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Dear Colleague

Submission on Human Rights Inquiry

Background

1. Soroptimist International works to ensure that the voices of women and girls around the world are included in international decision making and the policy setting, as well as within Australia. Soroptimist International is active at all of the major United Nation centres around the world maintaining a network of permanent representatives. The organisation holds a General Consultative Status with the United Nations Economic and Social Council and maintains official relations with several agencies and technical bodies.

2. As an advocacy body for women, the members of the Regions of Soroptimist International of South Queensland¹ and of the Soroptimist International of North Queensland² advocate for long term, effective, and workable solutions to the issues affecting equality for women, generally, and within Queensland.

3. We focus primarily on the issues under Terms of Reference 2(a) and address the desirability for Queensland to have a Human Rights Act. We provide practical Queensland specific examples of how the current government and legislative mechanisms would be greater enhanced to better protect the vulnerable and marginalised women and girls in Queensland, though a Human Rights Act.

Recommendations

4. We recommend that a Human Rights Act be enacted.

5. If enacted, the Act be accompanied by adequate resources, training and awareness at all levels in order to effect meaningful cultural change for women.

6. If enacted, the key features recognising specific regard to human rights affecting, women generally, Indigenous women, victims of domestic and family violence, provide for economic security and safety for women, and, environmental considerations with specific regard to the right to access to healthy air, clean water, food, and non-contaminated land; and, to shelter and safe communities free from harm or interference.

¹ Covering a broad area from the Gold Coast, Toowoomba to Deception Bay area

² Covering the area of Mackay, Cairns, Northern Tablelands and Atherton area

Soroptimist International and SISWP – In General Consultative Status with the Economic and Social Council, United Nations (ECOSOC)

Operational Relations with the United Nations Educational, Scientific & Cultural Organisation (UNESCO)

Special List of the International Labour Organisation (ILO);

Official relations with the Food and Agriculture Organisation (FAO)

Consultative status with the United Nations Industrial Development Organisation (UNIDO).

7. As far as practicable, a Human Rights Act should be compatible and consistent with Victoria's *Charter of Human Rights and Responsibilities Act 2006* and the ACT's *Human Rights Act 2004*.
8. A Human Rights Act should have a mechanism for accountability within government at all levels for breaches of a Human Rights Act and to ensure compliance with a Human Rights Act by way of court oversight, committee enquiries and / or scrutiny committees. This is particularly important in a system of government where there is one house of parliament.
9. A Human Rights Act create adequate remedies for breach of the human rights, where persons whose human rights are adversely affected can initiate proceedings to address the infringement of those rights.
10. The implementation of the Human Rights Act encourages cultural change within the community and government, throughout Queensland, and in rural communities, which may include education across a variety of levels and areas to effect.
11. The Human Rights Act be reviewed in 4 and 8 years, as in other states.

Key features of structure: Legislation for Human Rights and Effecting Cultural Change

12. It is the view of our members that a Human Rights Act is the most effective way to ensure the protection of human rights in Queensland. The ability to amend the Act with ongoing reviews (as has been done in other states) would enable the Queensland government to be responsive to change, while protecting the vulnerable, disadvantaged and marginalised persons in our community.
13. Aside from the often cited benefits of improved law making and government policy, improved public service delivery and protection of vulnerable and disadvantaged persons, a Human Rights Act would provide a means by which those adversely affected have another "tool in the armoury" on which to rely on when prejudices or infringement of their rights arise.³
14. This need not result in increased litigation, and the ACT Chief Justice Helen Murrell has been reported as saying that the Victorian *Charter of Human Rights and Responsibilities Act 2006* has had little direct impact on the outcome of cases, but its enactment has been a powerful symbolic statement.⁴
15. Further, the operation of charters of rights in both Victoria and the ACT has not seen the wholesale erosion of parliamentary sovereignty.⁵
16. Our members consider that a Human Rights Act has the potential to effect cultural change, but, in order to effect change that is meaningful and effective, and to improve the way in which vulnerable and prejudiced individuals are treated, it is our view that it is essential for all levels of government to be involved and engage with the introduction of a Human Rights Act, so that "*.. everyday Queenslanders, as well as those with power to make and shape*

³ UNSW: *Arguments For and Against a Charter of Human Rights* <http://www.gtcentre.unsw.edu.au/node/3071>, website accessed 16 April 2016
It is commonly argued that a statutory Charter of Human Rights would expressly recognise rights not currently recognised by Australian law, and therefore also - help promote a stronger culture of respect for human rights, improve government policy-making and administrative decision-making from a human rights perspective, bring Australia into line with every other liberal democracy, better meet the obligations Australia has undertaken, under international law, to protect human rights standards such as those contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (for copies of the core international human rights treaties, see the Office of the United Nations High Commissioner for Human Rights); and potentially allow Australian courts to play a broader role in protecting human rights under Australian law. Some common arguments against a Charter of Human Rights - Some suggest that a Charter of Human Rights would be unnecessary, given the existing common law and statutory protections of rights in Australia. Opponents of a Charter of Human Rights also consider that a Charter of Human Rights could damage our current system of democratic government.

⁴ Justice Margaret McMurdo, University of the Sunshine Coast Inaugural Law Oration: *A Human Rights Act for Queensland?* <http://archive.sclqld.org.au/judgepub/2015/McMurdo230915.pdf>, website accessed 16 April 2016

⁵ <http://katgallow.blogspot.com.au/2015/04/the-case-for-bill-of-rights-in.html>, website accessed 16 April 2016

*the law, about their rights and responsibilities, creating a culture of understanding and respect for human rights.*⁶

17. A key part of a Human Rights Act involves proactively effecting change and educating others. As noted in Victoria's 2015 Review⁷ influencers are important, and attention must be paid to the Senior leadership and organisational vision, including from Ministers and senior public servants, at an operational capacity level, including the role of supervisors and team behaviour to effect change. It was also recognised that there is a need to build the knowledge and capacity of staff, provide external input and oversight, including of community attitudes and expectations, consider the capacity in the legal sector, and the role of external accountability and oversight.

Key features for a Human Rights Act: Need for Remedies and Causes of Action

18. Our members consider that the introduction of remedies or causes of action where human rights breaches occur is essential. If absent, there is little accountability of government, individuals or entities for addressing human rights breaches.

19. Accountability is particularly important where there is only one house of Parliament in Queensland.

20. Accountability mechanisms, and remedies, may include:⁸

- 20.1. Mediation and dispute resolution options;
- 20.2. Vesting of powers with the Anti-Discrimination Commission of Queensland or consideration of the establishment of a Human Rights Commission in Queensland;
- 20.3. Ombudsman and Crime and Corruption Commission oversight;
- 20.4. Consideration of human rights issues within Ministerial Portfolios; and
- 20.5. Powers for the court to ascertain breaches and provide interventional or restorative remedies in addition to any existing or collateral rights or remedies that may exist.

Key Feature of a Human Rights Act: Specific Recognition of Issues Affecting Women

Women Generally

21. The Law Council of Australia considers that a Human Rights Act is the most effective way to ensure that the rights of all Australians are adequately protected.⁹

22. As the gender pay gap affecting women increases year to year (now around 18% across all fields)¹⁰ even after adjustment for ages and other variables, equality for women seems largely out of reach despite the progress and strides made by women over the past 50 years¹¹ without government intervention.

23. Our members consider that there needs to be clear legislative intervention in order for women, and Indigenous women as a particularly marginalised sub-group, to have equality of access across all walks of life.

24. Specific recognition in a Human Rights Act assists in achieving this and is a significant symbolic and practical step for government to take.

⁶ Michelle O'Flynn, Director of Queensland Advocacy Incorporated (QAI) <http://probonoaustralia.com.au/news/2015/04/qld-nfp-calls-for-human-rights-act/>, website accessed 16 April 2016

⁷ From commitment to culture, The 2015 Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, page 5 <http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/human+rights+legislation/2015+review+of+the+charter+of+human+rights+and+responsibilities+act+2006>, website accessed 17 April 2016

⁸ From commitment to culture, The 2015 Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, page 8-12 <http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/human+rights+legislation/2015+review+of+the+charter+of+human+rights+and+responsibilities+act+2006>, website accessed 17 April 2016

⁹ <http://www.lawcouncil.asn.au/lawcouncil/index.php/protecting-and-promoting-human-rights-in-australia> website accessed 16 April 2016

¹⁰ <https://www.wgea.gov.au/addressing-pay-equity/what-gender-pay-gap>, website accessed 17 April 2016

¹¹ https://www.wgea.gov.au/sites/default/files/BCEC_WGEA_Gender_Pay_Equity_Insights_2016_Report.pdf website accessed 17 April 2016

25. This would also be consistent with the approach by the Queensland Government Queensland Women's Strategy for 2016 to 2021¹² in addressing equality for women in the workplace.
26. It is our view that a Human Rights Act would enhance the objectives sought by that Strategy immeasurably, as well as requiring government at all levels to consider issues affecting women in their daily government and administrative activities.

Indigenous Women

27. Historically government policies that have lacked a human rights perspective have resulted in damaging long-term legacies for minority groups. Nowhere is this more evident than in Indigenous affairs.
28. The legacy of past governments in the forced removal of Indigenous children¹³ from their families remains today, with those attitudes persisting, perhaps even in unconscious ways, in the interactions between the State and Indigenous communities, particularly when assessing parenting and what is perceived as "appropriate" parenting.
29. It has been said that racism within authorities as well as individuals continues and the pathway to Indigenous self-determination as envisaged in the "UN Convention on the Rights of Indigenous Peoples" is still blocked. Attention (and action) beyond cursory recognition is needed to ensure that neither policies nor decisions that have resulted in previously embedded racism or marginalisation in the system of government or individuals continues, and a Human Rights Act could play a major role in changing this.¹⁴
30. We provide the following case studies from individuals with personal experience in Queensland Indigenous communities.
31. **CASE EXAMPLE** - An Indigenous woman must fight the preconceived views of what is "appropriate" parenting against which her parenting is assessed, the non-Indigenous standard against.¹⁵

An Indigenous mother gave birth to a premature baby who spent the first six weeks his life in hospital. The husband is intellectually impaired, but the family had good support from grandparents, who helped with the care of the three-year-old girl while the young mother was dealing with the new baby.

The baby was home for hospital for only two days before the mother took him up to the hospital because he was suffering badly from reflux and was continually crying with pain, leaving the three year old at home with the father. She was separated from her baby and not allowed to accompany him to the ward.

The police descended on the family's house announcing that the baby was severely damaged, had been shaken hard enough to have a detached retina and brain damage and had been placed on life support. There was no proof of this harm as having been caused by the mother, and the mother was later cleared of criminal charges.

But not without cost - the family Elders were involved and spoke positively for the mother to authorities, without success. The child was taken into protection while criminal charges and court proceedings ensued. Other children were also taken from the mother, without cause.

¹² <https://www.communities.qld.gov.au/communityservices/women/queensland-womens-strategy> website accessed 16 April 2016

¹³ Western Australian Aboriginal Child Health Survey, Forced Separation from Natural Family and Social and Emotional Wellbeing of Aboriginal Children and Young People, vol. 2 (Perth, Centre for Developmental Health, 2005), p. 52.

¹⁴ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people, James Anaya – Addendum: Situation of Indigenous peoples in Australia, August 2009

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/138/87/PDF/G1013887.pdf?OpenElement> (A/HRC/15/37/Add.4)

¹⁵ Provided by an Indigenous person

Despite the charges being eventually dropped against the mother, her children were not returned for some time. When they were eventually returned, and the case was closed, the father came back and the mother had to account for herself again.

The mother and her community were silenced in many ways, and were not allowed to speak on the mothers behalf or the child's behalf to authorities.

Despite the father not being allowed contact with the children, the mother continued to have to present the child to "prove" the child was unharmed, as regularly as weekly.

Had a Human Rights Act existed, the mother, the family and the Indigenous community would have had more opportunities and rights to speak on the mothers behalf and to avoid the trauma suffered by the mother and this child. The views and attitudes of government entities in assessing the mothers parenting would also have been amenable to other review.

32. **CASE EXAMPLE** - Access to information, fair and unbiased consideration of matters affecting them is often difficult for Indigenous persons.¹⁶

A young Indigenous mother said to her son "I'll wash your mouth out with soap if... " The son told the story to a teacher who reported it to authorities. All her children were taken into protective custody (for about a year). She lost her job. Her marriage broke down. In her attempts to persuade authorities that she was, in fact, a capable parent, she agreed to undertake a series of compulsory courses on drug and alcohol rehabilitation (though she informed them she did not drink or take drugs) and she also did an effective parenting course. At different interviews, though supported by an Elder, she was accused firstly of being emotionally unstable because she cried and then, when she worked hard not to cry, of being emotionally divorced from her children.

In a final interview, the social worker informed her that, despite her protestations, she had a history of drug and alcohol abuse, and had in fact assaulted her husband while under the influence. This incident had occurred in another regional area. The woman had never lived in that area. It was then revealed that the case-worker was using a file of a woman with the same name and date of birth, but was a different woman altogether.

The woman's children were returned to her care, but with no reunification support. The children, especially the son who told the teacher what his mother had said, have been traumatised by the experience. Nothing has been done about the loss of reputation or the return of her job.

A Human Rights Act would empower this woman to have a clear and strong voice to ensure she does have a remedy in this case.

33. **INSIGHTS** - An Indigenous lawyer's perspective on the plight of Indigenous women and children.¹⁷

When invited to sit on a panel to discuss what was child neglect it is sad to have to challenge people about their preconceived views.

In my experience, Indigenous women today face racist and demeaning generalisations that as Indigenous women they cannot, and do not, care for their children.

It is difficult for these women to challenge the enduring and persisting destructive perception that "the white way is always the right way"

The failing is a systemic one and the family is destroyed by government representatives who are far removed from the need (or necessity) to take measures to determine suitable family arrangements, and struggle to recognise kinship, extended and non-nuclear family arrangements in Indigenous communities.

¹⁶ Provided by an Indigenous person

¹⁷ Provided by an Indigenous lawyer

Is the assessor the problem? Why do they see the 'white' way deemed to be the correct way? What are they not seeing? Are they too pretentious in their child rearing beliefs? Is it their inability to communicate appropriately the problem?

Why does a happy, albeit dirty, faced and a fat little belly, partially covered by a shirt (just ripped in play), atop legs sporting scarred knees (as trophies of boisterous fun), and tough feet with no shoes - still measure neglect?

The "whiteness of right" is a common problem that Indigenous women face in being judged about their families.

Many women are also deprived of the full and complete information on which their cases are assessed. It is unfair to them, the family and those involved.

In my experience, the Indigenous woman is the most silenced group within Australia.

Whether these conditioned beliefs and behaviours can be rectified by a Human Rights Act depends on the level of accountability of all government at all levels, and depends on the ability to have remedies to assist women like these in various types of matters. Requirements for departmental officers to have regard to the Human Rights Act in their assessments can only help the situation for these families.

Homelessness of Women

34. Women experience homelessness in a variety of ways - climate and environment conditions make women vulnerable to homelessness, as does domestic and family violence. In turn, women become involved in the justice system due to social disadvantage, and Indigenous women are particularly vulnerable in this regard.
35. In Queensland, the age and gender profile of people accessing government-funded specialist homelessness services has changed in recent years. Clients presenting as either homeless or at risk of homelessness are now more likely to be female and relatively young. Rates for younger women aged 15–24 years rose significantly to 146 per 10,000 females aged 15–19 years and 145 per 10,000 females aged 20–24 years in 2010–11. When comparing all clients of specialist homelessness services in Queensland by age group and gender, the largest single cohort of adult clients is females aged 25–34 years.¹⁸
36. Women now constitute a considerable proportion of homeless people compared with the 1950s and 1960s. Of total 19,838 homeless people in Queensland in 2011, 43 per cent were female.¹⁹ Though women have slightly higher levels of supported homelessness, it remains a serious problem.
37. In 2013–14, more than half (54.8%) of Queenslanders accessing specialist homelessness services are women. This rate has increased in recent years.²⁰
38. With the increased homelessness of women, women become more vulnerable to extreme events including heatwaves, flood, fire, and cyclones. As outlined below, women and children are 14 times more likely to die than men during a disaster. For example, more women than men died during the 2003 European heatwave and many more African-American women were affected by Hurricane Katrina in 2005 than men. In many countries, women have subordinate positions, restricted mobility, less educational opportunity, less voice in decision-making and poorer employment, all of which increases vulnerability.²¹

¹⁸ "Queensland Women 2015", p.52-3 "Queensland Women 2015", p. 52-3, Statistics based on Australian Bureau of Statistics, 2012, *Census of Population and Housing: estimating homelessness, 2011*

¹⁹ <https://www.communities.qld.gov.au/resources/communityservices/women/qld-women-2015.pdf> , website accessed 17 April 2016

²⁰ <https://www.communities.qld.gov.au/resources/communityservices/women/qld-women-2015.pdf> , website accessed 17 April 2016

²¹ http://www.unisdr.org/files/20108_mediabook.pdf page 22 website access 18 April 2016

39. Women also experience homelessness as a result of domestic and family violence. With high rates of victims of domestic and family violence being women, they become involved in the justice system in unique and different ways compared to men, and are more vulnerable in many other facets of life.
40. Women often come into contact with the justice system as a result of homelessness and social disadvantage. Incarceration rates over the past 20 years in Queensland, have seen a dramatic increase in the number of women in prison where the rate at which women are being incarcerated in Australia has increased where between 1995 and 2002, the Australian Bureau of Statistics calculated that the female imprisonment rate had more than doubled (58%) over those seven years.²² In 2010, the ABS reported that the last 10 years (1999-2009) had seen an increase of 60% in the female prison population. The economic factors that cause women's involvement in prisons has also changed with more mental ill-health, substance abuse and social disadvantage present, particularly among remandees.
41. According to the Australian Bureau of Statistics, in Queensland between 2014 and 2015 there has been an increase in women prisoners²³ and studies also suggest that Indigenous women are more likely to be incarcerated compared to Indigenous men.²⁴
42. Indigenous women are also particularly vulnerable to incarceration, and homelessness. After adjusting for age differences, Indigenous people were imprisoned at 14 times the rate for non-Indigenous people in 2010. The imprisonment rate increased by 59 per cent for Indigenous women and by 35 per cent for Indigenous men between 2000 and 2010. Indigenous juveniles were detained at 23 times the rate for non-Indigenous juveniles at 30 June 2009 (figure 4.12.5). The Indigenous juvenile detention rate increased from 318 per 100 000 juveniles in 2001 to 420 per 100 000 juveniles in 2008, but fell sharply to 365 per 100 000 juveniles in 2009 (figure 4.12.5).²⁵
43. CASE STUDY from VICTORIA²⁶ -

Homelessness: *Many of the cases raising the Victorian Charter relating to housing and homelessness issues have involved challenging eviction orders that have been sought by public housing authorities. In the case of Homeground Services v Mohamed, for example, the Victorian Civil and Administrative Tribunal held that a non-profit welfare agency acted unlawfully pursuant to the Charter in seeking to evict a young tenant from transitional housing in accordance with a 'youth tenancy policy' in circumstances in which it was likely that the tenant would thereby become homeless. Office for Youth requires Charter compatibility in funding agreements and services*

The Office for Youth has ensured that funding agreements and services for youth participation services are in compliance with the Charter.

Source: *Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.*

²²While recognising the rates are lower than men, there remains an increase for women: <https://www.adcq.qld.gov.au/human-rights/women-in-prison-report/women-in-prison-contents/women-qld> ; "Addressing women's victimisation histories in custodial settings" <https://aifs.gov.au/publications/addressing-womens-victimisation-histories-custodial-settings/profile-women-prison>, website accessed 4 April 2016 (references omitted)

²³ Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2015~Main%20Features~Queensland~22>, website accessed 4 April 2016 - The male imprisonment rate increased from 354 to 362 prisoners per 100,000 male adult population and the female imprisonment rate increased from 36 to 38 prisoners per 100,000 female adult population.

²⁴ "Women in prison in Qld" Anti-Discrimination Commission of Queensland, <https://www.adcq.qld.gov.au/human-rights/women-in-prison-report/women-in-prison-contents/women-qld#Link3>, website accessed 4 April 2016

²⁵ Overcoming Indigenous Disadvantage – Key Indicators 2011 <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/key-indicators-2011/key-indicators-2011-overview-booklet.pdf> website accessed 17 April 2016

²⁶ http://www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf

Victims of Domestic and Family Violence

44. The rights of a child, which may be governed by Federal laws and courts, overlap substantially with state departments and child safety or child protection matters. Where families are able to rely on a Human Rights Act, they are better able to protect their family and the children involved in domestic and family violence.
45. CASE EXAMPLE - A victim of domestic and family violence whose experience demonstrates the need for shelter, safety, economic security and more.²⁷

In many cases of domestic violence (such as this one), it is woman who moves out of the family home to ensure her safety. The perpetrator is able to stay in the family home and has minimal impact on his way of life.

An educated woman who has worked in the family business but where the husband has siphoned funds out of their joint account into an undisclosed account is unable to leave. She has had to find and finance a place to live, find money for groceries and fuel, look for work and continue her studies (to set up future financial independence). Luckily she had a place to stay, despite the stress of uprooting and moving out.

She has previously accessed various support networks and community legal centre advice services. However, access and proper support, particularly safety was an issue. When she did decide to leave her husband, aside from the trauma of domestic and family violence and contending with that process, she faced difficulties trying to access funds and her property, which she needed, among other things, to apply for legal aid, not to mention to maintain economic security.

With limited access to funds, and demands placed on community legal centres, Virginia's options were limited. She had limited housing options, no place safe to sleep, and had to contend with the court process alone.

While she may have been able to access legal assistance eventually, a Human Rights Act may have enabled her to take action in other ways and to assist her and her family.

46. CASE EXAMPLE – A perspective from a grandparent who wants to keep a child from domestic and family violence but who is forced to allow access for the perpetrator.²⁸

A mum, who lived in a violent domestic situation, gave her newborn to her mother to rear. They went through the Family Law Court. Grandma is in her 40's and well able, in every way, to rear the child. All seemed well as the Court told them it would be until the child turned 18 yrs old.

Unexpectedly the Child Protection authorities arrive at the doorstep of Grandma. It seems Dad has been accused of molesting a young child and Grandma's court orders make it necessary for her to grant supervised access to him. The Child Protection authorities are therefore demanding to take the child into their protective custody so that this doesn't happen.

Child Protection authorities have, and rightly so, a mandate to make sure that ALL children are protected from possible/likely harm. Therefore their powers override ALL others.

But, what about the family unit and the Grandmother who is the child primary carer?

...

In another case, grandparents have fought a very expensive, lengthy and traumatic legal battle through the Family Law Court and have won residency of the grandchildren. Access to the children for the parents was part of the orders handed down, as is normal.

²⁷ Provided by a victim of domestic and family violence

²⁸ Provided by the Queensland Council of Grandparents Inc resources

However, the parent's previous lifestyle and the things they witnessed frightened the children and there is always pandemonium when access time comes around.

The grandparents are loath to force the children to visit their parents but know they are in breach of orders if they don't. They are also worried that if they do it will make the children even more rebellious about seeing their parents. Damned if they do and damned if they don't. The only answer is yet another trip to court which will be some time away.

A Human Rights Act would enable these grandparents to take other action to address the safety of these children.

47. CASE STUDY from VICTORIA²⁹ -

Study 24, p23:

Office of the Child Safety Commissioner highlights positive impact of Charter

The Office of the Child Safety Commissioner has stated that the Charter has assumed a meaningful role, impacting positively on children. More specifically, they believe that governments are 'increasingly examining issues relating to children through a human rights lens'. To evidence this, the Office cites the Victorian Law Foundation's consultation with young people as to how the Children's court should be reformed.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix I.

Women Deemed to Have Capacity but Who Have to Fight to Parent

48. CASE EXAMPLE - A case study of a woman who had to take extraordinary steps for her rights to be recognised within the existing mechanisms in Queensland

In 1998, a woman suffered a stroke as a result of medical negligence associated with the birth of her child. Serious brain injury resulted as well as physical disabilities. She was made a ward of the state on the belief that she was no longer competent to manage her affairs as a result of her stroke.

Over the course of 14 years, she engaged in numerous, lengthy, expensive and exhausting legal proceedings in order to have her capacity recognised to care for her children, to be able to take legal action, to be able to administer her own affairs and to be able to apply to be ultimately compensated for her suffering.³⁰

While this woman was able to access legal proceedings, her journey and rights would have been immeasurably improved had each of the government entities been required to have regard to her human rights. She would also have been better equipped to argue her matters with the assistance of a Human Rights Act.

49. CASE STUDY from VICTORIA³¹ -

Case Study 35, p27

Department of Human Services takes a holistic approach to human rights

The Department of Human Services has developed a human rights approach to their activities in the Southern Metropolitan Region. The practice transcends various sectors and consists of social inclusion projects, human rights training focused on youth justice, profiling of human

²⁹ http://www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf

³⁰ The GAAT'S Reason for Decision dated 16 October 2006: <http://www.austlii.edu.au/au/cases/qld/QGAAT/2006/66.html>; The GAAT'S Reason for Decision dated 27 October 2008: <http://www.austlii.edu.au/au/cases/qld/QGAAT/2008/74.html>; The GAAT'S Reason for Decision dated 31 August 2009: <http://www.austlii.edu.au/au/cases/qld/QGAAT/2009/68.html>; The QCAT'S Reason for Decision dated 23 April 2012: <http://www.austlii.edu.au/au/cases/qld/QCAT/2012/179.html>; The QCAT'S Appeal Tribunal Reason for Decision dated 16 October 2012: <http://www.austlii.edu.au/au/cases/qld/QCATA/2012/204.html>; Supreme Court action against the GAAT <http://archive.sclqld.org.au/qjudgment/2009/QSC09-128.pdf>

³¹ http://www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf

rights issues, appointment of human rights officers and promotion of human rights for the programs staff at regular meetings.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), Appendix J.

Case Study 55, p33:

Mother free to care for her daughter. A single mother living with cerebral palsy was at risk of having her daughter taken from her by Child Protection. She needed to demonstrate that with the appropriate assistance she would be competent, both emotionally and physically, to care for her daughter. The advocate in this case used the Charter principles to communicate the woman's rights to Child Protection through mediation in the Children's Court. These rights included recognition and equality before the law and protection of families and children. Consequently, the woman was able to demonstrate her capability of mothering her child and Child Protection are no longer involved.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

Children Exposed to Mental Illness

50. **CASE EXAMPLE** - A perspective from grandparents who wanted to protect their grandchild from harm when the primary carer suffered from mental illness:³²

Grandma sat at the kitchen table. The dishes were piling up and the housework hadn't been attended to for some time. No matter what she said to herself, she just couldn't get motivated to do the things she used to.

There was a sickness in her stomach that would not go away and she felt she was starting to lose touch with everyday life. Her friends and family kept telling her she had to "get over it" and go on. Still, out of nowhere the tears kept flooding in. She began to think she was becoming obsessive.

Every time the phone rang, her heart leapt into her mouth and she would wonder if she should answer it. Could she take bad news? What if her grandchildren really need her? Would this hell ever end? Why won't someone listen to her?

For seven years, she had lived through phone calls from her daughter threatening to suicide and take the children with her. Neighbours would call and she would have to race over to protect the children from her daughter.

Time after time, she had gone to child protection people. She searched the phone book desperately looking for some organization who could help but none of them seemed to believe her fears. Grandma lived in terror that some major tragedy would occur before anyone would act.

Grandma wondered how much more of this she could physically endure. Finally, Child Safety stepped in and a light was turned on.

But, at what cost to the child and at what point could a Human Rights Act have helped?

³² Provided by the Queensland Council of Grandparents Inc resources

Youth

51. The UN Convention of the Rights of the Child endorses four key principles for youth³³ - non-discrimination, devotion to the best interests of the child, the right to life, survival and development and respect for the views of the child.³⁴
52. Article 37 of the Convention provides that children who break the law should not be treated cruelly and should not be imprisoned with adults.³⁵ Queensland continues to place children 17 years or over into prisons with adults.
53. In relation to Indigenous youth,³⁶ though they constitute 8% of the state's population aged 10–17, with more than half, 53%, under youth justice supervision on an average day. This is higher than the national level, 45%. Indigenous young people aged 10–17 are 15 times more likely than non-Indigenous young people to be under supervision on an average day in 2013–14. Indigenous over-representation was greater in detention (24 times more likely) than in community-based supervision (14 times more likely).
54. CASE STUDY from VICTORIA³⁷ -

Study 13:

Victoria Police identifies human rights areas of concern. The Charter has played a significant role in 'prompting identification of potential issues in advance' and through this, influencing policy development and decision making processes. As an example, The Victoria Police Human Rights Unit Project has identified various policies and practices, which have the potential to result in human rights violations. They have conducted policy and practice audits into a range of units within the agency including:

- *Aboriginal Advisory Unit;*
- *Gay and Lesbian Liaison Unit;*
- *Multi-Cultural Advisory Unit;*
- *Prisoner Management Unit;*
- *Witness Security Unit; and*
- *Strategic Research Unit.*

The outcome of these audits in some units resulted in the development of protocols, which aim to ensure that the risk of Charter violations is minimised. In addition, Victoria Police have: audited police cells and holding rooms and reviewed its persons in custody policy to ensure complicity with human rights standards; referenced the Charter in Operational Safety and Tactics training guides; and ensured that complaints handling procedures are in line with human rights standards.

Source: Victorian Equal Opportunity and Human Rights Commission - Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July 2011), p158.

A Human Rights Act would inform youth of their rights, create a basis for the review of current processes around the provision for youth services including youth in detention as well as providing case specific clarification and resolution.

Safety, Shelter, Environment and Economic Security for Women

55. While environmental crime is gaining increased awareness, it is often overlooked as a human rights issue.

³³ <https://www.communities.qld.gov.au/childsafety/foster-and-kinship-care/rights-and-responsibilities/united-nations-convention-on-the-rights-of-the-child> website accessed 17 April 2016

³⁴ <http://www.unicef.org.au/Upload/UNICEF/Media/Our%20work/childfriendlycrc.pdf> A summary of Articles Article 37 Children who break the law should not be treated cruelly. They should not be put in a prison with adults and should be able to keep in contact with their family, website accessed 17 April 2016

³⁵ <http://www.unicef.org.au/Upload/UNICEF/Media/Our%20work/childfriendlycrc.pdf> website accessed 17 April 2016

³⁶ <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550837> website accessed 17 April 2016

³⁷ http://www.hrc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf website accessed 17 April 2016

56. Peter Breen in his paper *"Bill of Rights Legislation as a Sanction Against Environmental Offenders"*³⁸ discusses how environmental rights can and should be included in a bill of rights. He points out that *"[i]ndividuals' rights may be described as rights essential to the dignity of the person while community rights are rights attaching to a person by reason of his or her membership of a group or community. Of course, community rights are derived from individuals' rights, and they are no less essential to human dignity.."* He goes on to discuss the need to recognise environmental rights as human rights.
57. As stated by the United Nations Office on Drugs and Crime *"[t]he impact of illegal activities broadly covered by the term "environmental crime" goes well beyond the obvious effects on the environment and biodiversity. Crimes against the environment have serious social, development and economic consequences, particularly in least developed countries, and are a threat to basic human rights."*³⁹
58. Climate change is widely recognised by the United Nations Framework Convention on Climate Change as one of the most challenging ethical and social dilemma of our time, because it exacerbates environmental inequities already impacting vulnerable peoples.
59. The United Nations Human Rights Declaration of 1948⁴⁰, in defining relationships between the State and the Person, might be silent on the rights to healthy air, clean water and non-contaminated soils, but it does include the right to shelter, safe haven and equal access. The Earth Charter drafted in 1972⁴¹ and endorsed by United Nations Earth Summit in 2002⁴² defines the relationships for ethical decision making between State, Person and the Earth.
60. The need for recognition of Queensland's unique environment is more poignant when considering that as of July 2015, about 5% per cent of the State is national parks, and the coast of Queensland boasts the World Heritage Listed Great Barrier Reef.
61. Increased privatisation of public places,⁴³ authorisation of mining ventures in national park areas, and mining ventures that affect the Great Barrier Reef occurred in Queensland. Also, the impacts of climate change affects all Queenslanders, and are much like the rights Breen describes that should be protected.
62. Women are uniquely affected by the erosion of environmental human rights. And, environmental and climate events impact more on women. They are more likely to face increased risk to adverse health effects and violence and may be unable to access assistance safely and/or to make their needs known.⁴⁴
63. It would not be uncommon for them to be the least likely to escape because they are responsible for children, elders and disabled persons and are most likely living in cheaper accommodation with the least protection.
64. These adverse impacts are not limited to developing counties. Women and children are 14 times more likely to die than men during a disaster. For example, more women than men died during the 2003 European heatwave and many more African-American women were affected by Hurricane Katrina in 2005 than men. In many countries, women have subordinate positions, restricted mobility, less educational opportunity, less voice in decision-making and poorer employment, all of which increases vulnerability.⁴⁵

³⁸ http://www.aic.gov.au/media_library/publications/proceedings/26/breen.pdf website accessed 17 April 2016

³⁹ <https://www.unodc.org/unodc/en/frontpage/what-does-environmental-crime-have-in-common-with-organised-crime.html> website accessed 17 April 2016

⁴⁰ http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf website accessed 17 April 2016

⁴¹ <http://earthcharter.org/endorse/> website accessed 17 April 2016

⁴² http://www.unesco.org/education/tlsf/mods/theme_a/img/02_earhcharter.pdf website accessed 17 April 2016

⁴³ For example beaches and public areas becoming privatised in South East Queensland

⁴⁴ http://apps.who.int/gender/other_health/disasters/en/ website accessed 18 April 2016

⁴⁵ http://www.unisdr.org/files/20108_mediabook.pdf page 22 website access 18 April 2016

65. When considering building and developments, human rights for women become relevant. When considering safer spaces for women and vulnerable peoples, or in designing and retrofitting cities, the international approach is to design cities in the prevention of urban crime and the enhancement of urban safety strategies, acting as a common platform that links existing crime and violence prevention networks with urban players.⁴⁶ A Human Rights Act would improve this international approach in Queensland.

66. It is the view of our members that environmental rights ought to be recognised in a Human Rights Act as outlined in our recommendations and that women should have a human right to access to clean water, fresh air, food, shelter, and to safe haven.

Conclusion

67. We are happy to be involved in any additional consultation that may take place on this submission and the Bill, as well as later reviews of the Act and establishment of the surrounding infrastructure.

Sincerely,

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⁴⁶ <http://unhabitat.org/urban-initiatives/networks/global-network-on-safer-cities/> website accessed 18 April 2016