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*AASW(Qld) submission to the Inquiry on a Human Rights Act for Queensland*

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Queensland Branch Office– Brisbane

17 Ross St, Paddington

BRISBANE, QLD 4065

PO Box 1015

MILTON QLD 4064

T 07 3369 9818

F 07 3217 6938

Enquiries regarding this submission can be directed to:

**Queensland Branch President:**

Dr Fotina Hardy

Email: [REDACTED]

**Queensland Branch Manager**

Ms Mere Vitale

Email: [aaswqld@asw.asn.au](mailto:aaswqld@asw.asn.au)

## Introduction

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The Australian Association of Social Workers is the key professional body representing more than 9000 social workers throughout Australia. Social work is founded on the principles of social justice, human rights and professional integrity. It aims to enhance the quality of life and support the development of the full potential of each individual, group and community in society through practise that is ethically accountable, professionally competent and transparent.

As a profession, social work promotes social change, problem solving in human relationships and the empowerment of people to achieve enhanced wellbeing. Using theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments, working to address and redress inequity and injustice affecting the lives of individuals and communities. Social work is thus a profession that works across the whole spectrum of society, at an individual through to community and policy and research level. At the very core of the social work profession “principles of human rights and social justice” (AASW *Code of Ethics*).<sup>1</sup> A commitment of social work is to “promote policies, practices and social conditions that uphold human rights and that seeks to ensure access, equity, participation and legal protection for all”<sup>2</sup>. Social work is thus uniquely placed to provide a compelling and evidence based perspective on the criticality of human rights in our society.

*"The principles of human rights and social justice are central to social work theorising, ethics and practice. These are concepts that bind. They are the values that sustain and nourish us and are at the heart of our work and cannot be shed even in these increasingly complex times."<sup>3</sup>*

The Queensland Branch of the Australian Association of Social Workers (herein ‘the branch’) congratulates the Queensland Government for taking the initiative in moving towards a much needed Human Rights Act for Queensland. The Branch trusts that this Act will position Queensland as a national leader in responsible and ethical governance and help to create a climate that is aware of, and appropriately values, the rights of all members of its community. It would also cast Queensland as a contemporary and progressive state best positioned to achieve a fair, equitable and just society.

## The need and benefit of a Human Rights Act

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### The need for a Human Rights Act

The Branch is in support for a Human Rights Act in Queensland as it would provide the legislative protection that is currently lacking to ensure the Queensland community’s basic human rights are upheld. It would also give Queenslanders an avenue of redress should their rights be breached. As Brian Burdekin, a former Australian Human Rights Commissioner, commented in 1994 “It is beyond question that our current legal system is seriously inadequate in protecting many of the rights of the most vulnerable and disadvantaged groups in our community”.

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<sup>1</sup> AASW Code of Ethics 2012

<sup>2</sup> Ibid.

<sup>3</sup> Briskman ,L *Social work and the human rights of asylum seekers* in Victorian Social Work Vol 4 No2 July 2010

Whilst there is some protection afforded to people in Queensland through anti-discrimination legislation and the Australian Constitution, these are limited in scope and do not provide for the protection of all human rights. Australia is also bound by a number of international human rights conventions and covenants however these are unenforceable at a domestic level and, as the current Asylum seeker policy of the Australian Government demonstrates, can be both disregarded and contravened.

### **The benefits of a Human Rights Act**

Secondary to the benefit of providing an adequate level of human rights protection, an Act would also provide some assurance that future legislation and its application both through the Courts and executive policy, will not run counter to human rights. The Branch is also supportive of an Act for its propensity to impact our community through the active promotion of a rights-focused culture. This is as the Act compels discussion around how proposed law and government policy may impact human rights, and in turn creates an ongoing dialogue and increased awareness of human rights generally. It is the view of the Branch that a community that is more cognisant of how its activities impact on human rights, provides a catalyst for achieving a more socially responsible and cohesive community.

While the Act will impact all Queenslanders, the Branch would like to highlight how a few of our most marginalised, vulnerable and disadvantaged groups will benefit from enhanced human rights protections.

### **Aboriginal and Torres Strait Islanders**

The Branch acknowledges the disadvantages that are often experienced by Aboriginal and Torres Strait Islander people and is highly committed to reconciliation and advocating for the full protection of human rights, particularly as they pertain to indigenous Australians<sup>4</sup>. Queensland has failed to protect the human rights of its indigenous population in a number of ways both historically and presently, particularly through the oppressive state control enacted through the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* – a policy through which intergenerational trauma still palpably impacts the lives of Aboriginal and Torres Strait Islanders today. As noted in the 1997 *Bringing Them Home* report by the now Australian Human Rights Commission – “Indigenous families and communities have endured gross violations of their human rights. These violations continue to effect Indigenous people's daily lives”<sup>5</sup>. The continued over representation of Aboriginal and Torres Strait Islander people and particularly women, in our criminal justice system is testament to this.

With these past transgressions and our commitment to reconciliation in mind, the Branch recommends that a Queensland Human Rights Act:

- i. Fully reflect the obligations contained within the *United Nations Declaration on the Rights of Indigenous Peoples*
- ii. Provides for self-determination consistent with the United Nations Common Understanding of a Human Rights Based Approach to Development Cooperation framework.

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<sup>4</sup> Australian Association of Social Workers 2013, *Practice Standards*, <https://www.aasw.asn.au/document/item/4551>

<sup>5</sup> Australian Human Rights Commission 1997, *Bringing them home: The 'Stolen Children' report*, <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/bringing-them-home-stolen>

This step would not only entrench the human rights of Queensland's indigenous people in statute, but provide some level of reassurance that past transgressions will not be repeated.

### **Refugees and Asylum Seekers**

Social workers deliver services to asylum seekers and refugees in the context of support services including: advocacy, health and mental health services to asylum seekers awaiting determination of their status. Services to refugees are provided in the context of re-settlement, and other community based services including, health, mental health (including trauma recovery), income support, domestic and family violence, housing and child protection.<sup>6</sup>

The Branch understands that the Queensland Government cannot compel the Commonwealth to change existing Immigration policies that impact on the treatment and rights of refugees and asylum seekers. A Human Rights Act in Queensland however would ensure that refugees and asylum seekers living in Queensland are afforded the same rights and protections as other people in Queensland. As we know that this marginalised group in our community are particularly vulnerable to issues such as homelessness and poverty - exacerbated by limited government support and work restrictions due to visa class - the need for protection is critical<sup>7</sup>. It is hoped that a rights-culture to flow from an Act would further assist in countering negative public opinions that impact both those seeking asylum and also communities of refugees that have already been settled in Queensland. These communities often experience exclusion and racism which negatively impacts the Queensland community as a whole.<sup>8</sup>

### **People with a Disability**

In their commitment to human rights, social workers prioritise an holistic understanding of the person, seeing their impairment as only one aspect of what makes them who they are. This view is driven by a deep belief in the intrinsic worth of all human beings and their inalienable right to dignity and self-determination. Drawing on the significant contribution of the self-advocacy movement, social workers understand that people with disability are a diverse group and have a wide range of experiences, abilities, impairments and potential for development.<sup>9</sup>

People with disability often find themselves struggling to access and enjoy the same rights and freedoms as other members of society and often face discrimination and disadvantage with meeting amongst other things, their basic survival, housing, employment and education needs. Issues preventing access include both physical and social barriers. Considering this as well as the fact that people with disabilities are a diverse group with diverse and sometimes complex needs, it is clear that existing legislation and policy does not adequately address these needs with many people living with a disability continuing to experience increased levels of marginalisation,

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<sup>6</sup> AASW Position Statement Asylum Seekers and Refugees <https://www.aasw.asn.au/document/item/2483>

<sup>7</sup> Woodcroft, H, Barnes, L & Wilkinson, C 2014 *No road home for asylum seekers in Queensland*, Parity, vol. 27, no. 10, Nov 2014: viewed 12 April 2016, <http://search.informit.com.au/documentSummary;dn=782892736524735;res=IELHSS>

<sup>8</sup> Australian Association of Social Workers 2013, AASW statement on asylum seekers to incoming government, <http://www.aasw.asn.au/document/item/4999>

<sup>9</sup> Bigby, C.& Frawley, P.(2010). *Social work practice and intellectual disability*. Palgrave Macmillan, New York

discrimination and limited access to support and services that others take for granted.<sup>10</sup> It is therefore critical that any Act appropriately captures the rights contained within the *United Nations Convention on the Rights of Persons with Disabilities*. A Human Rights Act would provide a very explicit commitment to recognising that all members of our society have access to the same basic human rights, notwithstanding of disability.

### **Older People**

The role of social work in aged care is a vast area of practice. Regardless of context, social workers working with ageing populations focus on achieving holistic and contextual understanding of the individual's experience, and a commitment to self-determination, dignity and respect. In their commitment to human rights and social justice, social workers advocate for the rights of older people against the discrimination, neglect, family violence, reduced opportunities and elder abuse they can experience.<sup>11</sup> Essential preconditions for supporting this work are clear, inalienable and enforceable human rights protections. Rights and freedoms that are easily accessed when older people make decisions about their care and the quality of their lives, whether living independently or in a care facility. Core to this is ensuring that the voices of older people are not neglected or silenced, which currently occurs as there is no one overarching piece of legislation that covers the diversity of their needs and issues experienced, which are essentially about their human rights. A Human Rights Act in Queensland would ensure that the human rights of this particular group are upheld, something that is even more imperative given the growing ageing population and the demands for services that this brings with it.

### **Homelessness**

Social workers have traditionally supported individuals and families in the areas of homelessness; the high rates of our homeless population continues to be a major social problem. Homelessness Australia states that according to the latest ABS census in 2011 there were 19,838 homeless people in Queensland. This was an increase of 5.1% from the previous census in 2006 demonstrating the spread in the problem. The issue of homelessness is complex, exacerbated by a failure to adequately plan for and resource our population's housing needs, and represents a violation of a basic human right to an adequate standard of living.<sup>12</sup>

Homelessness directly affects health, educational and employment opportunities as well as the emotional well-being of individuals and families. The impacts are far reaching and impede not only the present but also the future opportunities of people who find themselves without a home<sup>13</sup>. Importantly, this has longer term implications for the sustainability and productivity of our communities.

Homelessness has created a large 'invisible' population within our community of individuals who effectively have little voice, without a home or address, these individuals are excluded from services and from opportunities. It is difficult to uphold the human rights of individuals who are effectively invisible and marginalised, and as social workers we commonly see breaches of human rights in terms of living conditions and access to basic support. The Branch suggests that a Human Rights Act will help sharpen the

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<sup>10</sup> Australian Association of Social Workers 2011, *Strengthening Human Rights in Victoria*, viewed 12 April 2016, <http://www.aasw.asn.au/document/item/2264>

<sup>11</sup> AASW Scope of Social Work Practice – Social Work in Aged Care, <https://www.aasw.asn.au/document/item/8305>

<sup>12</sup> Homelessness Australia 2012, *About homelessness*, viewed 10 April 2016,

<http://homelessnessaustralia.org.au/index.php/about-homelessness/homeless-statistics>

<sup>13</sup> Australian Association of Social Workers n.d., *Pathways to a Fair and Sustainable Social Housing System*, viewed 12 April 2016, <http://www.aasw.asn.au/document/item/3105>

focus on protecting Queenslanders who are currently homeless or at risk of homelessness not simply as a matter of good policy, but as a core priority to ensure all Queensland's human rights are upheld as a matter of necessity.

## Which rights, for whom and how

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### Which rights, and who, should be protected?

The Branch submits that the key rights articulated by the *Universal Declaration of Human Rights* should be protected by any legislation that may be introduced. As means of providing universal protection, the Branch asserts that these should sit alongside the rights expressed in the following treaties of which Australia is presently signatory to:

- 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 relating to the Status of Refugees
- International Convention for the Protection of all Persons from Enforced Disappearance
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child and its optional protocols
- Convention on the Rights of Persons with Disabilities and its optional protocol
- Declaration on the Rights of Indigenous Peoples.

The Branch further considers that all human rights should be held by all people and that the rights contained in the Act, be exercised without discrimination.

### Who does the Act bind and how should the Act be enforced?

The Branch endorses the recommendation that a Human Rights Act in Queensland should bind the Legislative Assembly, the Executive and the Judiciary equally and in line with a Dialogue Model. This will provide a framework that enables all three arms of government to reference and enact human rights when developing, interpreting and applying Queensland law and policy. The Branch further considers that it is appropriate for non-government organisations that are contracted in any way to carry out the functions of Government to be bound to the obligations within the Act. Notwithstanding the primary accountability for satisfying the Act falling on government, the Branch considers there should be provision for private organisations to 'opt in' to the Act as a means of taking leadership in delivering human rights informed services.

There remains a residual question for the Branch in terms of existing legislation and how these might currently contradict the rights legislated under a Human Rights Act. While the Branch recognises there is significant resource required to retrospectively review all state legislation, it nonetheless considers this an appropriate step. It is plausible that a broad consultation process would elucidate and steer government in the direction of which legislation currently has a high level of incongruence with human rights.

With regard to new legislation, the Branch recommends that the Act provides for Compatibility Statements to accompany each proposed piece of new legislation. These statements will ensure that any new legislation effectively 'passes' the human rights test by clearly articulating in which ways the legislation meets the commitments of a Human Rights Act (and if not, the rationale for this and why the interests of the proposed legislation are so significant they should limit human rights). The Branch considers compatibility statements both a crucial tool for accountability and as an appropriate safeguard against new law being passed that runs counter to human rights provisions.

### **The Act's enforcement and remedies for non-compliance**

It is the Branch view that there is existing structure for the Act's enforcement through the office of the Anti-Discrimination Commission. The Branch considers that the Commission appropriately sits at sufficient arms-length from Government to effectively and independently conciliate and investigates complaints of alleged breaches of the Act. Furthermore, the Commission is well versed on issues that relate directly to human rights and so is well placed to form views and apply penalties where it deems necessary. The Branch considers this option will be useful both in terms of effective enforcement and in terms of avoiding the creation of a further bureaucracy. Should the task of enforcement fall on the Commission, the Branch submits that it will be necessary that the Commission is appropriately funded to carry out its expanded scope. As an important addendum to this point, the Branch recommends that the Act further provides provision for the Queensland Civil and Administrative Tribunal to consider allegations of breaches of the Act. This in itself would require appropriate training and education of those officers involved to ensure appropriate levels of understanding of the Act and its principles.

To reflect the gravity of human rights transgressions, and to ensure the people of Queensland have access to a full suite of justice options, it is necessary that the Act provides a range of penalties available where human rights have been violated. The Branch submits that reparations should include restitution, damages, declarations (including public apologies and guarantees against future breaches), injunctions, changes in policy, practice and the law, and orders to cease offensive conduct.

### **Conclusion**

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Australia remains the only developed nation without a constitutional or legislative Bill of Rights at the national level. While the rhetoric of human rights leadership is often espoused, it is difficult to reconcile against the absence of a framework that enshrines human rights in legislation.

The AASW Queensland Branch firmly believes that the Queensland Government currently has an opportunity to take very real leadership in redressing the inadequate human rights protections of the people of Queensland. Furthermore, it would further preserve through legislation, a culture of human rights, which provides a substantive foundation from which the State can better stride toward achieving a fair, just and equal society.

The Branch has welcomed the opportunity to input to the Consultation on a Queensland Human Rights Act and is highly supportive of state human rights. We are hopeful this will proceed to further implementation of a broad Queensland Human Rights legislative framework being adopted in the future.