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The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
Brisbane QLD 4000

Via email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Committee,

I am pleased to have the opportunity to write a submission on the desirability of the Queensland Parliament enacting human rights legislation. I address five of the terms of reference below.

**TOR 2.a. The effectiveness of current laws and mechanisms for protecting human rights in Queensland**

The level of protection of human rights presently in Queensland is similar to the situation in a number of other jurisdictions in Australia. The common law provides certain protections for fundamental rights that may be legislated away by Parliament. There is also some legislative protection for rights through, for example, the *Anti-Discrimination Act*. However, antidiscrimination is only one aspect of human rights. In addition to being treated equally, we need protection of our human rights in a positive sense.

Anatole France famously said that ‘the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.’ This aphorism underlines the importance of spelling out the basic rights that we should all enjoy. Among these should be both traditional civil liberties, such as the right to vote, freedom of association, assembly, expression and the right to a fair trial, and economic, social and cultural rights such as the right to an adequate standard of living. People should not have to resort to sleeping under a bridge. These rights should be set out in one piece of legislation that drives the way in which governments and decision-makers work, and in light of which all other legislation should be interpreted.

Queensland’s history has been littered with violations of human rights. During the Bjelke-Petersen government, protest marches, arguably a defining feature of democracy, were banned. The Newman government, rejected so forcefully at the last election, brought back bad memories. While no one supports gang violence, many Queenslanders were concerned at features of the anti-bikie laws such

as guilt by association and reversal of the burden of proof with respect to bail. While the Bjelke-Petersen and Newman governments were defeated at the polls, the damage that they did during their terms of government was significant. A dialogue about human rights in between elections, particularly in a context of fixed four-year terms and a parliament that does not have an upper house, is vital to protect the rights of Queenslanders.

A Human Rights Act along the lines of the Victorian or ACT legislation would ensure that fundamental human rights such as the right to a fair trial would have to be taken into account by policy-makers by requiring that they vet proposed legislation against internationally recognized human rights. It would also ensure that all legislation is interpreted consistently with human rights, where possible; that legislation which is clearly inconsistent with human rights will be declared as such and Parliament asked to rethink the legislation; and that 'public authorities' such as public servants act consistently with human rights and properly take human rights into consideration when making decisions.

### **TOR 2.b. operation and effectiveness of statutory bills of rights**

A constitutional bill of rights is not on the agenda given the terms of reference for this inquiry. In any event, a legislative bill of rights that establishes a 'dialogue model', where the courts are able to make a determination as to whether legislation is compatible with human rights or not, but cannot strike it down, has certain advantages.

To begin with, this model may be viewed as consistent with Australians' deep commitment to democracy. In addition, this model recognizes that the judiciary, while principled, are human. The judiciary will strive to make decisions on the basis of principle and impartially, which is why they should have a role in scrutinising legislation for consistency with human rights. But they too can make mistakes. As US Supreme Court Justice Robert H. Jackson said, 'We are not final because we are infallible, but we are infallible only because we are final.' A constitutional bill of rights does not allow the elected representatives to correct judicial mistakes.

Furthermore, the mechanisms enshrined in existing legislative bills of rights (eg those in Victoria and the ACT) require governments to think about rights when they enact legislation, and require public authorities to act consistently with human rights and properly consider human rights when making decisions. In the ACT, the Human Rights Commission may also undertake compulsory audits of public authorities acting under ACT legislation such as Corrective Services, while in Victoria, the Ombudsman has been given a specific investigative role with respect to human rights.

The positive impact of these aspects of the legislative models in Victoria and the ACT is evident in the following examples concerning improvement of legislation, judicial review of administrative decision-making and improvement in practices of public authorities following a human rights audit. In the ACT, the legislation sought by the Commonwealth to supplement federal terrorism legislation was significantly more attuned to human rights than would otherwise have been the case. In Victoria, the Supreme Court of Victoria has found that the Director of Housing failed to take into account the rights to protection of families and children when requiring eviction of a family. In the ACT, the treatment of women prisoners has significantly improved following the Human Rights Commission's audit of the remand centres.

It is also possible to improve on these models by ensuring that Queenslanders have access to cheap and easily accessible remedies such as alternative dispute resolution through a Human Rights Commission.

### **TOR.2.c. The costs and benefits of adopting a Human Rights Act**

There will be some financial costs incurred in the establishment and maintenance of a well-functioning Human Rights Act. For example, it is essential if the legislation is to be fully functional that politicians, public servants, the judiciary and the public are educated about human rights.

However, a jurisdiction in which human rights are better protected will see positive gains in terms of social cohesion. In addition, legislation that is properly vetted and correctly viewed as compatible with human rights is likely to see fewer challenges in the courts. This is the benefit of 'frontloading' the system so that human rights are considered at the point of enacting new legislation, rather than focussing on judicial enforcement. The experience in Victoria and the ACT is that litigation has not flourished as a result of the passage of human rights legislation.

### **TOR.2.d. Previous reviews of human rights legislation**

The most recent and arguably most relevant review of human rights legislation is the eight-year review of the Victorian *Charter of Human Rights and Responsibilities*. The review found that the Charter has had a positive impact but that there is still work to do in order to fully establish a culture of human rights. Queensland can improve on the Victorian legislation by considering the recommendations made in the review. But Queensland can also be bold and do more than Victoria or the ACT, in particular, by moving to protect economic, social and cultural rights.

### **TOR.3.a. Objectives and rights to be protected**

A Queensland Human Rights Act should aim to prevent the overreach of some previous governments by ensuring that civil liberties are better protected. It should also commit the government to improving the socio-economic circumstances of all Queenslanders by including economic, social and cultural rights.

While some rights may need to be omitted from a Queensland bill of rights because they are the preserve of the Commonwealth – the right to enter and leave the country is one example – as a general principle, the rights protected should be all those to which Australia has already committed by ratifying human rights treaties, particularly the two major human rights Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In Victoria and the ACT, civil and political rights have been emphasised, although a limited right to education has been introduced into the ACT *Human Rights Act*. However, all rights support each other. The right to vote is not more important than the right to adequate housing. Homeless persons experience many violations of their civil rights, such as the right to personal security, as a result of their homelessness.

While some will object that economic, social and cultural rights require the expenditure of resources, civil and political rights also require the expenditure of resources. The right to a fair trial requires the establishment and maintenance of courts, for example. Furthermore, at the international level while certain aspects of socio-economic rights are absolute – they cannot simply be denied on a discriminatory basis, for example – the obligation on governments is to take steps using maximum available resources to progressively achieve the rights. Thus for example, when a man with chronic kidney failure attempted to argue that he was entitled to free dialysis under the South African bill of

rights, the Constitutional Court of South Africa held that the right to health did not require this as it was impossible for the state to comply given the limited resources available. Nevertheless, it is vital that policy- and decision-makers pay proper attention to socio-economic rights if we are to achieve a truly equal society. A Human Rights Act for Queensland would assist in achieving this goal.

Yours sincerely,

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