particularly given the complexities of the relevant current legislative regimes. Accordingly, if appropriate funding were directed to providing access to advice and representation for suitable potential and actual whistleblowers, there is likely to be a substantial downstream benefit in circumstances where they receive dedicated legal assistance to navigate the complexities of the current legal landscape, to take formal action where appropriate, and to secure remedies efficiently. The Human Rights Law Centre released a report in 2023 which referred to the significant number of self-represented litigants in this area in unsuccessful cases.<sup>13</sup> This not only highlights the inaccessibility of legal representation for many whistleblowers but it indicates that the current lack of funded support is likely to place a substantial burden on the judicial system and may create inefficient, adverse, and costly outcomes for whistleblowers, which runs counter to the objects of relevant legislation.<sup>14</sup>

Legal assistance for whistleblowers would help address this. Notably, the review of Queensland's public sector whistleblowing legislation, the *Public Interest Disclosure Act 2010* (Qld), by the Hon Alan Wilson KC recommended that the state Department of Justice and Attorney-General develop a program to fund a legal assistance provider (for example, Legal Aid or a community legal centre) to provide legal advice and/or representation to a person seeking a remedy under the state legislation.<sup>15</sup> We support a similar program (whether as a pilot or in a more permanent form) being introduced, and funded appropriately, at the federal level for whistleblowers in the public and private sectors. Further, a Discloser Support Scheme was previously under consideration by the Department of Premier and Cabinet in Victoria in 2018. This proposed making per-person funding of \$24,000 available for the "cost of seeking advice from a solicitor in

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<sup>12</sup> Migrant Justice Institute, above n 10.

<sup>13</sup> Human Rights Law Centre, *The Cost of Courage: Fixing Australia's Whistleblower Protections* (August 2023), 7.

<sup>14</sup> See, for example, section 6 of the *Public Interest Disclosure Act 2013* (Cth).

<sup>15</sup> State of Queensland (Department of Justice and Attorney-General), *Final Report: Review of the Public Interest Disclosure Act 2010*, (June 2023) 212- 213.

relation to making a protected disclosure, participating in an investigation and any detrimental action proceedings,” as well as up to \$2,000 for “career transition costs and welfare costs.” While it is unclear why such a proposal did not proceed, the Human Rights Law Centre continues to strongly endorse the adoption of a similar model by the Federal Government.

While the most suitable mode of delivery for funding in this regard requires further examination, incorporating such a service into the suite of legal assistance provided by community legal centres supported by NAJP is one possibility not currently included in the NAJP. We acknowledge the submission of Transparency International Australia to the independent review of the National Legal Assistance Partnership in that respect.<sup>16</sup> In any event, appropriate funding should be introduced by the Federal Government with a view to ensuring that “so far as possible, a person is no worse off for making a protected disclosure complaint,”<sup>17</sup> consistent with the objective of the proposed Victorian Disclosure Support Scheme for a legal assistance funding regime in this area.

## **Recommendations**

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### ***The Federal Treasury should:***

***Increase funding for Aboriginal and Torres Strait Islander Legal Services, including proper resourcing to run and expand legal assistance relating to children and young people, people at risk of imprisonment, people in prison and family violence, guided by service mapping and regular surveys of all unmet legal need;***

***Provide appropriate funding for specialised legal assistance for temporary migrants: (a) including (but not limited to) services to support access to ‘visa protections’ for temporary migrant workers; (b) to be allocated amongst community legal centres and Migrant Workers Centres, established in each state and territory;***

***Provide dedicated funding for legal assistance for migrants, refugees and people seeking asylum, including funding for specialist migration and refugee community legal centres; and***

***Provide dedicated funding for legal assistance for whistleblowers.***

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## **5. Implementation of detention oversight mechanisms as required under OPCAT**

Ratified by the Federal Government in 2017, the United Nations’ anti-torture protocol

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<sup>16</sup> Transparency International Australia, Submission to the Independent Review of the National Legal Assistance Partnership (2020-2025), 27 October 2023.

<sup>17</sup> Victorian Government Department of Premier and Cabinet Discussion Paper: ‘Designing a pilot for the Discloser Support Scheme’ (October 2018), 3.

OPCAT<sup>18</sup> provides a framework for stamping out cruel and degrading treatment by requiring governments to designate independent bodies to undertake inspections of places of detention by way of a National Preventive Mechanism (NPM) and to facilitate visits by the UN Subcommittee on the Prevention of Torture (SPT).

The Federal Government has repeatedly sought extensions to implement OPCAT, until January 2023. Two years later, OPCAT has still not been implemented. The Federal Government bears ultimate responsibility to finance the establishment of robust NPMs in every state and territory, as well as in relation to all places of detention under Federal authority and control – including offshore.

The ongoing standoff over funding between the Commonwealth and States endangers people deprived of their liberty who are at risk of cruel and degrading treatment, solitary confinement and strip searching, and disproportionately impacts over-incarcerated communities including Aboriginal and Torres Strait Islander people and children. Furthermore, it has placed Australia in breach of its international obligations and damaged its standing globally regarding its commitment to prevention of torture and related crimes in places of detention across the country and within Australia's control.

### **Recommendation**

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***The Federal Treasury should properly fund the establishment of robust NPMs in every state and territory as required by Australia's obligations under OPCAT.***

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## **6. Increasing resources for Aboriginal and Torres Strait Islander-led alternatives to prison and incarceration**

Aboriginal and Torres Strait Islander people are disproportionately incarcerated in police and prison cells across the country. The ongoing mass incarceration crisis includes locking up children as young as 10 in the same facilities as adults.

As above, investment is required in Aboriginal and Torres Strait Islander Legal Services to support First Nations people in police custody and prison. However, this should be coupled with investment in Aboriginal and Torres Strait Islander-led prevention and early intervention services that provide alternatives to prison, divert people from the criminal legal system (particularly children) and address the root causes of offending behaviour.

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<sup>18</sup> Optional Protocol to the Convention Against Torture, Inhuman and Degrading Treatment or Punishment, ratified by Australia on 21 December 2017.

These programs and services, and knowledge about what works for different communities, already exist. The Federal Government should support all jurisdictions with an immediate funding boost for existing Aboriginal and Torres Strait Islander, community, health and legal organisations and groups that address the root causes of offending behaviour and support people in contact with the criminal legal system.

Ending the mass incarceration of Aboriginal and Torres Strait Islander people starts with ending the entrenchment of Aboriginal and Torres Strait Islander children in the criminal legal system. The Federal Government must heed the following funding-related recommendations made to the Senate inquiry into Australia's youth justice and incarceration system:

- ensure transfer of decision-making power, control and resources to Aboriginal and Torres Strait Islander Community Controlled Organisations and communities to build alternative, self-determined supports for children and young people;<sup>19</sup>
- ensure reallocation of money being funnelled into prisons to culturally safe services that meet the needs of children and young people at risk of criminalisation and divert people away from the criminal legal system;<sup>20</sup>
- support jurisdictions to properly resource Aboriginal Community Controlled Organisations to develop decarceration models and implement place-based programs based on decarceration principles;<sup>21</sup> and
- report annually on the percentage of government funding going to Aboriginal specific investment, with reporting broken down into funding that goes to government departments and agencies, funding that goes to mainstream services, and funding that goes to Aboriginal organisations and individuals.<sup>22</sup>

## **Recommendation**

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***The Federal Treasury should increase funding for Aboriginal and Torres Strait Islander Community Controlled Organisations, including to support children and young people with unmet needs and provide health care for Aboriginal and Torres Strait Islander people in prison.***

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<sup>19</sup> Change the Record and the Human Rights Law Centre, Submission to the Inquiry into Australia's Youth Justice and Incarceration System (10 October 2024) recommendation 2.

<sup>20</sup> Ibid, recommendation 7.

<sup>21</sup> Victorian Aboriginal Legal Service, Submission to the Inquiry into Australia's Youth Justice and Incarceration System (October 2024) recommendation 5.

<sup>22</sup> Ibid, recommendation 27.

## 7. Access to health care and disability supports in prison

People in prison across Australia should have access to the same standard of health care that is available in the community.<sup>23</sup> Yet, they are unable to do so because they cannot access the Medicare Benefits Scheme (MBS) or the Pharmaceutical Benefits Scheme (PBS),<sup>24</sup> and access to the National Disability Insurance Scheme (NDIS) is extremely limited.<sup>25</sup> In addition to the denial of adequate healthcare in prison, this means that healthcare services in prisons are also often poorly integrated with community health services, creating serious reintegration risks.

Equivalency of healthcare is particularly important for Aboriginal and Torres Strait Islander people, who are disproportionately impacted due to their mass incarceration and because they experience higher rates of a number of health conditions compared to non-Indigenous people. This was recognised by the Royal Commission into Aboriginal Deaths in Custody, which recommended that “health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public.”<sup>26</sup> People with health and disability needs, who are inordinately incarcerated, are also disproportionately impacted.

Access to health and disability supports in prison must be improved through legislative change enabling access to the MBS, PBS and NDIS as well as increased funding. The funding must adequately resource Aboriginal and Torres Strait Islander Legal Services and Aboriginal and Torres Strait Islander Community Controlled Organisations to support people in prison, including resourcing Community Controlled Health Organisations to provide healthcare to people in prison and support children and young people with unmet needs.

### Recommendation

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***The Federal Treasury should increase funding for access to health and disability supports in prison, focusing on Aboriginal and Torres Strait Islander Community Controlled Organisations.***

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<sup>23</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) UN Doc E/CN.15/2015/L.6/Rev (17 December 2015) rule 24.

<sup>24</sup> State governments are responsible for funding prison health services and section 19(2) of the Health Insurance Act 1973 (Cth) prevents health services from receiving federal government funding if they receive funding from another level of government.

<sup>25</sup> The criminal legal system, rather than the NDIS, is expected to meet day-to-day needs, including medical and clinical supports: See, NDIS, ‘Who funds the supports you need when you’re in custody?’ <<https://ourguidelines.ndis.gov.au/how-ndis-supports-work-menu/justice-system/who-funds-supports-you-need-when-youre-custody>> accessed 7 February 2025.

<sup>26</sup> Royal Commission into Aboriginal Deaths in Custody (Final report, 1991) recommendation 150.

## 8. Fair and equal access to the aged pension

We submit that funds should be allocated in the upcoming budget to lower the age for Aboriginal and Torres Strait Islander people to access the Age Pension.

Every person should have the right to age and retire with dignity. The Age Pension is Australia's safety net for people who can no longer work, but do not have enough to support themselves. Yet the standard pension age fails to take into account the different life expectancy and ageing experiences of Aboriginal and Torres Strait Islander people. Aboriginal men have a life expectancy 8.8 years lower than non-Indigenous men, while for Aboriginal women the gap is 8.1 years. This gap in life expectancy is widening, rather than narrowing.

The gap means that Aboriginal and Torres Strait Islander people do not currently have fair and equal access to the Age Pension. While the gap in life expectancy persists, Aboriginal and Torres Strait Islander people should be able to access the Age Pension earlier.

The Federal Government should be seizing every opportunity to address the health impacts of generations of systemic discrimination. Allocating funds in the upcoming budget to providing fair and equal access to the Age Pension for Aboriginal and Torres Strait Islander people is one measure to support Closing the Gap targets that could ensure Aboriginal and Torres Strait Islander people are better supported in retirement.

### **Recommendation**

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***The Federal Treasury should allocate funding to lower the age for Aboriginal and Torres Strait Islander people to access the Age Pension.***

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## 9. Removing barriers to voting

Ensuring full and equal access to democratic participation is a fundamental cornerstone of Australia's democracy. Yet significant barriers to voting persist, particularly for Aboriginal and Torres Strait Islander people, people with disabilities, and people in prisons. Addressing these barriers requires targeted resources and initiatives, and we recommend that the Australian Electoral Commission (AEC) be specifically funded to deliver programs that ensure these communities are not further disenfranchised.

Aboriginal and Torres Strait Islander people living on homelands lack the same level of access to electoral services as those living in metropolitan centres. This inequity, combined with language barriers and confusion about government processes can make it difficult for many to participate in federal elections.

To address these challenges, it is essential that the AEC receive adequate funding to, among other things, translate enrolment and voting information into Aboriginal and Torres Strait Islander languages, recruit and train local interpreters to assist voters at polling places, and provide mobile polling teams to visit communities on homelands. These teams must be resourced to stay in communities long enough to ensure all eligible voters have the opportunity to cast their vote. These measures are vital to addressing inequities in service access while prioritising cultural safety and accessibility for Aboriginal and Torres Strait Islander communities.

For people with disability, barriers to voting are often structural, including inaccessible voting mechanisms and polling places, and a lack of awareness about available support options. The Human Rights Law Centre's submission to the parliament's Joint Standing Committee on Electoral Matters inquiry into the 2022 federal election emphasised the need to fund upgrades to voting infrastructure to ensure full accessibility in line with universal design principles.<sup>27</sup> We echo this recommendation in the context of this process. In addition, we recommend funding comprehensive outreach programs which are essential to increase awareness of accessible voting options for people with disability, coupled with the expansion of telephone-assisted voting, which would enable independent voting for people with vision impairment and other disabilities.

People in prisons face unique challenges that leave many effectively disenfranchised despite many having the legal entitlement to vote in federal elections and referendums. To address this, the AEC should be properly funded to deploy mobile polling teams to correctional facilities, ensuring that all eligible prisoners have the opportunity to enrol and vote. These mobile polling services should also be extended to other facilities like homeless shelters, nursing homes, hospitals (including forensic hospitals), and other locations where eligible voters who wish to vote may face difficulties in accessing polling places.

Addressing these barriers is essential to fulfilling Australia's obligations under Article 25 of the *International Covenant on Civil and Political Rights*, which guarantees the right to participate in public affairs without discrimination.<sup>28</sup> By providing targeted funding to the AEC, the Federal Treasury can empower the Commission to strengthen the inclusiveness, integrity, and fairness of Australia's democracy.

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<sup>27</sup> Human Rights Law Centre, *Submission to the Joint Standing Committee on Electoral Matters, Inquiry into the Conduct of the 2022 Federal Election* (Submission, November 2022) 21–27 <<https://www.hrlc.org.au/submissions/2022/11/22/federal-government-must-pursue-ambitious-reforms-to-secure-a-healthier-democracy-2022-election-review>>.

<sup>28</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 25.

## Recommendation

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***The Federal Treasury should resource the Australian Electoral Commission to fund programs that remove barriers to voting for Aboriginal and Torres Strait Islander people – particularly those living on homelands, people with disability, and people in prisons. This should include expanding mobile polling services, ensuring full accessibility of voting infrastructure, providing culturally safe and language-accessible resources, and conducting targeted outreach to uphold the right to vote for all eligible voters.***

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## 10. Funding for Anti-Slavery Commissioner

The Human Rights Law Centre considers the current allocation of \$8.0 million over four years from 2023-24 to establish and run the new Anti-Slavery Commissioner's office as insufficient to effectively meet stakeholder expectations and support the varied policy objectives for the office as set out in the *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024* (Cth).<sup>29</sup>

The current budget for the Commissioner would allow for up to 6 staff.<sup>30</sup> The NSW Anti-Slavery Commissioner has 12 staff, and has estimated he needs 18-30 staff to effectively fulfil his narrower range of functions under the NSW *Modern Slavery Act*.<sup>31</sup>

Other comparable offices have also received significantly more funding. In 2024, for example, the Government committed to providing an additional \$134.1 million over four years for the office of the eSafety Commissioner, and \$44.3 million over four years for the Office of the Australian Information Commissioner to support the Privacy Commissioner.

Without additional funding, the Commissioner is likely to be heavily reliant on the Modern Slavery Business Engagement Unit positioned in the Attorney-Generals' Department, compromising the independence of the office.

With an estimated 29 million people in the Asia-Pacific region and 41,000 people in Australia living in modern slavery,<sup>32</sup> the budget for the Commissioner must support both

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<sup>29</sup> Commonwealth of Australia, 'Budget Measures 2023-24,' <Budget Paper No. 2: Budget Measures>, 60.

<sup>30</sup> Legal and Constitutional Affairs Committee, Attorney General's Portfolio, 2024-2025 Budget Estimates, Answer to Question on notice no.132 from Senator David Shoebridge (31 May 2024), Portfolio question number: BE24-132.

<sup>31</sup> New South Wales Parliament, 'Joint Modern Slavery Committee. Report no. 1: Review of the Modern Slavery Act 2018', 2023 <<https://www.parliament.nsw.gov.au/tp/files/187395/Report%20No%201%20-%20MSC%20-%20Review%20of%20the%20Modern%20Slavery%20Act%202018.pdf>>, 2.61 - 2.63.

<sup>32</sup> Walk Free, 'Modern Slavery in Asia and the Pacific' <<https://www.walkfree.org/global-slavery-index/findings/regional-findings/asia-and-the-pacific/>>.

the currently legislated mandate, the anticipated scope of the role and the scale of addressing this enormous global problem.

## Recommendation

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***The Federal Treasury should expand the current budget for the office of the Anti-Slavery Commissioner to ensure it can carry out its functions effectively and meet stakeholder expectations.***

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# 11. Funding for a Whistleblower Protection Authority

The Federal Government is presently considering whether to establish a Whistleblower Protection Authority (WPA) or Commissioner and a public consultation process is underway in relation to the *Public Interest Disclosure Act 2013* (Cth) (PID Act) in particular.<sup>33</sup> Treasury is also presently undertaking a statutory review of whistleblower protections in the *Corporations Act 2001* (Cth).

The Human Rights Law Centre has consistently endorsed the urgent establishment of a standalone and independent WPA, to oversee and enforce federal whistleblower protections and support whistleblowers.<sup>34</sup> Funding should be reserved to ensure a future WPA is sufficiently resourced. The Human Rights Law Centre recommends that, in formulating the 2025-26 Federal Budget, the Federal Treasury have regard to:

- The importance of granting the WPA powers in relation to the protection of, and support for, whistleblowers in all sectors;
- The need for independence from present oversight or integrity bodies throughout Australia;
- The necessity of granting the WPA a sufficiently broad jurisdiction to oversee and enforce both public sector and private sector protections;
- The benefits that would be derived from a WPA that is resourced to foster greater coordination and more appropriate processes for referrals of whistleblowing matters across government;
- The dedicated staff required at the WPA to help it fulfil core functions such as:
  - the enforcement of public interest whistleblower protections in federal laws

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<sup>33</sup> Attorney-General's Department Consultation Paper, 'Public Sector Whistleblowing Reforms – Stage 2 – reducing complexity and improving the effectiveness and accessibility of protections for whistleblowers' (November 2023).

<sup>34</sup> See generally: Human Rights Law Centre, Centre for Governance and Public Policy at Griffith University and Transparency International Australia, '*Protecting Australia's Whistleblowers: The Federal Roadmap*' (June 2023).

- o the provision of support, information and assistance to current, former, and prospective whistleblowers;
- o to investigate and provide alternative dispute resolution services, and other recommendations and remedies, in response to alleged detrimental treatment of whistleblowers; and
- o the provision of support to other federal integrity and regulatory agencies, and relevant state-based authorities, in the receipt, assessment, referral, coordination and effective management of whistleblowing disclosures.

The Human Rights Law Centre otherwise endorses the Draft WPA Design Principles developed together with Transparency International Australia, and Griffith University,<sup>35</sup> and recommends that Treasury accordingly consider appropriate budgetary allocations to reflect the need for an appropriately resourced independent WPA in that regard.

### **Recommendation**

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***The Federal Treasury should provide appropriate funding for the establishment of an independent WPA to oversee and enforce federal whistleblower protections and for the provision of support to whistleblowers and other agencies with respect to whistleblowing disclosures.***

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## 12. Conclusion

The Australian Government has the opportunity to put human rights principles at the heart of government policies and improve the lives of all people in Australia in this budget. As with gender-responsive budgeting and participatory approaches to poverty reduction, a human-rights based budget would demonstrate and measure Australia's commitment to upholding and measuring human rights principles. This should include attention to progress on economic and social rights as much as on basic democratic freedoms. This simply requires putting people's dignity and equality first in assessing the impact of resource allocations. A rights-based approach to policy choices and funding should be made on the basis of transparency, accountability, non-discrimination and participation. The Human Rights Law Centre welcomes the opportunity to contribute this submission and remains available for further engagement on budgeting processes as necessary.

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<sup>35</sup> Transparency International Australia, Submission to Attorney-General's Department: 'Ensuring Australian Whistleblowing Laws Work: Draft Design Principles for a Whistleblower Protection Authority' (January 2024), Attachment 1.