



Queensland Branch

18 April 2016

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

By email to: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Re: Human Rights Inquiry Submission

The Queensland Branch of the Royal Australian and New Zealand College of Psychiatrists (QLD Branch) welcomes the opportunity to provide a submission to the Queensland Human Rights Inquiry (the Inquiry).

The QLD Branch wholly supports a Human Rights Act for Queensland to ensure the protection of Queenslanders' rights, particularly Queenslanders with a mental illness. A Queensland Human Rights Act would complement and strengthen the obligations the Commonwealth Government has to the international human rights treaties, which it has ratified.

The QLD Branch considers that there are many cases in Queensland where people with mental illness experience breaches of their human rights. These cases have been described overleaf and include the following issues:

- the locking of mental health wards in hospitals
- the placement of 17 year olds in adult prisons
- stigma and discrimination experienced by people with a mental illness
- poor access and equality of healthcare experienced by people with a mental illness.

The QLD Branch make a number of recommendations to the Inquiry overleaf, with regards to the structure of a Human Rights Act for Queensland and its principles, particularly to ensure the protection of people with mental illness.

[REDACTED]

Yours sincerely

[REDACTED]

Dr Agnew Alexander
Chair, RANZCP QLD Branch



The Royal
Australian &
New Zealand
College of
Psychiatrists

Queensland Branch

Submission to the Queensland Human Rights Inquiry

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About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness, and advises government on mental health care. The RANZCP is the peak body representing psychiatrists in Australia and New Zealand, and as a binational college has strong ties with associations in the Asia-Pacific region.

The RANZCP has more than 5500 members, including more than 4000 fully qualified psychiatrists (Fellows) and around 1400 members who are training to qualify as psychiatrists (trainees). In Australia, approximately 85% of practising psychiatrists are current RANZCP members. In New Zealand, more than 50% of practising psychiatrists are current members. In both countries, all psychiatrists must be accredited by the RANZCP before they can practise. The QLD Branch currently has 670 Fellows and 270 trainees. Its members hold positions in public and private psychiatry or both, and may specialise in a range of psychiatry sub-specialities including child and adolescent psychiatry, consultant-liaison psychiatry, rural and remote psychiatry, and forensic psychiatry.

Psychiatrists are the leading experts in the field of mental illness in Queensland. Through the RANZCP they receive rigorous training which enables them to provide optimal patient care, work collaboratively with other health professionals in the interests of patients, act with the highest professional and ethical standards, undertake research to improve mental health care, and lead mental health services.

Australia's Human Rights Obligations

Human rights are recognised and protected under international law. The two key human rights treaties which Australia has signed and ratified are:

- The International Covenant on Civil and Political Rights (the ICCPR), and
- The International Covenant on Economic, Social and Cultural Rights.

Australia currently has signed and ratified five of the other six human rights treaties:

- The International Convention on the Elimination of all Forms of Racial Discrimination
- Convention on the Elimination of all Forms of Discrimination against Women
- Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities.

Despite the Commonwealth Government's international obligations under these treaties, human rights are not given comprehensive and consistent legal protection in Australia (Human Rights Law Resource Centre, 2009). The United Nations' (UN) Human Rights Committee in its report on the Concluding Observations of Australia and the ICCPR (2009) had many concerns and recommendations including:

- that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law
- the notable gaps in the protection of children and juveniles in the criminal justice system, and that

children and juveniles can be detained in adult facilities or held in immigration detention facilities, where they are sometimes subject to abuse

- that Australia lacks a framework and programme to promote knowledge of the ICCPR and the related Optional Protocol among its population
- the situation of homeless persons, in particular Aboriginal and Torres Strait Islander peoples, who as a result of that condition are not able to fully exercise the rights enshrined in the ICCPR.

The primary aim of the human rights legislation in Victoria and the Australian Capital Territory (ACT) is to ensure that human rights are taken into account during governmental processes including law-making, policy-setting and decision-making, to create an awareness of human rights, and give some redress to people whose rights have been violated. These Acts are enacted into law as an ordinary piece of legislation, and are described as a 'dialogue' model, with the aim of building a culture that is respectful of human rights. A Queensland Human Rights Act would be based on this type of model, which is also in use in the United Kingdom (UK) and New Zealand, rather than a constitutional model, which exists in the United States, Canada and South Africa, due to the limitations of the Inquiry (Human Rights Law Centre & Allens, 2015).

The main advantage of a legislative dialogue model is its flexibility, as Parliament can amend the Act by passing amending legislation, adapting it to changes in societal values and the development of the human rights dialogue. However, Parliament retains the power to pass laws that contravene the human rights set out in the Act.

A Human Rights Act for Queensland

As well as enshrining human rights in law, a Human Rights Act in Queensland would also provide important social, economic and cultural benefits. The discussion paper 'A Human Rights Act for Queensland' (Human Rights Law Centre & Allens, 2015) outlined the key benefits as:

- improving law making and government policy
- improving public service delivery
- protecting marginalised Queenslanders by addressing disadvantage
- contributing to the development of a human rights culture
- creating and adding economic value
- assisting to fulfil Australia's human rights obligations
- 'bringing rights home' by enabling human rights complaints.

A Queensland Human Rights Act would create obligations for each of the three tiers of government (Parliament, Courts and the Executive) and private organisations that are carrying out the executive functions of public authorities, for example, a private organisation operating a prison.

A Human Rights Act should protect the rights of all people in Queensland regardless of whether or not they are citizens. The Act should not protect the rights of corporations or similar entities.

The QLD Branch recommends that a Human Rights Act for Queensland protect the rights of all people of Queensland – citizens and non-citizens.

The human rights legislation in Victoria, the ACT, and in the UK does not bind private organisations. The ACT has a provision allowing private entities to 'opt-in' to the obligations of public authorities, however

this mechanism has only been adopted by seven entities. The potential risks of creating an 'opt-in' mechanism are:

- creating a false perception that private organisations that do not opt-in will not have any human rights obligations under a Human Rights Act
- diminishing the inherent value of human rights by inferring that human rights do not apply in certain circumstances
- discouraging a meaningful cross-sectoral dialogue of rights-consciousness, if only the 'usual suspects' opt-in (Human Rights Law Resource Centre, 2009).

The QLD Branch is concerned that a Human Rights Act in Queensland should bind private entities also. This would ensure that all Queenslanders were afforded the protection of a Human Rights Act, not just those dealing with the public system. For example, a patient in a private hospital being treated for mental illness whose human rights are being violated under an Act may be unable to seek a remedy.

However, the QLD Branch is aware of the difficulties associated with binding private entities to human rights legislation, and suggests that a Human Rights Act for Queensland should include the ability for public authorities to stop people or private organisations abusing a person's human rights regardless of whether they have an obligation under a Human Rights Act. For example, if a public authority knows that a person's rights are being violated in a private hospital, the public authority has a duty to protect the person with mental illness.

The QLD Branch endorses provisions allowing private entities to be bound by a Human Rights Act in Queensland.

The Queensland Anti-Discrimination Commission resolves complaints under the Queensland *Anti-Discrimination Act 1991*, delivers training, and already promotes public discussion on human rights. A Human Rights Act in Queensland would require an independent statutory body to report on and oversee the Act and the Commission is a logical choice to carry out this role.

The QLD Branch recommends that the Queensland Anti-Discrimination Commission should be utilised to oversee and carry out the functions of a Human Rights Act in Queensland. This would also require the Commission to be appropriately resourced and empowered to do so.

A Human Rights Act in Queensland must ensure that people whose rights are violated have affordable access to an effective remedy. Based on the recommendations in the discussion paper 'A Human Rights Act for Queensland' (2015), a Human Rights Act should include:

1. a separate cause of action for breaches of the human rights enshrined in the Act
2. the ability to make a complaint to an independent statutory authority e.g. the Anti-Discrimination Commission and for the complaint to be conciliated
3. power for the independent statutory authority to investigate and report on systemic human rights issues that it identifies
4. provision for the Queensland Civil and Administrative Tribunal to receive applications alleging breaches of the Act
5. the full range of judicial remedies, including declarations, injunctions, and orders to cease the offending conduct.

The QLD Branch considers that judicial remedies should not include fully recoverable damages as it may lead to cumbersome litigations, wasting time and resources, which could be better spent improving

service deliveries.

The QLD Branch considers that there are many issues that should be addressed in a Queensland Human Rights Act in order to protect the rights of Queenslanders. These include, but are not limited to protecting the following:

- rights of Aboriginal and Torres Strait Islanders peoples to maintain their distinct status and culture, to self-determination, the right to land, and affording this group a special status in order to achieve equality and recognise the historical difficulties this group has endured
- rights of people from culturally and linguistically diverse backgrounds, including respect and recognition of their cultural, religious, spiritual and communication needs
- rights of the children, including freedom of expression, freedom of religion, a safe environment, and support provided to parents to ensure children's needs are met
- rights to education - children ought to have free access to a minimal level of adequate education so as not to disadvantage them in society and future employment
- rights of every person to freedom of sexual expression between consenting adults and the right to live in communities without discrimination, including the right to marry between all consenting adults
- rights of women for equality and freedom from discrimination, abuse, and all levels of violence, including employment, health and education
- rights of elderly people to live safely and have the necessary care provided to assist in activities of daily living and to live a meaningful and dignified life in one's advanced years
- rights of people with intellectual and physical disabilities, especially mental illness to live safely and to have the necessary care and service provision to assist in activities of daily living, to live a meaningful and dignified life without stigma or discrimination, and to equality under the law
- rights of all types of patients, especially those with mental illness to access equality in healthcare and treatment without stigma or discrimination, and to be treated with dignity and respect
- rights of all types of patients, especially those with mental illness to receive help to access equality in health care, housing, education, employment and psychological wellbeing
- rights of people with mental illness to pursue and maintain employment, to recognise the manifold psychological benefits of employment, and submit that persons should not be limited in what occupations they can pursue nor be dismissed from employment based on having or having had a mental illness
- the principles underpinning the Queensland *Mental Health Act 2016* which protect people with a mental illness when they are not in their right mind, including: improving and maintaining their health and wellbeing, safeguarding their rights and autonomy, providing treatment in the least restrictive way possible, protecting their safety and welfare, and enabling them to be diverted from the criminal justice system if they are found to have been of unsound mind at the time of committing an unlawful act.

The QLD Branch recommends that a Human Rights Act for Queensland include the above principles and rights.

The QLD Branch recommends that the principles of a Human Rights Act for Queensland should also be based on Australia's obligations under the ratified human rights treaties.

Queensland Human Rights Breaches

The QLD Branch considers that there are many cases in Queensland where people with mental illness experience breaches of their human rights. Examples of a few of these cases are provided below, including:

- the locking of mental health wards in hospitals
- the placement of 17 year olds in adult prisons
- stigma and discrimination experienced by Queenslanders with a mental illness
- poor access and equality of healthcare for Queenslanders with a mental illness.

Locked Wards

At the end of 2013, Queensland Health issued a directive to lock all of the public acute mental health wards in order to prevent stopping patients from absconding. At the time, the QLD Branch and other organisations, including the Queensland Mental Health Commission provided submissions to the Queensland Government explaining how the decision was not evidence based and not in the best interests of a recovery oriented, least restrictive approach to mental health.

The locked wards policy deprives patients of their liberty, infringing on their human rights. It is also inconsistent with the Queensland *Mental Health Act 2000*'s key principles that when a person's liberty and rights are adversely affected (for example, through involuntary treatment) this should only be done when there is clear benefit to the public and done in the least restrictive way:

Section 9 Principles for exercising powers and performing functions

A power or function under this Act relating to a person who has a mental illness or intellectual disability must be exercised or performed so that

- (a) the person's liberty and rights are adversely affected only if there is no less restrictive way to protect the person's health and safety or to protect others; and*
- (b) any adverse effect on the person's liberty and rights is the minimum necessary in the circumstances.*

The Queensland *Mental Health Act 2016*, to begin in November 2016, also has similar principles in section 3 paragraphs (2)(b) and (3):

(2) The main objects are to be achieved in a way that—

- (b) is the least restrictive of the rights and liberties of a person who has a mental illness;*

(3) For subsection (2)(b), a way is the least restrictive of the rights and liberties of a person who has a mental illness if the way adversely affects the person's rights and liberties only to the extent required to protect the person's safety and welfare or the safety of others.

The policy applies to all acute mental health wards and does not distinguish between voluntary and involuntary patients. Essentially, voluntary patients in a locked ward are involuntary patients as their rights are removed, and as McSherry (2014) points out 'a voluntary patient ending up in a locked ward is a contradiction in terms'.

The policy contravenes Articles of the UN's Convention on the Rights of Persons with Disabilities (CRPD) which Australia has ratified, including Article 14 which states:

States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) enjoy the right to liberty and security of person

(b) are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

Furthermore, as it is mental health wards that are being locked and not general hospital wards, it is implied that patients with mental impairments are being deprived of their liberty because they have a disability. As Article One of the CRPD states, the purpose of the CRPD is:

to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Queensland Government is aware of its responsibilities under the CRPD. For instance, the Queensland 'Disability Service Plan 2014-2016' (2014) states that the Plan contributes to the Queensland Government's obligations under the CRPD. Similarly, in the Queensland Government's commitments in 'Absolutely Everybody: Enabling Queenslanders With A Disability' (2011) it states that 'by 2021, we expect that the principles and tenets of the Convention on the Rights of Persons with Disabilities will be embedded in policy and practice in government, business and the community...' (p.13).

The Queensland Government's stated commitment and alignment to the CRPD obligations is consistent with the belief that 'human rights are meant to be the drivers of mental health policy' (McSherry, 2014). However as is evident in the locked wards policy, the Government is inconsistent in addressing its human rights obligations.

The QLD Branch recommends that Queensland adopt a Human Rights Act, which requires the Queensland Government to change the locked wards policy, enabling patients in mental health wards to possess dignity, liberty and respect.

17 Year Olds in Adult Prisons

Queensland is the only Australian jurisdiction to transfer 17 year olds to adult prisons if they have more than six months remaining on their sentence. The practice of putting 17 year olds in adult prisons is in breach of the UN's Convention on the Rights of the Child (CRC) which Australia has ratified. The UN refers to all people 17 years of age as 'children'.

In 2012, the Australian Human Rights Commissioner condemned the practice as unacceptable and in breach of the international rights of the child (ABC News, 23 November 2012). The practice contravenes the following Articles of the CRC:

Article 3 paragraph 1: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

Article 37(c): 'State Parties shall ensure that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...'

Article 40 paragraph 1: 'States Parties recognise the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth... and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'

Article 40 also relates to the difficulties the children experience and the problems that arise from being imprisoned with adults. The founder of Sisters Inside (prisoner advocacy group), stated that 'these teenagers, particularly the boys, are brutalised in the adult system' (The Australian, 28 September 2009). The United States' National Prison Rape Elimination Commission (2009) reported that 'more than any other group of imprisoned persons, youth imprisoned with adults are probably at the highest risk of sexual abuse'. The Commission found that juveniles comprised less than 1% of prison inmates in 2005, yet accounted for 21% of all victims of sexual violence in prisons. Youth in adult jails are 19 times more likely to commit suicide than their counterparts in the general population, and 36 times more likely to commit suicide than in a juvenile detention facility (Campaign for Youth Justice, 2007).

In a 2011 media release, the Queensland Law Society President said that 17 year olds locked up are adversely affected by older offenders in the prison, stating that 'they are cast into prison for relatively minor offences and then come out with a criminal trade'. Legal groups and youth advocates are not only concerned that the practice of imprisoning 17 year olds with adults breaches the CRC, but that it leads young people to a life entrenched in crime (ABC News, 23 March 2016).

The UN has raised the issue with Australia in its reports. The Committee on the Rights of the Child's Concluding Observations of Australia (2012) recommended that the Queensland Government remove all 17 year old children from the adult justice system (para. 83 and 84). Also, the Human Rights Council's Report of the 'Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (2015) which focuses on children deprived of their liberty, states that 'criminal justice systems are designed for adults and incorporate none of the specific procedural safeguards required for children. In particular, adult criminal justice systems expose children to a range of sentences and disciplinary punishments aimed specifically at adults, without any rehabilitative component' (para. 35).

Like the evidence provided earlier with regards to the sexual violence experienced by the children, the Human Rights Council's Report (para. 16) also states that:

Children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment. Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.

As is clear from the evidence and the UN's response to the practice, imprisoning a 17 year old in an adult prison contravenes the CRC and other human rights and is seriously damaging to the child.

The QLD Branch recommends that a Human Rights Act for Queensland include provisions to prevent children from imprisonment in adult jails and, as a result, swiftly bring an end to the practice in Queensland.

Stigma and Discrimination Experienced by People with Mental illness

The 1993 Australian Report of the National Inquiry into the Human Rights of People with Mental Illness, otherwise known as the 'Burdekin Report' highlighted the violations of the human rights of people with mental illness, and made the point that people with mental illness are human beings with human rights, who are entitled without discrimination to the full range of human rights. The report concluded that Australians affected by mental illness are among the most vulnerable and disadvantaged in our community, who suffer from widespread, systemic discrimination and are consistently denied the rights and services to which they are entitled.

The National Survey of Mental Health Literacy and Stigma (Reavley & Jorm, 2011) revealed that mental health consumers reported stigmatising attitudes from the community as the issue of most concern. The Survey described how these types of attitudes might inhibit consumers from seeking help, increase their psychological distress, and adversely affect their successful reintegration into society.

The Australian Senate Select Committee on Mental Health's First Report (2006) noted that mental illness raises many human rights issues, and that people with mental illness experience discrimination within society, and even within the health care system.

Mental Illness Fellowship Queensland frequently have to advocate for Queenslanders with a mental illness around housing, healthcare, legal matters, and education in order for the person to be treated the same as people in the community who have a physical health problem, and with the same level of dignity and respect.

The UN's 'Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care' address discrimination amongst people with mental illness. Although the Principles are not formally binding like the International Covenants, they influence the interpretation of Australia's human rights obligations under the International Covenants.

Principle 1(2) states: *all persons with a mental illness ... shall be treated with respect for the inherent dignity of the human person.*

Principle 1(4) states: *there shall be no discrimination on the grounds of mental illness...*

Likewise, the Article 3 of the CRPD includes the principles:

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons

(b) non-discrimination

(c) full and effective participation and inclusion in society

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.

The QLD Branch members are concerned that they frequently see patients who will not accept the full range of treatment on offer for their disorders because of their perception that their extended families will not accept them. This in turn may lead to the patient's prolonged suffering and suicidal actions.

Stigma and discrimination are an unfortunate issue attached to mental illness that can affect a person with mental illness in many ways, particularly when it comes from the community and the treating health service. The QLD Branch considers that mental health literacy and education is a means to address stigma and discrimination, whilst also increasing the awareness and tolerance of mental illness, and the importance of seeking treatment.

The QLD Branch recommends that a Queensland Human Rights Act include provisions to prohibit discrimination against people with a mental illness and increase mental health literacy in the community.

Access and Equality of Healthcare

Queenslanders with a mental illness, like other Australians with a mental illness, do not experience equal standards of and access to health care as people with a physical illness.

Dr Sev Ozdowski OAM, during a speech during his term as the Australian Human Rights Commissioner (2005) stated that 'mental health is a human rights issue' and commented that the human rights issues raised in the Burdekin Report were not seen as 'a decade old history but as current affairs'.

Australia has signed and ratified human rights treaties which explicitly recognise the right of everyone to the highest possible mental health care. The International Covenant on Economic Social and Cultural Rights (ICESCR) Article 12 states:

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Convention on the Rights of the Child (CRC) Article 24 states:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Also principles which relate to access to healthcare exist in the UNs' 'Principles for the Protection of

Persons with Mental Illness and for the Improvement of Mental Health Care’.

Principle 8(1) states: *‘Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons’.*

Principle 14 states: *‘A mental health facility shall have access to the same level of resources as any other health establishment...’*

Similarly, the UN’s Committee on the Rights of Persons with Disabilities in its Concluding Observations of Australia (2013) was concerned that not all organisations for people with psychosocial disabilities are provided with adequate resources for their operations (para. 12). The Committee was also concerned that the scope of protected rights in Australia’s *Disability Discrimination Act 1992* is narrower compared to the CRPD and does not provide the same level of protection to all persons with disabilities (para. 14).

Access to health care for people with a mental illness is an obligation under the CRPD, Article 25(c) sets out that State parties shall provide health services as close as possible to people’s own communities, including rural areas. This is a particular concern for Queensland as it already experiences challenges providing health services to rural and remote areas. The New South Wales Mental Health Commission’s report into Australia’s International Human Rights Obligations (2014) stated that proper access to well resourced community mental health services has been an ongoing problem in Australia. The Commission’s report recommended that compliance with the CRPD would help redress the discrimination that continues to be experienced by people with lived experience of mental illness.

The QLD Branch recommends that a Human Rights Act for Queensland comply with the Covenant on the Rights of Persons with Disabilities to ensure people with a mental illness are afforded equal standards of, and access to, healthcare as people with a physical illness, and have a lived experience of mental illness without stigma and discrimination.

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