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# *Policy Document*

## Health and Human Rights (2023)

### Position Statement

The Australian Medical Students' Association (AMSA) recognises the need to advocate for, protect, and uphold human rights. AMSA strongly supports the position of national and international human rights agencies in striving towards the realisation of the highest attainable standard of health for all people, including physical, mental, social, cultural, and spiritual health.

AMSA affirms that:

1. Human rights are universal, interdependent and non-negotiable;
2. The attainment of human rights is fundamental to the attainment of social justice and positive health outcomes;
3. Medical students and healthcare professionals play a pivotal role in upholding the values and principles of human rights and the responsibility to not contribute to human rights violations;
4. AMSA supports and promotes medical student activism, including protests against human rights violations;
5. Efforts to improve health must address issues of human rights, and this process can be aided by the adoption of a Human Rights-Based Approach (HRBA);
6. Local, state and federal governments should acknowledge past and ongoing human rights violations and take productive steps in implementing a greater proportion of the recommendations made by the United Nations' Human Rights Council;
7. The introduction of a Federal Charter of Human Rights would formalise Australia's international human rights obligations, provide consistent guidance to all state and territory jurisdictions, and allow cohesive decision-making to occur when implementing, auditing and evaluating rights-based policy and practice throughout Australia.

### Policy Points

AMSA calls upon:

1. Australian medical students and medical professionals to:
  - a. Be agents of social change, raise awareness and campaign for political change towards health equity for all people;

- b. Practise medicine in a manner that is informed by the interdependency of health and human rights;
  - c. Uphold ethical principles of medicine at all times to ensure patient rights are protected within the healthcare system through;
    - i. Creating support systems for students and medical schools to advocate for human rights and health issues;
    - ii. Creating avenues for advocacy for medical students which recognise intersectional and diverse nature of human rights in health issues;
  - d. Recognise the diverse, complex and dynamic nature of health in Australia and globally, while understanding the unique and overlapping needs of priority populations;
    - i. This also extends creating accountable pathways of support for medical students and professionals who belong to priority populations.
2. Australian Medical Schools to:
- a. Provide medical students with high quality education on human rights and their impacts on health, including:
    - i. Awareness of fundamental human rights and their implications on the provision of healthcare to all people;
    - ii. Understanding of relevant current and past human rights violations in Australia and internationally, enabling students to recognise wrongdoing and work to prevent future offences;
    - iii. Appreciation for HRBAs in formulating and implementing healthcare programmes and interventions;
    - iv. Understanding how human rights are framed and enforced in the Australian legal system;
    - v. Clinical skills for interacting with patients, taking into account psychosocial factors and the influence of human rights on health;
  - b. Provide flexibility in delivery of medical education to allow students to pursue external opportunities, such as conference leave that encourages students to inform themselves about health inequities and equip themselves with the necessary skills to advocate for change;
  - c. Ensure ongoing psychological, professional and financial support in the form of scholarships for medical students that are a part of priority groups affected by human rights abuses.

3. The Australian Medical Council (AMC)
  - a. To work with Australian medical schools to develop guidelines and expectations for teaching human rights in Australian medical schools using a HRBA.
4. Medical Colleges to:
  - a. Actively engage and encourage college members to:
    - i. Participate in college driven professional development opportunities to gain further adequate and appropriate training in relation to HRBA in providing care and knowledge of the interdependency of health and human rights;
    - ii. Undertake research in relation to the extent and impact of health inequities, both within and between countries, as well as the efficacy of HRBA implementation in various circumstances;
    - iii. Utilise college networks and communities to be agents of social change through advocacy and facilitating initiatives build awareness for, and respect of, the interdependency of health and human rights;
    - iv. Promote advocacy within the colleges to ensure college members uphold an equitable standard of care for all individuals as well as provide education to college members about what health services are available to vulnerable groups.
5. The International Federation of Medical Student Associations (IFMSA) and National Medical Organisations to:
  - a. Continue to facilitate opportunities between different national medical organisations around the world to engage and discuss human rights and health related issues in order to promote cross-cultural engagement in human rights and health advocacy;
  - b. Continue to offer opportunities for students to engage with external stakeholders in order to ensure the voice of students is heard and accounted for on an international advocacy and policy level.
6. State, Territory and Local Governments to:
  - a. Ensure a Human Rights Based Approach (HRBA) forms the underlying basis of health policy, strategy and programme development and decision making;
  - b. Ensure that priority groups are identified and provisions introduced to account for and ameliorate the health inequities faced by these groups when compared to the general population;
  - c. In the absence of a Federal Charter of Human Rights, develop and adopt consistent Charters of Rights in all States and Territories, similar to those enacted in Victoria, Australian Capital Territory and

Queensland, that outline the basic rights, freedoms and responsibilities of all persons in those States or Territories and allow a person to bring causes of action for alleged breaches under the Charters.

7. The Commonwealth Government to:

- a. Recognise the interdependence between human rights and health, acknowledging that:
  - i. The protection of the right to health is integral to the protection of the exercise of all other rights;
  - ii. The right to health and its social determinants are addressed meaningfully through adequate and community-acceptable health policies and programs;
  - iii. Commitment to the realisation of the United Nations Sustainable Development Goals (SDGs) by 2030 is an essential endeavour;
  - iv. A positive human rights reputation for Australia may encourage all members of the international community to implement strategies and systems that uphold human rights;
- b. Develop and adopt into domestic law a national Charter of Human Rights, recognising and protecting the civil, political, economic, social and cultural rights set forth within the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Therefore, providing means and measures to better protect the fundamental human rights of all people subject to Commonwealth jurisdiction. Such a Charter would:
  - i. Set forth the fundamental rights people within Australia are entitled to;
  - ii. Strengthen Australia's culture of respect for fundamental human rights;
  - iii. Better protect the rights of minorities, including the rights of non-citizens;
  - iv. Require the Commonwealth Parliament to consider whether new legislation complies with human rights standards;
  - v. Provide enforceable remedies for breaches of human rights;
  - vi. Re-establish Australia's reputation as a "good international citizen";
- c. Introduce a Federal Human Rights Court to facilitate adjudication of causes of action brought under the proposed national Charter of Human Rights, providing an expeditious and expert-informed avenue of dispute resolution;

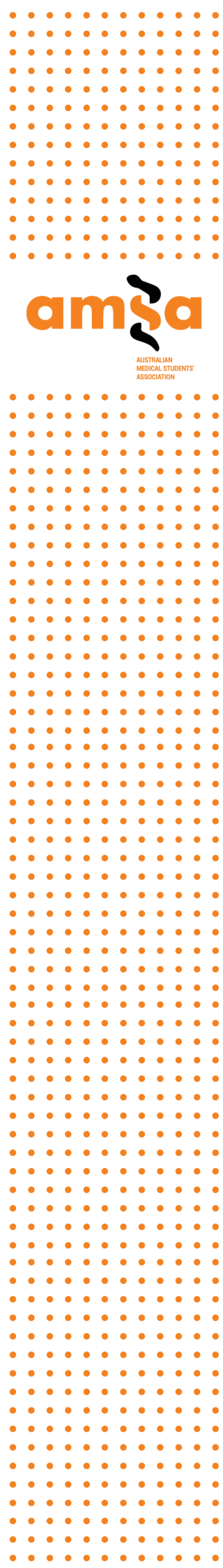
- d. Obey the international human rights treaties Australia is party to (including customary international law), even in the absence of corresponding domestic law;
- e. Ensure that the Commonwealth Government fully adheres to, and enforces, existing human rights law in Australia;
- f. Integrate a Human Rights-Based Approach to health policy, strategy and programme development and decision-making, ensuring that:
  - i. All parties involved are held accountable for the observance, respect and protection of human rights;
  - ii. All individuals are able to enjoy equally or exercise their right to health, regardless of any status that might apply to them (e.g. race, gender identity, sexuality, language or opinion);
  - iii. All concerned stakeholders are able to have ownership and control over all phases of health policy, strategy and programme development and decision-making;
  - iv. Healthcare facilities and services are made sufficiently available to all;
  - v. All individuals have equitable physical, economical and information access to healthcare facilities and services;
  - vi. Healthcare facilities and services are people-centred with the capacity to cater for diverse and specific needs;
  - vii. Healthcare facilities and services have the capacity to sufficiently cope with all variety of health needs.

## Background

### Introduction to Health and Human Rights

The Australian Medical Students' Association (AMSA) is the peak representative body of Australia's 17,000 medical students across all Australian Medical Schools. AMSA affirms that all people have the right to the highest attainable standard of health and that human rights and health are inextricably linked. Accordingly, AMSA actively seeks to advocate on issues pertaining to human rights and health outcomes. As the representative body of all medical students at Australian universities, AMSA also aims to foster and encourage medical students to play a leading role in advocating for human rights and challenging human rights abuses.

Health, according to the World Health Organisation (WHO), is "a state of complete physical, mental, and social well-being and not merely the absence of disease and infirmity [1]." In 1948, the United Nations (UN) adopted the Universal Declaration of Human Rights, which Australia played a prominent role in drafting, expressing "recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family [2]." Further to this, the Universal Declaration of



Human Rights acknowledged the interconnectedness of health and human rights by stating that “everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control [2].”

The UN International Covenant on Economic, Social and Cultural Rights (ICESCR) was the first binding international legal instrument recognising the right to health and wellbeing [3]. Human rights in health as recognized by the ICESCR encompasses:

1. The provision of a high standard of health care for infant and child development;
2. The improvement of environmental and industrial hygiene;
3. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
4. Creating conditions to ensure adequate access to medical service and attention in the event of sickness [4]

Without health as a fundamental human right, individuals are unable to exercise other human rights to their fullest extent, such as the right to education or employment [5]. Undoubtedly, the highest standards of health also cannot be achieved without other fundamental human rights as a foundation, such as the right to food, water, housing and freedom from discrimination, demonstrating the interdependence between health and human rights. Therefore, governments globally must ensure human rights are binding in order to guarantee health and health rights for all, and vice versa [5].

### **Current Australian Human Rights Law**

Currently, human rights are protected under State and Federal legislation, the Australian Constitution, and common law [6]. The Constitution only specifies five explicit individual rights: the right to trial by jury (Section 80), key freedom of religion (Section 116), the right to vote (Section 41), the protection against acquisition of property on unjust terms (Section 51 (xxxii)), and the prohibition of discrimination based on the basis of State of residency [7].

Discrimination against individuals based on their race, gender identity, sexual orientation, disability, age etc. is illegal under anti-discrimination laws [8]. However, there is no uniform approach to anti-discrimination, as there are discrepancies between an individual's rights depending on the jurisdiction they fall into (refer to State and Territory Approaches to Human Rights below) [7, 8, 9]. Therefore, any

complaints of unlawful discrimination or human rights violation are currently lodged with the relevant state/territory agencies and/or with the Australian Human Rights Commission (AHRC) [8]. The AHRC has done anti-discrimination work around the following groups of individuals: Aboriginal and Torres Strait Islander people, children, people with a disability, LGBTQIASB+ people, asylum seekers and refugees. They have also raised awareness around race, age and gender discrimination. However, as an independent third party, the AHRC's role is simply to receive and investigate those who produce complaints of unlawful discrimination. Hence, their role is primarily around awareness and response, rather than active protection and legislation of human rights [10].

### State and Territory Approaches to Human Rights

While there exists human rights legislation in certain Australian jurisdictions, the remainder of Australia follows individual and differing anti-discrimination rights and laws [8, 9]. Some states, namely Australian Capital Territory (ACT) [11], Victoria (VIC) [12] and Queensland (QLD) [13] have passed their own individual Charter of Human Rights, which formally protects individuals at the State/Territory level [14, 15, 16]. However, there are discrepancies in their function and ability to protect human rights [14, 15, 16]. In New South Wales (NSW), the Northern Territory (NT), South Australia (SA), Western Australia (WA), as well as on a Federal level, there is no comprehensive protection of human rights in legislation; this is despite Australian signatory of various core international human rights treaties described below [15].

The *Human Rights Act 2004* in the ACT enshrines various civil and political rights (sourced from the ICCPR) and the right to education (sourced from the ICESCR) in legislation [14]. This Act stipulates that Bills introduced into the Legislative Assembly must be accompanied by a "compatibility statement" which identifies the compatibility between the Bill and the rights outlined by the Act [14]. Individuals are able to challenge alleged breaches of human rights by public authorities in the Supreme Court [14]. Incompatibilities between the Bill or Act in question with human rights stipulated in the Act can be determined by the ACT Supreme Court through declarations of incompatibility.

While the Victorian *Charter of Rights and Responsibilities Act 2006* predominantly protects civil and political rights, similar to the ACT legislation, this Charter cannot be utilised in a court of law to commence legal action in response to an alleged breach of human rights [15]. Instead, the Charter can only be utilised in prevailing legal disputes [15]. However, like the ACT legislation, compatibility statements accompany Bills introduced to Parliament which can be countered by a declaration of inconsistent interpretation by the Victorian Supreme Court [15].

The Queensland *Human Rights Act 2019* outlines similar human rights as the Victorian and ACT legislation with the additional rights: the right to education and the right to health services [16]. Section 37 of the QLD Act states “every person has the right to access health services without discrimination” and “a person must not be refused emergency medical treatment that is immediately necessary to save the person’s life or to prevent serious impairment to the person” [16]. The QLD Act places the onus on QLD government agencies/departments and adjacent organisations to uphold these rights; however, compliance is not required for private organisations and the federal government and their agencies [16]. A core feature of the QLD Act concerns the dispute resolution process to address human rights breaches raised by the QLD Human Rights Commission [16].

Currently, all other states and territories in Australia have the following legislation which are adjacent to addressing human rights - *Anti-Discrimination Act* (NT), the *Equal Opportunity Act 1984* (SA), *Anti-Discrimination Act 1998* (Tas) and the *Equal Opportunity Act 1984* (WA) [17, 18, 19, 20]. While they are theoretically significant, the scope of these laws do not cover the breadth of Australia’s human rights roles and responsibilities to provide adequate protection of rights. Furthermore, they encourage inequitable and inconsistent approaches to human rights throughout Australia. Evidently, the lack of a single or focused piece of law on state or national levels, and the interplay of the numerous existing legislations, creates difficulties in defining and respecting human rights.

## Domestic Implementation of Australia’s International Human Rights Obligations

Australia is party to a number of major international human rights treaties, including:

- ICESCR
  - ICCPR
  - International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
  - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
  - Convention on the Rights of the Child (CRC)
  - Convention on the Rights of Persons with Disabilities (Disability Convention)
- [21]

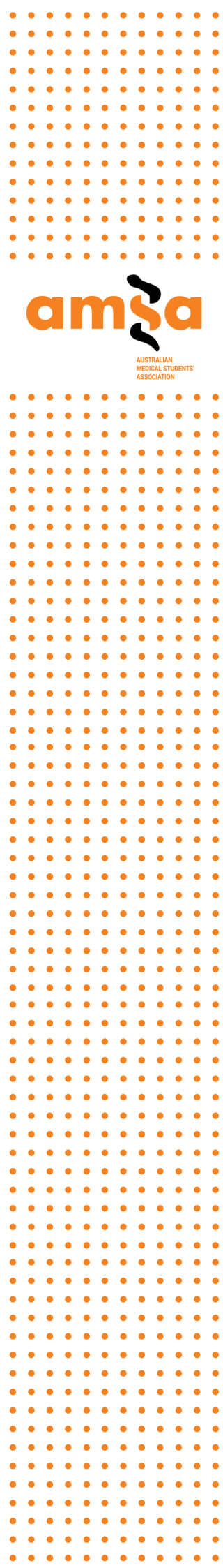


As a party to these treaties, Australia is obligated, under international law, to respect and uphold the rights enumerated within the respective treaties [21]. However, the act of ratification does not automatically incorporate treaty rights and obligations into Australian domestic law – for this to occur, the Commonwealth Parliament must pass specific legislation implementing the terms of the treaty domestically, if the relevant rights/obligations are not already recognised in existing legislation [22]. Thus, it is possible to be party to a treaty, and bound under international law, whilst simultaneously not recognising the terms of that treaty (i.e. rights/obligations) under Australian domestic law.

Indeed, whilst some human rights enjoy legal protection in Australia, many international human rights treaties have yet to be incorporated fully (if at all) into Australian domestic law [23]. The UN treaty bodies, responsible for monitoring States parties' implementation of the various treaties, have repeatedly condemned Australia for not acting in accordance with these treaties and incorporating them into domestic legislation. The UN Committee on Economic, Social and Cultural Rights noted "because the Covenant has not been entrenched as law in the domestic legal order, its provisions cannot be invoked before a court of law [23]."

Practically, this means an individual whose treaty rights have been violated has no recourse to the courts or access to an effective remedy within Australia [24]. Increasingly, such individuals resort to lodging complaints with the relevant UN treaty bodies; in a significant number of cases, treaty bodies have upheld individuals' complaints, condemning Australia's human rights breaches [23]. The decision, however, of a UN treaty body is not enforceable on a State party, and Australian governments routinely ignore or reject their recommendations [23].

As Australia's national independent human rights institute, the AHRC has a broad range of statutory responsibilities with respect to human rights, including: undertaking inquiries into potential human rights breaches of national significance, the investigation and conciliation of complaints alleging breach of human rights and anti-discrimination law, intervention in court proceedings that involve human rights issues and examining proposed legislation with respect to human rights compliance [23]. Although individuals may lodge a human rights complaint with the Commission, the Commission has only limited jurisdiction to investigate suspected breaches relating to acts or practices of the Commonwealth, and any such finding or recommendation is non-enforceable and may be rejected by the Commonwealth [23]. Furthermore, the Commonwealth is not required to respond to Commission reports detailing human rights breaches by the Commonwealth or legislation incompatible with Australia's international human rights obligations [23].



## A Charter of Human Rights in Australia

A Charter of Human Rights is a complete list of all the human rights that a nation declares important or deserving enough to be safeguarded under specific legal protection. This could include political, cultural, civil, social and economic rights [24]. Furthermore, a Charter of Human Rights would help embed a respectful and inclusive human rights culture within government and the public, and help to incorporate Australia's international human rights obligations into domestic law [24].

As previously discussed, there is currently an inadequate legal patchwork of human rights protections at the Federal level [24]. A Charter of Human Rights would ensure that the human rights of all natural persons falling under Australian jurisdiction at the time in question are legally recognised [24, 25]. The definition of 'natural persons' would extend to include those held in off-shore detention, ensuring that the right to access judicial review through Australian courts cannot be denied. Following Victoria's approach to its *Charter of Human Rights and Responsibilities Act 2006* [24], a Federal Charter of Human Rights would require that all Bills be accompanied by a Statement of Compatibility, which assesses the compatibility of the Bill with the prescribed 'rights' under the Charter. This would ensure that all new Bills passed are passed with consideration of the potential impact on human rights. The Statement of Compatibility would detail compliance with the Charter, or if there are areas where rights are limited, justify the encroachment. The Charter would operate retroactively to evade the impracticalities of sifting through existing legislation and inserting Compatibility clauses. As noted above, Australia is a party to seven international human rights treaties [21]. A Charter would synthesise the agreed rights and enhance clarity, and permit natural persons to bring causes of action under it to ensure that Parliament, its associated bodies and NGOs are held directly accountable [24, 25].

## International Examples of a Charter of Human Rights

Multiple national and international committees have called upon Australia to develop and adopt a Charter of Human Rights to ensure all people in Australia have a safety net to protect their human rights [26, 27]. A criticism of a Charter of Human Rights is that it would divert legislative power away from Parliament, granting the judiciary too great a bearing on the political system [26, 28]. However, other Commonwealth countries such as Canada have successfully embedded a Charter of Human Rights into their constitutions [26]. Additionally, if a constitutionally embedded Charter of Human Rights isn't adopted in Australia on the argument that it would take power away from Parliament, a Human Rights Act could be possible

like those in New Zealand or the UK, which engender protections of human rights into each bill passed in parliament [26].

The Canadian *Charter of Rights and Freedoms* guarantees rights beyond those currently established in the Australian Constitution (refer to section: Current Australian Human Rights Law), such as freedom of thought, belief, opinion, and expression; rights of First Nations people, freedom of peaceful assembly and legal rights beyond trial by jury for some offences [29, 30]. The Canadian Charter was initially opposed by some parties in Government and by the Province of Quebec when it was established in 1982, however, it is viewed positively in all regions of Canada today including Quebec, with a favourability of 92% [31].

The New Zealand *Bill of Rights Act 1990* works in a similar manner as if it were established in the Constitution [32]. The New Zealand Act was borne out of the UN International Covenant on Civil and Political Rights and outlines the right to freedom of expression and religious belief, freedom of movement and freedom from discrimination. Government and anyone carrying out public duties must observe these rights and provide justification for their limitations [32]. Unlike Canada, the New Zealand Parliament can pass laws that are inconsistent with the New Zealand Act, however the Attorney-General must inform the government whenever an inconsistent bill is proposed, and the issue must be brought to Parliamentary discussion [32]. Outside of Parliament, the New Zealand Act allows for New Zealanders to challenge laws in the court when they are considered inconsistent with their legislated rights. The United Kingdom *Human Rights Act 1998* gives further effect to the rights guaranteed under the European convention and functions similarly to the New Zealand Act in that it allows anybody, regardless of citizenship, the right to challenge Government, police, or local councils in court when their legislated rights are infringed [33].

### Implementing a Human Rights Court

The enactment of such wide-reaching legislation also demands a practicable avenue to bring causes of action with respect to alleged breaches. A Human Rights Court would deal with matters concerning human rights violations to which the Commonwealth and its delegated bodies are party to. An Australian Human Rights Court could function similarly to New Zealand's Human Rights Tribunal, which hears claims related to New Zealand's Human Rights Legislation [34]. While this may see an influx in cases, case law produced would allow for the Charter to remain up-to-date and relevant to domestic issues as they arise. A separate avenue would also expedite hearings and help to alleviate delays through the entire legal system, which is particularly crucial in matters concerning potential breaches of human rights. Although the courts cannot strike down legislation deemed to be inconsistent with human rights, it can interpret laws in a way that is, or alternatively issue a declaration

that it is in breach, to which the Legislative Assembly is required to respond within 6 months.

## Human Rights Based Approaches to Health

The WHO has drawn attention to the "human rights-based approach" (HRBA) as a means of integrating concern for human rights into the design of health policy, strategy and programmes [35, 36]. A HRBA to health is particularly crucial owing to the indivisibility of civil, political, and socioeconomic rights as an upstream determinant of health [36]. When adopted appropriately, a government is pushed to utilise the maximum available resources to take steps towards health, legal and judicial system improvements, targeting discriminatory practices and unjust power relations. HRBAs would also maximise the fulfilment of rights amongst all individuals with explicit prioritisation to those who are most disadvantaged and least able to access their right to health [35]. Taking a HRBA to health is therefore foundational to closing global health inequities. Well developed multi-sectoral policies and strategies that support the attainment of healthcare access at a primary, secondary and tertiary level will not only reduce health inequities globally, but also maximise population wellbeing and productivity [36]. The HRBA is founded upon seven key principles:

1. Accountability of all institutions concerned with health
2. Equality and non-discrimination
3. Participation of all concerned stakeholders
4. Availability of healthcare facilities and services
5. Accessibility of healthcare services should be equitable
6. Acceptability of healthcare services the people and community served
7. Quality care [36]

A state or country that is thus unwilling to employ its available resources for the realisation of the right to health is thus under violation of its obligation under Article 12, as well as failing to execute policies that take a human rights based approach. In 2000, the ICESCR components of health and human rights were clarified by the Committee on Economic, Social and Cultural Rights (CESCR) to assist parties' implementation of the Covenant. The CESCR affirmed the insufficient expenditure and misallocation of public resources responsible for non-enjoyment of the right to health - particularly for priority groups - as a violation of human rights. The obligation of a country to fulfil its duty and obligation to realising the fundamental right to health includes also the realisation of equitable distribution of health facilities, goods and services, as well as an obligation to monitor this realisation of the right to health through indicators and benchmark reporting [37].



## Current and Past Human Rights Violations in Australia

Priority groups within the Australian population are historically and currently impacted more frequently to human rights violations [38]. These groups include, but are not limited to, individuals in the LGBTQIASB+ community, women and children, Aboriginal and Torres Strait Islander people, homeless persons, people in the workforce, individuals with chronic disease or disability, and the elderly [38]. On a national scale, vulnerability to human rights violations increases when legislation fails to provide adequate and specific protections.

Australia lacks legislation that acknowledges the human right to access adequate housing [39], with 116,427 homeless persons documented nationwide and others living in improper and potentially unsafe housing [40]. These individuals are at the greatest risk of human rights violations, as access to water, food, education, work and other basic necessities becomes difficult or impossible. Additionally, legislation surrounding the rules of eviction means it is still possible to enforce eviction without reason, placing a large population at risk of homelessness and jeopardising the security of their rights [41].

Stemming from the ongoing legacy of colonisation and still present institutionalised racism, Aboriginal and Torres Strait Islander peoples are disproportionately disadvantaged in their right to food, housing, health, work and education [42]. There is significant overrepresentation in the criminal justice system, with Aboriginal and Torres Strait Islander people comprising 30 percent of Australia's adult prison population, but only 3 percent of the national population [42]. In 2022, the UN Human Rights Council also found Australia violated Indigenous rights to enjoy culture as a direct consequence of inadequate protections against the adverse impacts of climate change [43]. While no national action has been undertaken, the state of Victoria announced the formation of a Truth and Justice commission in March 2021 to investigate the history of violence, abuse, and discrimination against Australia's First Nations peoples [44].

While the Universal Declaration of Rights states "everyone has the right to seek and to enjoy in other countries asylum from persecution [39]," the *Migration Act 1958* (Cth) places certain immigrants at risk of having their basic rights violated. All immigrants must have their visas approved on the Australian mainland before entering the country. However, when refugees arrive via boat in an area not accounted for by the Migration Act, known as an excised offshore place, they are sent to a regional detention centre [45]. These locations are often located in a third party country and lack the facilities to properly accommodate these refugees, placing them at particular risk of having their human rights violated. Cases of inhumane treatment including, but not limited to, child abuse, sexual assault,

murder, suicide and neglect of severe mental illness, are rife in reports and disclosures [46]. The right to freedom of movement and freedom from arbitrary arrest and detention is repeatedly affronted, with no governmental response. Successive Australian governments have relied on “tough on borders” rhetoric to win elections, and subsequently this populist tactic has continued the incentivisation of offshore processing as a deterrent for other asylum seekers and refugees [47]. The legal prohibition of staff reporting on abuses of detainees also violates the right to freedom of expression and opinion, and exacerbates the concealment of the abhorrent breaches of asylum seekers and refugees’ rights [48].

A 2022 report for the Disability Royal Commission found Australia to not uphold its responsibilities under the UN Convention on the Rights of Persons with Disabilities [49]. Indeed, Australia has failed to act in a manner consistent with Article 14 of the Convention, which states that people with disability cannot be kept in prisons or hospitals just because of their disability [49]. People with disabilities are more likely to be unemployed and subject to exploitation, violence, and abuse [49]. While Australian governments have implemented programs to remedy such violations, the specification to accommodate a persons’ disability under federal law should be expanded to ensure compliance with Article 5 of the Convention [49].

### **International Criticisms of Human Rights Violations in Australia**

Australia, a leading proponent of the Universal Declaration of Human Rights, is considered to have a contradictory human rights history by countries around the world [50]. During the 2020 Universal Periodic Review (UPR) by the UN Human Rights Council, many nations around the world condemned Australia’s recent human rights-related negligence despite 122 nations putting forward 344 recommendations in the UPR held in 2015 [51]. When the Commission assessed the implementation of the recommendations made to Australia in 2015, it was revealed that only 11% of the recommendations were fully implemented by the Australian government while 9% were not implemented at all [52]. In the 2021 UPR, forty-seven nations expressed their concerns regarding Australia’s perpetual human rights violations [53].

Moreover, organisations that advocate for human rights have also expressed their disappointment over human rights violations in Australia. Amnesty International has criticised Australia’s ‘boat turnbacks’ policy, condemning it for violating international human rights law [54]. The Human Rights Law Centre has strongly suggested that Australia, an affluent democratic nation, ought to be part of the solution to human rights breaches but it is being denounced on the international stage for being part of the problem [51]. It added that the Australian government rejecting recommendations from 30 countries to raise the age of criminal responsibility has further tainted its global reputation [51]. According to Save the Children Australia,

the Convention on the Rights of the Child was ratified by Australia more than 30 years ago, but Australian children continue to grow up in a milieu where their rights are not protected [51, 55]. It should be noted that while 112 countries support the Safe Schools Declaration to protect the education of children during conflicts, Australia has not yet endorsed it [56]. Equality Australia and ACON have condemned that three states in Australia are still forcing transgender people to have surgery or medical intervention before they can amend their gender identity on their documents [57].

The 2021 Report of the Office of the United Nations High Commissioner for Human Rights recommended that a national conversation in Australia is needed to elucidate federal level human rights laws and policies that are capable of guiding human rights-related policymakers [58]. However, the Australian government has neither addressed the Commissioner's recommendation nor introduced a national Charter of Human Rights. According to AHRC, "Australia is the only common law legal system in the world without a constitutional Bill of Rights or a National Human Rights Act [59]."

### **The Role of Medical Students, Doctors, and Medical Education**

Medical students and doctors play an important role in advancing the national and global discussion on health and human rights. Without health professionals that deeply understand the interrelatedness of health and human rights, and how this relates to individual, local, national and global health outcomes, entire communities suffer as a consequence [60]. This work begins in the medical education space, which to-date has not provided comprehensive and adequate training on health and human rights to the next generation of medical doctors. The WHO recognises that medical schools have an obligation to direct their education and research to addressing the priority health concerns of the communities they serve [61]. Historically, medicine and medical education has been focused on a disease-orientated model of health and illness which ignores the underlying role of social determinants of health in health outcomes [62]. While Australian medical schools are teaching the social determinants of health more so than before, there is no data currently available on the teaching of health and human rights.

While medical schools are encouraged to provide human rights teaching to their students, medical students and doctors should feel empowered to seek out opportunities to engage with human rights issues through their own learning, advocacy and the constant upholding of medical ethics. Furthermore, medical schools and Australian medical colleges should facilitate and encourage students and doctors to seek professional development opportunities related to health and human rights without penalisation. Lastly, medical students and doctors should feel

safe in advocating for educational, social and political change in the human rights space, knowing that the health of patients and society depends on recognition and protection of human rights.

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## Policy Details:

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