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Amnesty International Queensland & Northern New South Wales Branch's submission to the Queensland Human Rights Inquiry

The Queensland & Northern New South Wales Branch of Amnesty International Australia welcomes the opportunity to make a submission to this inquiry.

The Branch strongly supports the introduction of a Human Rights Act in Queensland.

ABOUT AMNESTY INTERNATIONAL AUSTRALIA

Amnesty International is a worldwide movement to promote and defend all human rights in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is the world's largest independent human rights organisation, comprising more than 7 million supporters in 160 countries and more than 500,000 supporters in Australia. The Queensland & Northern NSW branch represents over 78,000 Amnesty International supporters in Queensland.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or political parties.

THE CASE FOR A HUMAN RIGHTS ACT FOR QUEENSLAND

Despite being a signatory to the United Declaration on Human Rights, there is no enforceable obligation on Australia to fulfil the universal rights expressed in this keystone agreement. Former and current government policy and legislation demonstrates that not only is this obligation non-binding, it is often flagrantly disregarded.

The resulting vulnerability is further compounded by Australia's failure to nationally legislate an overarching human rights protection- a noticeable departure to every other liberal democracy in the world. Although there are a number of anti-discrimination laws, along with limited constitutional protections, these collectively do not provide an adequate protection against human rights abuses.

A Human Rights Act will help ensure that the human rights of Queenslanders are legally protected. Along with providing an enhanced sense of security and protection, this would more tangibly reflect the intentions of those Australian representatives who were intensively involved in the development and adoption of the UDHR in 1948. It would also meaningfully and purposively demonstrate the State's commitment to meeting international human rights obligations through domestic legislation.

Perhaps most profoundly though, it would provide reassurance to various groups and individuals that have suffered human rights violations at the hands of the Queensland Government, that the past will not be repeated.

The following case study on indigenous poverty in Australia, put forward in an Amnesty International Australia submission on the National Human Rights Charter consultation in 2009, demonstrates why human rights (and in this case, social, cultural and economic rights) demand better protection.

Case Study: Indigenous Poverty - why Economic, Social and Cultural rights need to be better protected

By human development standards, Australia is the third richest country in the world.¹ The past decade of economic growth has afforded most Australians an average increase in disposable income per person of 2.9 per cent each year since 1996-1997.² But wealth is much more than income. Even with the recent downturn in the economy, most Australians have the opportunity to “develop their full potential and lead productive, creative lives in accordance with their needs and interests and have the knowledge and resources needed for a decent standard of living and to be able to participate in the life of the community.”³ In other words, most Australians are afforded a life of inherent dignity, in which our fundamental human rights are protected, upheld and fulfilled.

But this decade of growth has been matched by a decade of decline for Australia’s most marginalised. In the same period that most Australians were enjoying the benefits of growth, the number of Australians living in poverty increased. Income poverty rose by 2.3 per cent from 1994 to 2004⁴ and it is estimated that 2-3.5 million people in Australia live in poverty.⁵ This poverty manifests not just as a lack of income but also as discrimination, exclusion and powerlessness. People living in poverty experience violations of rights that most of us take for granted. They have less access to knowledge, poorer nutrition, fewer health services, less secure livelihoods, more vulnerability to crime and physical violence and fewer political and cultural freedoms. Australia does not have a national poverty reduction strategy and there is no guarantee of a minimum income. Social security payments are paid below the Henderson Poverty Line - a significant contributor to people either living in, or being at risk of, poverty.⁶

The increasing poverty within Australia and the failure of Australia to take concrete action to combat it, is in breach of its obligations to provide its citizens with an adequate standard of living as outlined in Article 11 of ICESCR. The Australian Government does not take a rights-based approach to its planning and procedures and there is no overall rights framework.⁷ The failure of this approach is evidenced by the standard of living of many Aboriginal and Torres Strait Islander peoples.

¹ Based on human development indicators, in the United Nation’s Development Program’s Human Development Report 2007/2008. <http://hdr.undp.org/en/reports/global/hdr2007-2008/> (accessed 14 April 2009)

² Australian Bureau of Statistics, The Economy and Economic Resources, 12 June 2008 www.abs.gov.au/AUSSTATS/abs@.nsf/39433889d406eeb9ca2570610019e9a5/f87840718d7659ceca2572c7001ace20!OpenDocument#NATIONAL%20INCOME081 (accessed 14 April 2009).

³ United Nation’s Development Program’s Human Development Report (2007) <http://hdr.undp.org/en/reports/global/hdr2007-2008/> (accessed 14 April 2009)

⁴ ACOSS Australia Fair report: Australia slipping behind other rich nations (2007) at www.acoss.org.au/News.aspx?displayID=99&articleID=3081 (accessed 8 June 2008).

⁵ HRLRC Freedom Respect Equality Dignity: Action NGO Submission to the UN committee on ESCR (2008)

⁶ A/HRC/4/18/Add.2 11 May 2007 Human Rights Council Fourth session, Item 2 of the provisional agenda IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED ‘HUMAN RIGHTS COUNCIL’ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari Addendum Mission to Australia (31 July to 15 August 2006)

⁷ A/HRC/4/18/Add.2 11 May 2007 Human Rights Council Fourth session, Item 2 of the provisional agenda IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED ‘HUMAN RIGHTS COUNCIL’ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari Addendum Mission to Australia (31 July to 15 August 2006)

Housing

The UN Special Rapporteur on Housing recently described Aboriginal and Torres Strait Islander housing as some of the worst in the world.⁸ Overcrowding and poor housing stock are central to this humanitarian tragedy. An estimated one third of Aboriginal and Torres Strait Islander households are overcrowded, which is a much higher proportion than other Australian households.⁹ Overcrowding and poor housing are not a simple case of cause and effect. In an assessment from independent tradespersons who repaired and categorised over 41,000 jobs completed in Aboriginal communities in remote and regional Australia, only 10 per cent were due to householder damage, overuse, misuse or vandalism.¹⁰ The major causes of housing failure are a lack of routine maintenance and poor initial construction and not, as commonly attributed, a failure to consider issues of cultural appropriateness or the longstanding myth that Aboriginal people destroy their homes.

Health

Aboriginal people get sicker and die younger than non-Indigenous Australians. Life expectancy at birth is approximately 17 years lower for Indigenous Australians.¹¹ In 2000-2002, Aboriginal and Torres Strait Islander mothers were twice as likely to give birth to low weight babies and Aboriginal and Torres Strait Islander infants were three times as likely to die.¹² Two out of the three leading causes of death for Aboriginal and Torres Strait Islander people are chronic diseases of the circulatory system and cancer.¹³ The Western Australian Aboriginal Child Health Survey reported that 18 per cent of Aboriginal children had a recurring ear infection, 12 per cent had a recurring chest infection, 9 per cent a recurring skin infection and 6 per cent had a recurring gastrointestinal infection.¹⁴

And yet, despite higher rates of ill-health, Aboriginal people have much lower rates of accessing healthcare services. Over a three-year period in the mid-1990s, Aboriginal Medicare-users born in the 1940s received just over \$1,000 in benefits, while non-Aboriginal people received nearly \$1,800.¹⁵ In 2001-2002, Medicare expenditure for Aboriginal and Torres Strait Islander peoples was only 39 per cent of that for other Australians, for dental services it was 24 per cent, and for pharmaceuticals, 33 per cent. Per-capita spending on medicines through the Pharmaceutical Benefits Scheme (PBS) in 2001-2002 was \$73.23 overall for Indigenous Australians, compared with \$220.29 for other Australians. This conservatively amounts to \$67 million annual underspend, based on the national average, or a significantly higher shortfall if based on need.¹⁶ This does not constitute budgetary prioritisation as envisaged by Article 2 of ICESCR, which reads in part:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

⁸ Report of the Special Rapporteur, above.

⁹ Ibid

¹⁰ Paul J. Torzillo et al 'The state of health hardware in Aboriginal communities in rural and remote Australia', Australian and New Zealand Journal of Public Health 2008 vol 32 no 1

¹¹ HREOC Social Justice Report 2005 (2005) at www.hreoc.gov.au/social_justice/sj_report/sjreport04/Appendix2RDAandSRAs.html (accessed 14 April 2009)

¹² Ibid

¹³ HREOC, as above.

¹⁴ Ibid

¹⁵ Gavin Mooney 'Institutionalised Racism in Australian Public Services' Indigenous Law Bulletin (2003) 47

¹⁶ Sophie Couzos and Dea Delaney Thiele 'The International Covenant on Economic, Social and Cultural Rights and the right to health: is Australia meeting its obligations to Aboriginal peoples?' Medical Journal of Australia, volume 186, number 10, 21 May 2007.

RIGHTS TO BE PROTECTED

Human rights belong to everyone. If the Act is to fulfill the tenets enshrined in the UDHR, it will state that human rights are available to all, without exception. It is through the universal protection of the human rights that the state better works toward achieving a fair, equal and just society.

The Branch contends that an effective Queensland Human Rights Act must reflect the rights expressed in the UDHR and the following treaties for which Australia is a signatory:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child and its optional protocols.
- International Convention for the Protection of all Persons from Enforced Disappearance.
- Convention on the Rights of Persons with Disabilities and its optional protocol.
- Convention relating to the Status of Refugees
- Declaration on the Rights of Indigenous Peoples.

While each right holds equal importance, the Branch recognises that there are reasonable limitations on some of these. Notwithstanding this, the Branch asserts that 'absolute' rights need to be guaranteed in the instances of slavery, torture, cruel, inhuman or degrading treatment or punishment.

THE BENEFITS OF A HUMAN RIGHTS ACT FOR QUEENSLAND

The primary benefit of an Act is the adequate protection of Queenslanders' human rights. Communities with appropriate human rights protections best placed to achieve a society that is equal, just and fair - a society the Branch contends is a reflection of the Queensland community's values and aspirations.

The Branch contends that, in order to realise these benefits, that the Act must be obligatory rather than aspirational. Following the introduction of the Victorian Charter, the Victorian Equal Opportunity and Human Rights Commission noted that:

"Significant improvements have been made to the support provided to marginalised and vulnerable Victorians, including Indigenous Victorians, people with a disability and those with a mental illness. Consumers are being engaged more often and more effectively in designing and planning services. Human rights considerations are being used in diverse areas, from reviewing taxation policies for people affected by the February 2009 bushfires to improving pay equity in local councils and providing better protection for international students. Changes are being made to the daily operations and processes of many organisations that are making it easier for people to access information and services, and ensuring that services are fair and effective."¹⁷

More broadly the legislation has the potential to cultivate a culture of human rights across Queensland. Enforcing legislation that requires consistent consideration of human rights across all arms of government necessitates both a high and broad level of education that in time should manifest as a culture. On reflection of the Victorian experience, the Branch recommends that the level of education needs to be sustained so the impetus on human rights does not wane over time.

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www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/167-2009-report-on-the-operation-of-the-charter-of-human-rights-and-responsibilities-apr-2010

Beyond public authorities this culture is likely to be transposed across the entire Queensland community. The British Institute of Human Rights evaluated the impact of the *UK Human Rights Act 2006* and stated:

“The case studies show how human rights language is being used by and on behalf of a wide range of people, including young people, older people, victims of domestic violence, parents, asylum seekers, people living with mental health problems and disabled people, in the following areas:

- protecting human dignity
- challenging discrimination
- promoting participation
- challenging brutality
- taking positive steps to protect human rights
- using human rights where resources are an issue
- using human rights to challenge blanket policies
- protecting human rights in the context of contracted out services”¹⁸

This enhanced vernacular and awareness of human rights is one that holds particular merit in the pursuit of a cohesive and supportive Queensland community.

A Human Rights Act would also provide some reassurance to those who have suffered human rights violations that the past will not be repeated. Countless Aboriginal and Torres Strait Island people have experienced enduring intergenerational trauma and systematic oppression as a result of basic human right breaches under the Queensland Government’s *Aboriginals Protection and Restriction of the Sale of Opium Act 1897*. The latitude of this legislation being tantamount to the State seizing almost all control over the lives of Aboriginal people in Queensland. Aboriginal and Torres Strait Island people experienced extensive violations to their fundamental human rights including the right to be free from cruel, inhuman treatment, the right to recognition as a person before the law and the right to be free from slavery or servitude.

Contemporary examples include the recent finding that Indigenous children in juvenile detention had experienced treatment that could constitute torture.¹⁹ More broadly, recent amendments to the Queensland *Youth Justice and Other Legislation Amendment Act 2014 (Qld)* provides direction to the Courts to disregard the principle that detention should be considered only as a last resort - a direction running counter to those expressed in the Convention on the Rights of the Child.

Also within the Youth Justice system, the long-standing practice of children from rural and remote locations, charged with offences (not convicted), being remanded in custody, involving travel under escort to either of the two Youth Detention Centres (Brisbane or Townsville).

Since early and limited progress with income management via the Cape York Welfare Reform (2002-2012), the momentum to practice direct systemic controls by the state (increasingly the Commonwealth) over the income management of populations deemed to be poor managers due to personal and social problems.

The arbitrary use of a basics card to quarantine a large proportion of the recipient’s expenditure is a major consequence of the earlier reform. The key human rights issue is that, unless freely chosen by the recipient, it cannot be an answer to passive welfare because it removes the moral agency and potential for personal autonomy from the recipient.

¹⁸ <http://www.equalityhumanrights.com/publication/human-rights-act-changing-lives>

¹⁹ <http://www.abc.net.au/news/2015-09-17/juveniles-hooded-in-nt-by-corrections-staff/6785344>

In these instances, the Branch views a comprehensive Queensland Human Rights Act would work to protect these transgressions from occurring by actively:

- steering Parliament to consider the propensity for human rights violations when considering new, and amending existing, law; effectively serving as a positive template for the scrutiny of all new bills - to be used by relevant parliamentary committee; and
- holding the executive arm of State Government more accountable to human rights when formulating policy; and
- directing the Courts in terms of applying a human rights lens to the application of the law; and
- with particular reference to the above case of child torture within a juvenile detention centre - entrenching human rights standards into the conduct of public servants, including but not limited to, those delivering frontline services.

ENFORCEMENT AND REMEDIES

The Branch considers that to achieve a rights-based culture in Queensland and retain the integrity of the Act, it would be critical that the Act is actively applied, discharged and administered as a tripartite effort between Parliament, the Executive and the Courts aka the 'dialogue' model. The obligations of the Act must also be apply to those organisations who are contracted to provide public services on the state government's behalf.

The Branch further submits that the existing Anti-Discrimination Commission is well placed to have additional powers (with commensurate resource) bestowed on it to investigate, report on and conciliate human rights complaints. This option both avoids the unnecessary creation and expenditure of a new independent body and ensures that the space is kept as uncomplicated and easy as possible for the public to navigate.

On the matter of remedies, it is imperative that the Act provides appropriate access for individuals to seek enforcement of their rights and, where it is found an individual's rights have been infringed, to remedies. The Branch considers existing national bodies established to consider complaints about human rights and discrimination lack the enforcement powers necessary to deter government bodies from infringing human rights.

The Branch recognises that the nature and context of a breach will have a bearing on the appropriate remedy to be ordered and it is with this in mind that the Branch recommends a range of available remedies be expressed within the Act. These should include:

- seeking redress through the courts
- dispute resolution
- restitution
- public apologies
- guarantees against recidivism
- changes in policy, practice and where necessary, law.

CONCLUSION

The Branch strongly believes that a Human Rights Act for Queensland provides the only means through which the Queensland Government can adequately ensure the human rights of all people in Queensland are protected and promoted. It would enshrine in legislation enforceable legal rights and obligations, promote a rights-based culture within our society, and provide a foundation from which the state can better foster fair and inclusive communities.

The Branch appreciates the opportunity to provide commentary on this critical issue, and remains hopeful that this very necessary law becomes a realised legacy of the Queensland Government.

AMNESTY INTERNATIONAL QUEENSLAND & NORTHERN NEW SOUTH WALES BRANCH COMMITTEE

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On behalf of over 78,000 Amnesty International supporters in Queensland.