

# Human Rights Inquiry

**Anti-Discrimination Commission Queensland Submission to  
the Queensland Parliament, Legal Affairs and  
Community Safety Committee**

**April 2016**

---

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Contents

Introduction	3
The Anti-Discrimination Commission supports a Human Rights Act	3
Effectiveness of current laws and mechanisms	4
Common law	5
Administrative law	6
Queensland Parliamentary Committee system	7
Anti-discrimination laws	11
The complaints process	11
Other processes within anti-discrimination laws	11
Other Queensland legislation	12
Operation and effectiveness of human rights legislation elsewhere	12
Victoria and Australian Capital Territory	12
United Kingdom Human Rights Act	14
New Zealand Bill of Rights Act	14
Case studies in which human rights legislation has been used	15
Costs and benefits of adopting a Human Rights Act	15
Human rights legislation reviews	17
Western Australian and Tasmanian reviews	17
Northern Territory	18
National Human Rights Consultation	18
A Human Rights Act for Queensland	20
The objectives of the legislation	20
Rights to be protected	23
Civil and political rights	23
Economic, social and cultural rights	24
Property Rights	25
Right to self-determination and Aboriginal and Torres Strait Islander Queenslanders	26
Limitation Clauses	27
Making of laws, courts and tribunals and other entities	28
The making of laws	28
Courts and Tribunals	29
Judicial interpretation	29
Judicial decision making function	30
Breaches of human rights by public authorities	32
Damages	33
Public Authorities	33

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

Other Entities	34
Inconsistency of laws and decisions	34
Existing statutory complaints processes	34
Existing Internal complaints mechanisms	34
Anti-Discrimination Commission	35
Queensland Ombudsman	35
Crime and Corruption Commission	35
Relationship with other complaints handling bodies	36
The functions and responsibilities under a Human Rights Act	36
The Legislative Assembly	36
The Judiciary	36
The Public Sector	37
The Anti-Discrimination Commission	37
Other Complaint handling entities	37
Recommendations	38
Examples of Cases that have used human rights legislation	40
Helping an older couple live in the same care home	40
Reuniting separated older couple	40
Supporting an older woman strapped into her wheelchair against her wishes	40
Investigating unexplained bruising on a boy living in a care home	41
Securing safe housing for a family fleeing domestic violence	41
Preventing a woman and her newborn baby being made homeless	42
Supporting children to visit their mum in a mental health care home	42
Getting justice for a war veteran unlawfully detained by the Council	42
Challenging unannounced daily visits from social workers	43
Protecting the dignity of a learning disabled man in residential care	43
Supporting a disabled man to visit a gay pub	44

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Introduction

1. The Anti-Discrimination Commission makes this submission to the Queensland Parliamentary Legal Affairs and Community Safety Committee Inquiry into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.
2. The Anti-Discrimination Commission Queensland (the Commission) is an independent statutory authority established under the Queensland *Anti-Discrimination Act 1991*. The functions of the Commission include promoting an understanding, acceptance, and public discussion of human rights in Queensland, and dealing with complaints alleging contraventions of the *Anti-Discrimination Act 1991* and of whistle-blower reprisal.

## The Anti-Discrimination Commission supports a Human Rights Act

3. The Commission supports a Queensland Human Rights Act that:
  - reflects our key human rights obligations, including civil, political, economic, social and cultural rights, property rights, and the right to self-determination for Aboriginal and Torres Strait Islander Queenslanders;
  - will respect, protect and fulfil these human rights obligations;
  - takes a holistic and unified approach to maximise cultural change and educative function;
  - provides a process for parliament to explain how new laws impact on human rights, while retaining parliamentary sovereignty;
  - requires compliance with human rights at all levels of government policy and decision-making;
  - provides a process for independent investigation and resolution of human rights complaints;
  - provides a process for education, training, and information dissemination;
  - provides a regular and independent assessment of steps taken by government to meet human rights responsibilities;
  - requires courts and tribunals to interpret laws consistently with human rights;
  - allows people to bring freestanding human rights matters to the courts and receive enforceable remedies, including damages, for breaches of human rights, and;
  - allows private entities the opportunity to comply with human rights obligations.
4. A Human Rights Act, if passed, would be a demonstration by the Queensland Parliament of its strong commitment to working with the people of Queensland to ensure that human rights breaches could be challenged and remedied appropriately.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

5. A Human Rights Act could provide a process for citizens whose rights have not been protected or fulfilled in the delivery of government (or government-funded) services to have their rights upheld, as articulated within the proposed specific human rights legislation. Additionally, a Human Rights Act, over time, would provide a mechanism for significant cultural reform by influencing positively the way that services are designed and delivered, so that they promote an inclusive and fair Queensland society.
6. A culture of human rights is, by its very nature, inclusive rather than exclusive. The foundation of human rights is that every man, woman, and child, because of their humanity, can seek equal justice, equal opportunity, and live life with dignity, free from discrimination.

'I am convinced that the development of a culture of human rights throughout the world is one of the most important contributions that can be made to future generations. The foundation for this culture is enshrined in the principles of the Universal Declaration. A culture of human rights would result in a profound change in how individuals, communities, states and the international community view relationships in all matters. Such a culture would make human rights as much a part of the lives of individuals as are language, customs, the arts, faith and ties to place. In this culture, human rights would not be seen as the job of 'someone else,' but the obligation and duty of all.'<sup>1</sup>

(José Ayala Lasso, the first United Nations High Commissioner for Human Rights)

7. The benefits of protecting and fulfilling human rights and creating a human rights culture can be felt on a very simple and practical everyday level.

The former Attorney General of Victoria, Rob Hulls, has described an instance where the Victorian *Charter of Human Rights and Responsibilities Act* was used by the family and advocates of a very elderly, Victorian woman living in a nursing home. Staff at the home were in the habit of showering the resident without drawing the shower curtain. This breach of privacy and lack of respect for her dignity greatly distressed this elderly female resident. Relying on her right to privacy and her right to freedom from degrading treatment, advocates were able to draw attention to the inappropriate showering practice, and to have a discussion about changing the practice. The *Charter* gave them the platform and right to have this discussion, and to effect a change in practice. In time, with the development of a human rights culture in all agencies, such a practice would hopefully be eliminated without the need for an external intervention.

## Effectiveness of current laws and mechanisms

8. **Terms of Reference 2a: the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms.**

There is no comprehensive statement of human rights in Queensland that operates as a minimum standard for the protection of rights. The paper, *The National Human*

---

<sup>1</sup> Jose Ayala Lasso, '[A culture of human rights](https://www.questia.com/read/1G1-20518046/a-culture-of-human-rights)', *UN Chronicle* Winter 1997 (<https://www.questia.com/read/1G1-20518046/a-culture-of-human-rights>).

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

*Rights Consultation - Engaging in the Debate*, prepared by the Human Rights Law Resource Centre, in conjunction with Allens Arthur Robinson, comprehensively discusses existing human rights protections in Australia.<sup>2</sup>

In this submission, the Commission proposes to look at some of the significant common law, administrative law, and parliamentary protections of human rights that currently exist in Queensland, and to discuss the current deficits in the protection of the human rights of Queenslanders.

## Common law

9. The Hon Robert French AC, Chief Justice of the High Court, has said that  
‘many of the things we think of as basic rights and freedoms come from the common law and how the common law is used to interpret Acts of Parliament and regulations made under them so as to minimise intrusion into those rights and freedoms.’<sup>3</sup>
10. Some rights and freedoms give rise to direct legal obligations that may be enforced in courts of law. Other rights and freedoms exist to the extent that laws do not encroach on them. The High Court said in *Lange v Australian Broadcasting Corporation*:  
‘Under a legal system based on the common law, “everybody is free to do anything, subject only to the provisions of the law”, so that one proceeds “upon an assumption of freedom of speech” and turns to the law “to discover the established exceptions to it.”’<sup>4</sup>
11. In statutory interpretation there is a presumption, known as ‘the principle of legality’, that legislation is not intended to encroach upon common law fundamental rights and freedoms. The principle of legality can be displaced by the parliament in writing laws.
12. The rights and freedoms upheld by the courts include the freedom of speech, personal liberty, access to courts, legal professional privilege, protection from self-incrimination, procedural fairness, no alienation of property without compensation, and equality of religion. However, under the common law there is no settled list of protected rights (unlike the human rights covenants); instead, rights are incrementally developed on a case by case basis. Common law rights play a significant role in the protection of our rights and freedoms, but do not replace statutory human rights protections.
13. Protection of rights and freedoms under the common law can be contrasted with protection of rights under a Human Rights Act. Common law rights have been described as freedoms, rather than rights, and are often limited in how they can be enforced.
14. Under a Human Rights Act, there is more likely to be a positive duty to enforce a right, rather than merely a negative duty to leave people to be free to go their own way.<sup>5</sup> For example, in the United Kingdom case of *DSD & NBV v The Commissioner of Police for*

---

<sup>2</sup> Philip Lynch and Phoebe Knowles, *The National Human Rights Consultation: Engaging in the Debate*, Human Rights Law Resource Centre Ltd, [2008], 22–31.

<sup>3</sup> Robert French, ‘The Common Law and the Protection of Human Rights’ (Speech delivered to the Anglo Australasian Lawyers Society, Sydney, 4 September 2009) [3].

<sup>4</sup> *Lange v Australian Broadcasting Corporation* (Political Free Speech case) (1997) 189 CLR 520, 564 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ) quoting *Attorney General v Guardian Newspapers (No 2)* [1990] 1 AC 109, 283.

<sup>5</sup> Tom Campbell, Jeffrey Goldsworthy and Adrienne Stone, *Protecting Human Rights: Instruments and Institutions* (Oxford University Press, 2003) 17.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

*the Metropolis* [2014] EWHC 436 (QB), the UK High Court relied on the human right to be free from torture and cruel inhuman and degrading treatment<sup>6</sup> to find that the police have a duty to conduct an investigation in a timely and efficient manner. In that case, the failure to investigate complaints about a serial rapist meant that the rapist committed 105 rapes and sexual assaults over a period of six years. The perpetrator was eventually apprehended following a routine search for key words in a crime database. In Queensland, without the explicit requirement for the protection of human rights in a Human Rights Act, police do not have a positive duty to take investigative action.

15. The relationship between common law rights and human rights protected by international instruments was recently summarised by the Australian Law Reform Commission:

‘Common law rights overlap with the rights protected in these international instruments and bills of rights. In their history and development, each may be seen as an important influence on the other. A statute that encroaches on a traditional common law right will often, therefore, also encroach on its related human right. However, the two rights may not always have the same scope. While some common law rights are often conceived of as residual, human rights are rarely thought of in this way. Moreover, human rights have been said to tend to grow in content and form.’<sup>7</sup>

16. If Parliament so desired, the principle of legality could be codified in a Queensland statute, such as the *Acts Interpretation Act 1954*. This could act as a clear statement of parliamentary support for the principle of legality and further protect fundamental rights and freedoms from statutory limitation. Alternatively, the Act could be amended to require that, as far as it is possible to do so consistently with the legislation’s purpose, all state legislation be interpreted in a manner that is compatible with a list of Australia’s human rights obligations.
17. However, while both steps are worthy of consideration, it would not achieve the framework, breadth of purpose, or ability to drive an enhanced human rights culture in Queensland to the extent that a Human Rights Act could achieve.

## Administrative law

18. Judicial review is an administrative law mechanism for protecting common law rights in Queensland, through the powers of the Supreme Court to consider the legality of an administrative decision. The power of judicial review to protect human rights is limited by the threshold tests for judicial review, the separation of powers, the distinction between law and merits and the restriction to public power. Judicial review has been described as sporadic and lacking in follow-up mechanisms to ensure broader systemic change.<sup>8</sup>
19. The threshold tests for the application of judicial review include the making of a decision of administrative character that is made under an enactment.<sup>9</sup> Many decisions do not meet this test, either because they are not of administrative character

---

<sup>6</sup> Article 3, *European Convention Human Rights*.

<sup>7</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms - Encroachments by Commonwealth Laws*, Report No 129 (2015), 2.45.

<sup>8</sup> Mark Aronson, Bruce Dyer and Matthew Groves, *Judicial Review of Administrative Action*, (Lawbook Co., 2004) 1.

<sup>9</sup> *Judicial Review Act 1991*, section 4.



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

(for example where they are contractual decisions), or where the legislation does not authorise the specific decision. Such decisions are not able to be judicially reviewed.<sup>10</sup>

20. In the case of *King v Director of Housing* [2013] TASFC 9, a mother with three young children faced homelessness after being evicted from her public housing home for no fault of her own. She was unable to access a remedy through judicial review as the eviction decision was not expressly provided for in legislation, and considered contractual in nature. The resulting homelessness could not be considered by the court because the matter did not meet the jurisdictional threshold for any judicial review, namely that there was a decision of administrative character made under an enactment.
21. Many decisions that affect human rights are similarly outside the reach of judicial review.
22. A comparison can be made with the Australian Capital Territory (the ACT), a human rights jurisdiction, in the case of *Canberra Fathers and Children Services Inc v Michael Watson* [2010] ACAT 74 (29 October 2010). There, the ACT Civil and Administrative Tribunal found that an eviction from social housing that would result in homelessness was a breach of the human right to be free from unlawful or arbitrary interference with the home.
23. In that case, crisis accommodation was provided to Mr Watson and his three sons. Despite attempts to find alternate accommodation, Mr Watson was unable to obtain private rental accommodation due to his family situation and income level. If he was evicted from the premises, he and his family would again be homeless. Mr Watson was on the standard waiting list for public housing, and would not receive an offer of housing for a year or more. He was ordered to vacate the premises. In considering the case, the Tribunal said:

‘The Tribunal adopts the view that the question of arbitrary interference is not answered by asserting lawfulness based on contract. The Tribunal notes that it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right. Thus, the exercise of a contractual right can be unlawful.’<sup>11</sup>
24. The *Judicial Review Act 1991* could be amended to make listed of human rights obligations a relevant consideration in government decision-making. However, while such a step is worthy of consideration, it would not achieve the framework, breadth of purpose, or ability to drive an enhanced human rights culture in Queensland to the extent that a new Human Rights Act could achieve.

## Queensland Parliamentary Committee system

25. Under the *Legislative Standards Act 1992* (Qld), Queensland’s Parliamentary Counsel must provide advice to Ministers, government entities, and members of the Legislative Assembly on the application of fundamental legislative principles to the Bills and subordinate legislation it drafts for them.<sup>12</sup> The fundamental legislative principles include: requiring that legislation has sufficient regard to the rights and liberties of individuals. The *Legislative Standards Act 1992* states at section 4:

---

<sup>10</sup> *Griffith University vs Tang* [2005] HCA 7.

<sup>11</sup> *Canberra Fathers and Children Services Inc v Michael Watson* [2010] ACAT 74, [37].

<sup>12</sup> *Legislative Standards Act 1992*, section 7(g) & (h).



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

(3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation:

- a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
- b) is consistent with principles of natural justice; and
- c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
- d) does not reverse the onus of proof in criminal proceedings without adequate justification; and
- e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
- f) provides appropriate protection against self-incrimination; and
- g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
- h) does not confer immunity from proceeding or prosecution without adequate justification; and
- i) provides for the compulsory acquisition of property only with fair compensation; and
- j) has sufficient regard to Aboriginal tradition and Island custom; and
- k) is unambiguous and drafted in a sufficiently clear and precise way.

26. The Parliamentary Counsel is required to provide a brief assessment of the consistency of the Bill with fundamental legislative principles, in the explanatory notes to a Bill before the Queensland Parliament. If the Bill is inconsistent with fundamental legislative principles, the reasons for the inconsistency must also be stated.
27. Portfolio committees are established by standing rules and orders, and each department is required to be covered by a portfolio area.<sup>13</sup> The role of portfolio committees is set out in sections 92 and 93 of the *Parliament of Queensland Act 2001*, and includes considering legislation and proposed legislation. Previously, legislation introduced into parliament was considered by one committee, the Scrutiny of Legislation Committee.
28. The current process and legislative framework for scrutiny of legislation is as follows:
  - Bills and proposed subordinate legislation are drafted by the Office of the Queensland Parliamentary Counsel (OPQC).<sup>14</sup>
  - OPQC must provide advice to Ministers and government entities on alternative ways of achieving policy objectives and on the application of the fundamental legislative principles.<sup>15</sup>
  - When introducing a Bill in the Legislative Assembly the member must circulate an explanatory note for the Bill to members.<sup>16</sup>

---

<sup>13</sup> *Parliament of Queensland Act 2001*, section 88.

<sup>14</sup> *Legislative Standards Act 1992*, section 7.

<sup>15</sup> *Legislative Standards Act 1992*, section 7.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- An explanatory note for a Bill must include a brief assessment of consistency with the fundamental legislative principles, and the reasons for any inconsistency.<sup>17</sup>
  - After the first reading of the Bill (the explanatory speech), it is referred to a portfolio committee for report back to Parliament by a specified date, unless the Bill is declared urgent.<sup>18</sup>
  - The portfolio committee is responsible for examining Bills in its portfolio area to consider the policy to be given effect by the legislation and the application of the fundamental legislative principles to the legislation.<sup>19</sup>
  - The portfolio committee determines whether to recommend the Bill be passed, may recommend amendments to the Bill, and considers the application of the fundamental legislative principles and compliance regarding explanatory notes.<sup>20</sup>
  - The portfolio committee is required to report to the House within the time fixed for report. The Bill is set for its second reading stage regardless of whether the committee has reported in the relevant timeframe.<sup>21</sup>
29. Thus, one of the important tasks of a committee reviewing legislation is to examine and report on its consistency with fundamental legislative principles. However, there is no mandatory requirement for the Minister promoting the Bill to provide a response to the committee's recommendation.
30. In a recent inquiry by the Committee of the Legislative Assembly reviewing Queensland's Parliamentary committee system, the Anti-Discrimination Commission recommended the following measures be adopted to increase human rights accountability in the scrutiny of legislation:
- In the *Legislative Standards Act 1992*, include as an express objective that Queensland legislation is consistent with the promotion and protection of human rights;
  - Replace the expression 'rights and liberties of individuals' with 'human rights';
  - Add to the definition of fundamental legislative principles 'the separation of powers';
  - Define 'human rights' in an inclusive way such as 'the personal rights and liberties recognised or expressed under the Constitutions of Queensland and Australia, in statutes of the parliaments of Queensland and Australia, or in treaties ratified by the government of Australia';
  - Develop and implement a guidance note to assist in identifying human rights issues;
  - Replace the requirement for explanatory notes to include a 'brief assessment of consistency' with a requirement of a 'statement of compatibility' with fundamental legislative principles for all Bills and amendments;

---

<sup>16</sup> *Legislative Standards Act 1992*, section 22.

<sup>17</sup> *Legislative Standards Act 1992*, section 23(f).

<sup>18</sup> Standing Rules and Orders of the Legislative Assembly, Chapter 23, section 131 (Standing rules and orders for the conduct of proceedings in the Assembly are made under section 11 of the *Parliament of Queensland Act 2001*).

<sup>19</sup> *Parliament of Queensland Act 2001*, section 93.

<sup>20</sup> Standing Rules and Orders of the Legislative Assembly, Chapter 23, section 132.

<sup>21</sup> Standing Rules and Orders of the Legislative Assembly, Chapter 23, section 136.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- Establish under the *Parliament of Queensland Act 2001* a separate specialist bipartisan committee (a Human Rights Committee) with roles to include the examination of all Bills and subordinate legislation for compatibility with fundamental legislative principles.
  - Amend the *Parliament of Queensland Act 2001* to require the Member promoting a Bill to respond to any recommendations or concerns raised by the specialist human rights committee.
31. In its report on the review of the Parliamentary Committee System, the Committee of the Legislative Assembly discussed the Commission's submission at length.<sup>22</sup> It noted that the Legal Affairs and Community Safety Committee is undertaking this inquiry into a Human Rights Act for Queensland, and awaits the report to consider the issues and recommendations made.
32. Aside from the existing provisions in the *Legislative Standards Act 1992*, and the *Parliament of Queensland Act 2001*, which have a limited impact on the protection of rights, there are no other formal or legislative requirements requiring the Queensland Legislative Assembly to have regard to the rights and liberties of individuals before passing legislation.
33. Neither Act has any applicability once legislation has been considered by the Legislative Assembly, meaning there is no capacity for review of existing legislation. The provisions have no ongoing or broad purpose of protecting individuals from breaches of human rights.
34. The key deficits in the current procedure, as compared to those that could be mandated by a human rights act, are:
- Human rights are not fully incorporated into the meaning of 'fundamental legislative principles'.
  - There is no requirement for the explanatory notes or a committee's report to include reasons for any departure from the fundamental legislative principles.
  - There is no requirement that the member promoting a Bill respond to concerns raised by the portfolio committee about consistency with the fundamental legislative principles. Specialised knowledge of human rights would improve governance and decision-making by Parliament. Human rights reports should be prepared by a human rights subcommittee with adequate resources and expertise.
  - There currently are no standards or requirements for public engagement if legislation is proposed that will impact on human rights. Depending on the level of human rights concerns, a formal opportunity for public submissions should be provided unless there are exceptional circumstances.
35. Greater consideration of human rights is needed in the development of legislation and policy, and in the parliamentary process in general. The primary aim of such consideration is to ensure that human rights concerns are identified early, so that policy and legislation can be developed in ways that do not impinge on human rights or, in circumstances where limitations on rights are necessary, those limitations can be justified to Parliament and the community.

---

<sup>22</sup> Report No. 17, February 2016.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Anti-discrimination laws

36. The Commonwealth, States, and territories have passed legislation prohibiting discrimination on a range of grounds. The anti-discrimination legislation does not purport to provide comprehensive protection for every human right articulated in the international human rights instruments. Rather, the legislation aims to promote equality of opportunity for everyone by providing protection from unfair discrimination in certain areas of public activity. The main process for remedying acts of unlawful discrimination is the complaints process in the legislation.

## The complaints process

37. The complaints process allows for individuals who believe they have been discriminated against on the prohibited grounds to make a complaint to the relevant agency. At the conciliation stage there are numerous ways in which complaints may be resolved, including negotiating changes in processes or procedures, changes in work conditions, and the giving of an apology. Negotiations, where successful, may lead to beneficial outcomes for the individuals involved in the complaint. However, the terms remain confidential and cannot serve as binding precedent, although de-identified information can be used for general educational purposes.
38. Not all complaints can be successfully conciliated, and some may ultimately proceed to a public hearing before a tribunal or court. The decisions can indirectly affect more individuals and organisations than those involved in the specific complaint. The broader public benefit of tribunal or court decisions is that it builds a body of case law that can illustrate the circumstances and parameters of unlawful discriminatory conduct. Unfortunately, developing a body of case law can be slow and cannot efficiently assist the development of larger systemic changes that may be necessary to comprehensively protect an individual's human rights.
39. A complaints based mechanism under existing discrimination legislation has an important, but limited, effectiveness in comprehensively protecting human rights. The complaints mechanism, while valuable in dealing with instances of unlawful discrimination, cannot be relied upon as the primary means of ensuring an individual's human rights are comprehensively protected. Comprehensive protection is best achieved through the passing by Parliament of a Human Rights Act. A complaint process should be an important remedy under a Human Rights Act to enable the rights to be enforced. The anti-discrimination legislation and processes may be an important component in the framework of remedies under a Human Rights Act.

## Other processes within anti-discrimination laws

40. Anti-discrimination laws also provide a limited range of mechanisms to protect human rights. For example, provisions exist under the Queensland *Anti-Discrimination Act 1991* to permit the Anti-Discrimination Commission to:
- intervene, with the leave of the court, where a proceeding involves human rights issues;
  - scrutinise legislation, in limited circumstances;
  - conduct inquiries, in limited circumstances.
41. To effectively protect human rights, the Commission ought to be given powers to intervene in proceedings involving significant human rights issues, to scrutinise and

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

report on existing or proposed legislation, and to conduct inquiries on any matter affecting human rights within the Commission's jurisdiction. The existence of a legislated human rights framework, such as a Human Rights Act, would greatly facilitate the appropriate use of these powers, and the appropriate consideration by the legislature or the courts of any submissions made by a Commission pursuant to the powers.

42. Improvements could be made to the *Anti-Discrimination Act 1991* which is now twenty-five years old, to provide better protection from discrimination, sexual harassment, victimisation and vilification. The Commission has recommended the Act be referred for review by the Queensland Law Reform Commission. However, even if the Act was reviewed to align it with contemporary discrimination legislation in other jurisdictions, it would not have the framework, breadth of purpose, or ability to drive an enhanced human rights culture in Queensland to the extent that a Human Rights Act could achieve.

## Other Queensland legislation

43. Some existing Queensland legislation specifically refers to human rights. For example, the *Mental Health Act* and the *Guardianship and Administration Act* both set out principles that must be applied in performing functions and exercising powers under those Acts. The principles include 'the right of all persons to the same basic human rights to be recognised and taken into account'. However 'human rights' or 'basic human rights' are not defined in those Acts, or in the *Acts Interpretation Act*. So that public servants and others can comply with the principles, the human rights that must be taken into account should be clearly articulated.
44. The most efficient way of spelling out what human rights means is through a Human Rights Act. It would define the standard for applying laws, as well as for making and interpreting legislation, and promote a human rights culture.

## Operation and effectiveness of human rights legislation elsewhere

**Terms of reference 2b: the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally.**

### Victoria and Australian Capital Territory

45. Terms of reference 2b: The *Human Rights Act 2004* (ACT) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) are examples of the type of Human Rights Act that ought to be enacted in Queensland. The framework created by these Acts is premised upon

'the shared conviction that there should be a dialogue between the three arms of government, with parliament retaining its legislative supremacy, the courts playing a subsidiary but important interpretive and declaratory role,

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

and the executive facilitating the creation of a human rights culture across government'.<sup>23</sup>

46. Professor George Williams, in his submission to this Inquiry, writes that recent reviews of each of the Acts reveal that they have each enjoyed a good measure of success.

47. The first review of the ACT Act showed that:

'it has had an impact particularly in such areas as the development and scrutiny of legislation. Emergency electro-convulsive therapy legislation, the use of children for tobacco test purchases, the wearing of headscarves at ACT schools, the banning of car window washers at traffic lights, sentencing laws, the exclusion from public employment of a person with a criminal record and counter-terrorism legislation have all been considered under the new human rights framework. A human rights audit of the ACT's youth detention facility revealed the existence of many practices inconsistent with human rights including routine strip searches and the use of seclusion and surveillance. In the courts, the Act has not caused a flood of litigation. Nevertheless, it has been cited in a range of cases and has influenced their outcome.'<sup>24</sup>

48. The Law Institute of Victoria, in the 2015 review of the Victorian Charter, highlighted the major benefits of the Act to date were that the Charter has:

- shaped to law and policy development process;
- ensured that Parliament takes human rights into account when passing laws;
- generated a greater awareness of human rights within public bodies;
- improved decision making in public authorities;
- been an important advocacy tool for people to use whose rights are at risk;
- directed courts to interpret legislation compatibly with human rights; and
- provided remedies for individuals when their human rights have been breached.<sup>25</sup>

49. Professor Williams, in his submission, has identified some improvements that could be made to overcome some deficiencies in the Victorian regime. In particular, he has recommended that if Queensland develops its own Human Rights Act, it should:

- provide a stand-alone cause of action;
- ensure that a parliamentary committee charged with a scrutiny function is so empowered to scrutinise all kinds of legislation, and is given enough time to do so; and
- contain a clear judicial interpretive provision.

---

<sup>23</sup> George Williams and Daniel Reynolds, Submission No. 006 to Queensland Legal Affairs and Community Safety Committee, *Human Rights Inquiry*, 11 March 2016.

<sup>24</sup> The Tasmanian Law Reform Institute considered the operation of the ACT legislation. See Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania*, Report No 10 (October 2007) 37.

<sup>25</sup> George Williams and Daniel Reynolds, above n 20.



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## United Kingdom Human Rights Act

50. Human rights legislation was enacted in the United Kingdom in 1998. The *Human Rights Act 1998* (UK) is an ordinary statute that can be amended or repealed by the British Parliament at any time.
51. Under the United Kingdom Act:
- The rights protected are those in the *European Convention on Human Rights*. The focus is on civil and political rights, but some economic, social and cultural rights, such as the right to property and the right to education, are also included.
  - All public authorities, including courts and tribunals but excluding Parliament, must act in a manner that is compatible with the *European Convention*.
  - Courts are required to interpret and give effect to legislation in a manner that, as far as possible, is compatible with the *European Convention on Human Rights*.
  - Courts have the power to declare legislation incompatible with the Convention but they have no power to invalidate primary legislation, though they may invalidate subordinate legislation, such as regulations.
  - When legislation is introduced into parliament, the relevant Minister must make a statement about its compatibility with Convention rights.
52. The implementation of the *Human Rights Act*, has had a considerable impact on the case law and legal culture of the United Kingdom. Commenting on that impact two years after the Act came into operation, the Lord Chancellor said:
- ‘The Act represents one small manageable step for our Courts; but it is a major leap for our constitution and our culture. It has transformed our system of law into one of positive rights, responsibilities and freedoms, where before we had the freedom to do what was not prohibited. ... [I]t has moved public decision-making in this country up a gear, by harnessing it to a set of fundamental standards. And it has breathed new life into the relationship between Parliament, Government and the Judiciary, so that all three are working together to ensure that a culture of respect for human rights becomes embedded across the whole of our society.’<sup>26</sup>

## New Zealand Bill of Rights Act

53. The *New Zealand Bill of Rights Act 1990* is an ordinary Act of parliament. Even though there are no explicit enforcement provisions for citizens in the Act, the New Zealand Court of Appeal has held that compensation may be obtained from government agencies for any breach of the rights in the Act.<sup>27</sup>
54. Under the *New Zealand Bill of Rights Act*:
- Primarily, civil and political rights are protected.
  - The rights apply to acts done by the legislative, judicial, and executive branches of the New Zealand Government and people performing public functions.

---

<sup>26</sup> Lord Irving of Lairg, ‘The Human Rights Act Two Years On: An Analysis’ (Speech delivered at the Durham University Irvine Lecture, Durham, 1 November 2002).

<sup>27</sup> *Simpson v Attorney General* [1994] 3 NZLR 667.



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- The Act protects the rights of all legal persons, both corporations and natural persons.
- The rights covered by the Act are not expressed in absolute terms but are subject 'only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.<sup>28</sup>
- The New Zealand government may enact legislation that is inconsistent with the Act, but the Attorney General is required to inform Parliament of this inconsistency on its introduction.
- Government procedures now also require that all draft legislation presented to Cabinet be certified as complying with the Act.<sup>29</sup>
- In interpreting legislation, New Zealand courts are required to favour a meaning that is consistent with the Act. However, courts do not have the power to override inconsistent legislation, and there is no express provision in the Act for the courts to declare legislation to be incompatible with it.

## Case studies in which human rights legislation has been used

55. Attached to this submission are a number of case studies that demonstrate the effectiveness of human rights legislation in those jurisdictions that have it. The cases include examples of human rights matters solved without litigation, and some examples of cases resolved with litigation. The cases are drawn from a number of sources.<sup>30</sup>

## Costs and benefits of adopting a Human Rights Act

### Terms of reference 2c: the costs and benefits of adopting a HR Act (including financial, legal, social and otherwise).

56. Professor Gillian Triggs has said:

'Australians will cheerfully assert the right to freedom of speech, freedom of assembly, the right to a fair trial and the right to property, without ever being able to point to a specific constitutional or legislative provision.'<sup>31</sup>

57. A Human Rights Act is legislation that provides the basis or the framework upon which a culture of human rights can adequately be established. It is very difficult to build that culture in Australia or Queensland where we don't have laws to hang the ideas from.
58. The benefits of creating a human rights culture are not always obvious, particularly if you have no lived experience of discrimination, rejection and humiliation because of such things as disability, age-related impairment, religious belief, racial identity and poverty. An accessible environment, while particularly relevant for people with disabilities has benefits for a broader range of people. For example, curb ramps assist parents pushing baby strollers. Information in plain language helps people with less education or people for whom English is a second language. Announcements of each stop on public transport may aid travellers unfamiliar with the route as well as those

---

<sup>28</sup> *New Zealand Bill of Rights Act 1990*, section 5.

<sup>29</sup> Department of the Prime Minister and Cabinet, *Cabinet Office Manual* (1996).

<sup>30</sup> For UK cases, see [the British Institute of Human Rights website](https://www.bih.org.uk/Pages/FAQs/) (<https://www.bih.org.uk/Pages/FAQs/>); See also [the Human Rights Law Centre case law data base](http://hrlc.org.au/caselaw/). (<http://hrlc.org.au/caselaw/>).

<sup>31</sup> Gillian Trigg, 'Creating a human rights culture' (2014-15) *Southern Cross University Law Review* 17, 64.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

with visual impairments. Additionally, the benefits for many people can help generate widespread support for making changes to build a more inclusive and fairer society.

59. It is well documented that, historically, society and government have characterised certain people (such as people with disability and people with age-related impairment) as the 'deserving poor' required help. Society and governments' remedy to alleviate suffering was to establish charitable responses. Charitable responses, although well-meaning, often resulted in the 'deserving poor' being viewed as objects of pity and charity and not as subjects who are right-bearers. Thus, a culture has developed that it is acceptable for some population groups to be treated less favourably than those population groups who are valued.
60. There have been studies that prove the link between racial discrimination and increased costs to the health system.<sup>32</sup>
61. A Human Rights Act, over time, would provide Queenslanders, whether they are legislators, policy makers, program developers, or service providers with the means to protect and fulfil the rights of all Queenslanders, irrespective of their lived experience. A Human Rights Act would provide us with the chance to create opportunities and spaces to understand and respect each other, and to live better lives.
62. The cost of not protecting and fulfilling all Queenslanders human rights is both tangible and intangible, and not always quantifiable in dollar terms. However, we know instinctively and anecdotally that where there is inequality in society, without a framework to address it, that there are significant costs — socially, economically, and culturally to those individuals directly affected, and the broader society. These costs manifest in antisocial behaviour and disruption; unhealthy communities; more violent communities; greater costs to our health system and our police, justice, and corrective services systems, and ultimately, our social services systems. These costs far outweigh the cost to establish and maintain a Human Rights Act.
63. The financial costs to government of adopting a Human Rights Act would also depend on the model introduced, and the resources devoted to its implementation. The experience in other jurisdictions with Human Rights Acts is that there has not been a flood of litigation, or other significant financial burden to the state. An analysis of the Victorian Charter in 2011 found that it had only cost 50 cents per Victorian, per year.<sup>33</sup>
64. The initial costs devoted to the implementation of a Human Rights Act, including the education and training of public servants at all levels on human rights, would be offset by the development of human rights compliant legislation, policies and procedures that benefit the community as a whole, as well as those individuals who may be subjected to human rights breaches.
65. Attached to this submission are examples of case studies that demonstrate some of the social and financial benefits of adopting a Human Rights Act. The cases are drawn from a number of sources.<sup>34</sup>

---

<sup>32</sup> 'Counting the billion dollar cost of racism in Australia', Deakin University media release, 6 April 2016.

<sup>33</sup> Ben Schokman, '50 cents is a wise investment to protect fundamental rights', Human Rights Law Centre Opinion archive, 2 September 2011.

<sup>34</sup> For UK cases, see the British Institute of Human Rights website, above n 29.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Human rights legislation reviews

**Terms of reference 2d: previous and current reviews and inquiries (in Australia and internationally) on the issue of human rights legislation.**

### Western Australian and Tasmanian reviews

66. Aside from the ACT and Victoria, the other Australian States and Territories have not adopted a Charter of Human Rights. However, in 2006 and 2007, the governments of Tasmania and Western Australia commissioned public consultation processes into human rights protections in those states. Both of these inquiries recommended that a Charter of Human Rights be enacted at a state level.
67. The Western Australian Committee found that human rights legislation should:
- maintain parliamentary sovereignty – democratically elected politicians and not judges should retain the responsibility for determining how rights should be balanced and when rights should be limited for the common good of the community;
  - encourage a human rights culture in government departments and agencies;
  - discourage litigation as a way to resolve human rights issues – the emphasis should be placed on conciliation to settle disputes; and
  - protect civil and political rights as well as social, economic and cultural rights.<sup>35</sup>
68. The Committee recommended:
- ‘that the draft Bill should implement specific economic, social and cultural (ESC) rights in the same way that civil and political rights are implemented under the draft Bill. A WA Human Rights Act should also expressly recognise that ESC rights are to be progressively implemented. The inclusion of this statement would be important in ensuring that when the Parliament, the Government and the courts (when interpreting legislation) consider whether legislation is compatible with ESC rights, they will do so on the clear understanding that those rights are to be progressively implemented, and that this implementation will need to take into account the availability of government resources and competing demands for government resources.’<sup>36</sup>
69. In 2007, the Tasmania Law Reform Institute released its Final Report No 10: *A Charter of Rights for Tasmania*.<sup>37</sup> The Institute found that human rights legislation should:
- include economic, social and cultural rights in the Charter, as well as civil and political rights;
  - bind ‘public authorities’ and not private individuals, corporations or community organisations that are not engaged in work for the government or in the performance of public functions;
  - contain an express provision that where a public authority has acted in a way, or proposes to act in a way, that is made unlawful by the Charter, a person who is or would be the victim of that unlawful act may take legal proceedings

---

<sup>35</sup> Consultation Committee for a Proposed WA Human Rights Act, *Report*, November 2007.

<sup>36</sup> *Ibid* 87 and 88.

<sup>37</sup> Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania*, Report No 10 (October 2007).

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

against the authority in the Supreme Court of Tasmania or may rely on the Charter rights in any legal proceedings; and

- not restrict the range of remedies available to the court. A court should be able to grant any remedy that is just and equitable in the circumstances. This would mean that the court could award damages to an individual for breach of Charter obligations.

70. However, to date the recommendations of the Western Australian Committee and the Tasmania Law Reform Institute have not been followed.

## Northern Territory

71. In 2007, the Northern Territory Statehood Steering Committee released a community discussion paper, *Constitutional Paths to Statehood* addressing, among other issues, the inclusion of a bill of rights in a future Northern Territory Constitution. After considering a range of issues the Committee concluded:

‘The Committee strongly believes that Statehood, which will achieve equal status for the Northern Territory as a State of Australia must be achieved before consideration of a Bill of Rights. The two matters should be considered in separate processes. That would give each matter the community attention that each deserves. The Committee believes that equal status as a State will mean greater certainty of legislation enacted in the State of the Northern Territory, and that would include a Bill of Rights if the Northern Territory is to have one.’<sup>38</sup>

## National Human Rights Consultation

72. In 2008, the Rudd Government established a National Human Rights Consultation Committee (NHRCC), chaired by Father Frank Brennan, to undertake consultation and report by 30 September 2009.

73. The Brennan Committee recommended that Australia adopt a federal Human Rights Act, along the lines of legislation already introduced in the Australian Capital Territory (ACT) and Victoria. The proposed legislation would set out a list of rights drawn from major human rights treaties, ensure that new legislation introduced into the parliament was compatible with the Act, and provide for the High Court to declare existing legislation incompatible with the Act and to refer the legislation back to parliament for possible amendment.

74. In particular the Committee recommended that Australia adopt a federal Human Rights Act that:

- is based on the 'dialogue' model which sets out a list of human rights and accords the executive, the legislature and the judiciary specific roles in the protection and promotion of those rights. Versions of the dialogue model are the *New Zealand Bill of Rights Act 1990* (NZ), *Human Rights Act 1998* (UK), *Human Rights Act 2004* (ACT) and *Charter of Human Rights and Responsibilities Act 2006* (Vic);
- protects the rights of human beings only, and imposes the obligation to act in accordance with those rights on federal public authorities only (which includes Ministers, officials and entities);

---

<sup>38</sup> Northern Territory Standing Committee on Legal and Constitutional Affairs, *Towards Northern Territory Statehood: Issues for Consideration. Committee Report*, February 2010, 37. ([http://ntstate7.com.au/sites/default/files/Billofrights\\_customarylaw.pdf](http://ntstate7.com.au/sites/default/files/Billofrights_customarylaw.pdf))

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- specifies certain non-derogable civil and political rights;
  - includes a limitation clause for derogable civil and political rights;
  - requires statements of compatibility for all Bills and legislative instruments;
  - empowers the Joint Committee to review all Bills and relevant legislative instruments for compliance with the human rights expressed in the Human Rights Act ;
  - contains an interpretative provision (which would not apply to economic, social and cultural rights) requiring federal legislation to be interpreted in a way that is compatible with the human rights expressed in the Human Rights Act and consistent with Parliament's purpose in enacting the legislation;
  - extends to the High Court of Australia a power to make a declaration of incompatibility;
  - imposes an obligation on federal public authorities to act in a manner compatible with human rights (other than economic, social and cultural rights) and to give consideration to relevant human rights (including economic, social and cultural rights) when making decisions; and
  - enables individuals to institute an independent cause of action against federal public authorities for breaches of human rights (other than economic, social and cultural rights).<sup>39</sup>
75. In 2010, the government responded to the NHRCC report by issuing its *Australia's Human Rights Framework* document, which included proposals to establish a statutory Parliamentary Joint Committee on Human Rights, which would scrutinise legislation's compliance with human rights treaties and a requirement that all new legislation introduced or tabled in Parliament be accompanied by a compatibility statement on human rights.
76. The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) was passed by the federal parliament and came into effect on 4 January 2012.
77. The Act introduces two significant changes to the way legislation is to be passed through federal parliament:
- It establishes a Parliamentary Joint Committee on Human Rights ('the Committee') to examine Bills for compliance with certain human rights; and
  - It requires a statement of compatibility to be prepared in respect of each Bill introduced into a house of parliament, which assesses whether the Bill is compatible with human rights.
78. The Brennan Committee recommendation to pass a federal Human Rights Act has not been followed.

---

<sup>39</sup> Australian Government Solicitor, [Express law: Report on the National Human Rights Consultation released](http://www.ag.gov.au/publications/express-law/el110.pdf), 23 October 2009. ( <http://www.ag.gov.au/publications/express-law/el110.pdf>)

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

## A Human Rights Act for Queensland

### The objectives of the legislation

79. The objective of the legislation should acknowledge the key purpose of human rights laws: to respect, protect, and fulfil human rights. The obligation to respect is a negative obligation, requiring government to refrain from violating rights. The obligation to protect relates to third parties and requires government to prevent others from violating human rights. The obligation to fulfil is a positive obligation, and requires government to take active steps, or positive action, to implement the rights of its citizens. In international law, the obligations to respect, protect, and fulfil apply equally to civil, political, economic, social and cultural rights.
80. In practice, this may look like:

	<b>Right to life</b>	<b>Right to housing</b>
<b>Obligation to respect</b>	A State, or its agents, cannot take a person's life arbitrarily or unlawfully. For example, the police cannot shoot a person unless they are acting in self-defence.	A State, or its agents, cannot evict or deny a person from access to their home arbitrarily or unlawfully.
<b>Obligation to protect</b>	A State must take reasonable measures to ensure that <i>non-State entities or private individuals</i> do not take a person's life arbitrarily or unlawfully. For example, a State must create a police force to protect people against violence.	A State must take reasonable measures to ensure that <i>non-State entities or private individuals</i> do not evict or deny a person access to their home arbitrarily or unlawfully. For example, a State must adopt residential tenancy legislation.
<b>Obligation to fulfil</b>	The State must take reasonable measures to reduce infant mortality and increase life expectancy by eliminating malnutrition and epidemics. For example, a State must provide access to immunisation.	The State must take reasonable measures to ensure that individuals have access to appropriate housing. For example, a State must ensure the provision of public housing for those without sufficient resources.
	<b>Right to freedom from torture</b>	<b>Right to health</b>
<b>Obligation to respect</b>	A State, or its agents, cannot torture a person. For example, the police cannot engage in acts of torture during investigations.	A State, or its agents, cannot prohibit or deny a person access to health care arbitrarily or unlawfully. For example, laws must be passed to allow universal access to health facilities.
<b>Obligation to protect</b>	A State must take reasonable measures to ensure that <i>non-State entities and private</i>	A State must take reasonable measures to ensure that <i>non-State entities and private</i>



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

	<i>individuals</i> do not engage in torture. For example, a State must create a police force to protect people against such abuse. Social services must protect children and young people from abuse.	<i>individuals</i> do not cause damage to person's health. For example, environmental laws to prohibit companies from dumping of hazardous waste that affects public health.
<b>Obligation to fulfil</b>	The State must take reasonable measures to monitor places of detention to ensure the conditions of detention do not result in torture.	The State must take reasonable measures to ensure that individuals have access to appropriate health services. For example, a State must ensure the provision of emergency medical treatment.

81. The objectives of the Victorian Charter describe the purpose of the Charter as being to protect and promote human rights by:
- a) setting out the human rights that Parliament specifically seeks to protect and promote; and
  - b) ensuring that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights; and
  - c) imposing an obligation on all public authorities to act in a way that is compatible with human rights; and
  - d) requiring statements of compatibility with human rights to be prepared in respect of all Bills introduced into Parliament and enabling the Scrutiny of Acts and Regulations Committee to report on such compatibility; and
  - e) conferring jurisdiction on the Supreme Court to declare that a statutory provision cannot be interpreted consistently with a human right and requiring the relevant Minister to respond to that declaration.
82. These objectives can be seen to mirror the practical goals of the Charter and describe the role of the Charter in protecting and promoting human rights.
83. Unlike the Victorian Charter, the ACT *Human Rights Act* does not have a separate purposive statement, but includes the following inspiring preamble:
- a) Human rights are necessary for individuals to live lives of dignity and value.
  - b) Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
  - c) Human rights are set out in this Act so that individuals know what their rights are.
  - d) Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- e) This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.
  - f) Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.
  - g) Although human rights belong to all individuals, they have special significance for Aboriginal and Torres Strait Islander peoples—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.
84. A preamble such as this demonstrates the wider value of human rights and summarises the Act in a way that is accessible to the broader community.
85. The ACT *Human Rights Act*:
- outlines the rights that are protected;
  - states who has human rights;
  - provides for limits to human rights where reasonably necessary in a free and democratic society;
  - describes how human rights are interpreted and apply to laws, parliament and decision makers;
  - provides for private entities to opt in; and
  - describes the roles of public bodies and courts in monitoring and intervening in human rights matters.
86. The UK *Human Rights Act* gives further effect to the rights and freedoms guaranteed under *the European Convention on Human Rights*.
87. Considering the comparative legislative provisions and our overall recommendations, the objectives of a Queensland Human Rights Act could be:
- The purpose of this Act is to protect, respect, and fulfil human rights by:
- a) setting out the human rights that parliament specifically seeks to protect;
  - b) requiring statements of compatibility with human rights to be prepared in respect of all Queensland laws, and enabling a Scrutiny Committee to publically and regularly report on such compatibility ;
  - c) imposing an obligation on all public authorities to act in a way that is compatible with human rights;
  - d) ensuring that all statutory provisions, whenever enacted, are interpreted so far as is possible in a way that is compatible with human rights;
  - e) conferring jurisdiction on the Supreme Court to declare that a statutory provision cannot be interpreted consistently with a human right, and requiring the relevant Minister to respond to that declaration;
  - f) conferring jurisdiction on an independent statutory body to:

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- i. conduct independent investigation and resolution of human rights complaints;
  - ii. engage in education, training, and information dissemination; and
  - iii. provide regular monitoring of government compliance of human rights responsibilities;
- g) enabling people to rely on human rights in legal proceedings in courts and tribunals, or to institute an independent cause of action; and
- h) providing private entities with the opportunity to comply with human rights obligations.

## Rights to be protected

88. The Commission recommends that the term 'human rights' be defined to mean the rights and freedoms recognised by Australia's commitment to core international agreements. Accordingly, the Commission recommends specifies Human Rights Act refer to the seven core human rights agreements<sup>40</sup> ratified by the Australian Government, plus the United Nations *Declaration on the Rights of Indigenous Peoples*, and the four core International Labour Organization instruments<sup>41</sup>. There should be provision allowing for the addition of any new instruments that Australia might ratify, without amendment of the Act.

## Civil and political rights

89. The key rights protected by the *International Covenant on Civil and Political Rights* (ICCPR) are set out below. The ICCPR specifies that all people have the right to:
- self-determination;
  - non-discrimination in the enjoyment of ICCPR rights;
  - life;
  - equality before the law and equal protection;
  - right to freedom from torture or other cruel, inhuman or degrading treatment or punishment;
  - freedom from slavery and servitude;
  - freedom of movement;
  - privacy;
  - freedom of thought, conscience, and religion;
  - freedom of expression;
  - freedom of assembly and association;

---

<sup>40</sup> CERD (*Convention on the Elimination of all forms of Racial Discrimination*), ICESCR (*International Covenant on Economic, Social & Cultural Rights*), ICCPR (*International Covenant on Civil & Political Rights*), CEDAW (*Convention on the Elimination of all forms of Discrimination Against Women*), CAT (*Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment*), CROC (*Convention on the Rights of the Child*) and CRPD (*Convention on the Rights of Persons with Disabilities*).

<sup>41</sup> ILO Convention (No. 100) concerning Equal Remuneration for Men & Women Workers for Work of Equal Value, ILO (No. 111) concerning Discrimination in respect of Employment & Occupation, ILO Convention (No. 156) concerning Equal Opportunities & Equal Treatment for Men & Women Workers: Workers with family responsibilities, and ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

- participation in public life, including the right to vote; and
  - rights concerning criminal proceedings and punishment, including the right to a fair hearing, the presumption of innocence and the prohibition against double jeopardy
90. The protection of civil and political rights are found in most human rights jurisdictions, and these protections are recommended for Queensland.

## Economic, social and cultural rights

91. The key rights protected by the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) are set out below. The ICESCR specifies that all people have the right to:
- self-determination;
  - work and to have fair conditions of work;
  - form trade unions and strike;
  - family life, including paid parental leave and the protection of children;
  - adequate standard of living, including adequate housing;
  - social security;
  - enjoyment of the highest attainable standard of physical and mental health;
  - education, including free primary education; and
  - participation in cultural life.
92. Protections for economic, social and cultural rights have been slower in their adoption, and the Victorian Equal Opportunity and Human Rights Commission has provided a useful paper on the implementation of economic, social and cultural rights in that jurisdiction. The paper counters four persistent assumptions made about these rights, namely that they are:
- mere aspirations;
  - vague and ambiguous;
  - too expensive; and
  - cannot be interpreted and enforced by the courts.

The paper demonstrates that each of these assumptions can be challenged by evidence from other jurisdictions.<sup>42</sup>

93. It is recognised that all human rights are interdependent and indivisible. For example, the right to freedom from inhuman and degrading treatment can be threatened by health care that is not adequate.
94. Other Australian jurisdictions considering economic, social and cultural rights have recommended prioritising the right to the highest attainable standard of health and the

---

<sup>42</sup> Dr John Tobin, [Economic, social and cultural rights and the Charter of Human Rights and Responsibilities – A framework for discussion](http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/169-economic-social-cultural-rights-and-the-charter-of-human-rights-and-responsibilities—a-framework-for-discussion-mar-2010), Victorian Equal Opportunity & Human Rights Commission Occasional Paper, 2010 (<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/169-economic-social-cultural-rights-and-the-charter-of-human-rights-and-responsibilities—a-framework-for-discussion-mar-2010>).

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

right to education (WA<sup>43</sup>, Tasmanian<sup>44</sup> and Commonwealth reviews<sup>45</sup>). The ACT has made a similar choice and provides for the right to education. The ACT and Victoria have also included cultural, religious, and language rights of minorities, and Victoria has included cultural rights specific to Aboriginal peoples.

95. Some economic, social and cultural rights have substantive protection elsewhere in Queensland laws, such as anti-discrimination laws. Human rights protection for such existing rights would enhance and bolster the existing legal safeguards.
96. There is clearly an expectation in Queensland that the state has a role to play in securing economic, social and cultural rights, such as education, housing, and health. The inclusion of these rights in a Human Rights Act is a useful accountability mechanism for these community expectations.
97. The *International Covenant on Economic, Social and Cultural Rights* recognises that implementation of rights is to be achieved progressively and subject to available resources, and states at Article 2, 1. that:

‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the **maximum of its available resources**, with a view to **achieving progressively** the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’
98. If the immediate protection of all economic, social and cultural rights is not considered immediately appropriate, a staged approach can be considered where priority is given to some, immediately realisable economic, social and cultural rights, for example, the right to basic education and emergency medical treatment. This is the approach in the ACT, and is the approach recommended by the Commission. Alternatively, all economic, social and cultural rights could be listed and explicitly subject to progressive implementation.
99. Alternatively, economic, social and cultural rights could be implemented later, after civil and political rights have been implemented.

## Property Rights

100. The *Universal Declaration of Human Rights* states that there is a right to own property<sup>46</sup>. The Commission suggests property rights ought to be in a Human Rights Act, and protected by a provision that states that every person has a right not to be deprived of his or her property, except on fair and just terms. This right ought to be expressed in general terms to ensure that it covers deprivations of property by any means, and also deprivations of all forms of property including realty, intellectual property, and all other forms of personal property.

---

<sup>43</sup> Consultation Committee for a Proposed WA Human Rights Act, *Report*, November 2007.

<sup>44</sup> Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania*, Report No 10 (October 2007).

<sup>45</sup> Australian Government Solicitor, [Express law: Report on the National Human Rights Consultation released](http://www.agps.gov.au/publications/express-law/el110.pdf), 23 October 2009. (<http://www.agps.gov.au/publications/express-law/el110.pdf>).

<sup>46</sup> *Universal Declaration of Human Rights*, Article 17

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Right to self-determination and Aboriginal and Torres Strait Islander Queenslanders

101. The right to self-determination is a strong theme in international human rights, enshrined in a number of United Nations instruments including the:

- *United Nations Charter*;
- *International Covenant on Civil and Political Rights (ICCPR)*;
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; and
- *Declaration on the Rights of Indigenous Peoples*.

102. In 1999, Patrick Dodson called for a Treaty which recognised the right to all the common human rights and fundamental freedoms recognised in national and international law, as well as the distinct rights of Indigenous peoples. In 2002 Larissa Behrendt highlighted this speech as an example of an Indigenous expression of self-determination.<sup>47</sup>

103. Speaking in favour of a Human Rights Act for Queensland, Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner with the Australian Human Rights Commission, questioned: 'How do we actually reassure our mob that the Stolen Wages will never happen again in Queensland? We need checks and balances.'

104. The Victorian Charter protects cultural rights and specifically applies to Aboriginal people, stating at section 19:

- '(1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.
- (2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—
  - (a) to enjoy their identity and culture; and
  - (b) to maintain and use their language; and
  - (c) to maintain their kinship ties; and
  - (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.'

105. The ACT Act has a similar recognition in its preamble:

'Although human rights belong to all individuals, they have special significance for Aboriginal and Torres Strait Islander peoples—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.'

106. The Victorian Equal Opportunity and Human Rights Commission, with Professor Larissa Behrendt and Alison Vivian, engaged in consultation with the Victorian Indigenous community about the inclusion of self-determination in their Charter.<sup>48</sup> This

---

<sup>47</sup> Larissa Behrendt, '[Self Determination and Indigenous Policy: The Rights Framework and Practical Outcomes](http://www.austlii.edu.au/au/journals/JIIndigP/2002/7.pdf)' (2002) *Journal of Indigenous Policy*, Issue 1. (<http://www.austlii.edu.au/au/journals/JIIndigP/2002/7.pdf>)

<sup>48</sup> Larissa Behrendt and Alison Vivian, '[Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion](#)', Victorian Equal Opportunity & Human Rights Commission Occasional Paper, 2010.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

consultation found general support for the inclusion of this right. In this paper, decisions of international treaty-monitoring bodies on self-determination were described to help understand what self-determination might mean in practice. Some examples from this paper include where treaty monitoring bodies:

- emphasised the essential requirement for Indigenous participation in decisions that affect them (CERD requires informed consent);
- called for increased Indigenous participation in state institutions;
- criticised the lack of forums for consultation with governments;
- recommended the strengthening of existing self-governance programs;
- cautioned that, rather than trying to assimilate Indigenous peoples, state parties should endeavour to protect their cultural identity;
- repeatedly emphasised the role of Indigenous peoples in decision making on issues affecting their traditional lands and resources, and economic activities;
- criticised natural resource concessions granted without full consent of the communities concerned;
- supported rights to develop language and culture and, in particular, the right to communicate with government authorities in their native language; and
- urged the adoption of measures to safeguard Indigenous communities' rights and freedoms to which they are entitled individually and as a group.

107. The Victorian consultation explored four possibilities for the inclusion of self-determination:

- to have the right to self-determination specifically protected in the Charter;
- to have several rights added to the Charter that would assist Aboriginal people in Victoria to exercise the right to self-determination;
- to have a Preamble to the Charter that places self-determination as a key principle against which the rights within the Charter need to be interpreted; and
- to have a mechanism that supports the enforcement of rights in the Charter that are central to self-determination.

108. A similar consultation is recommended in Queensland, before the introduction of a Human Rights Act.

109. It is noted that both Canada and New Zealand have a significantly more established framework for self-determination because of existing treaties. This experience demonstrates that a framework for self-determination is achievable, and is not divisive. It is noted that the introduction of such a provision would not replace or invalidate calls for a Treaty with Aboriginal and Torres Strait Islander peoples here in Australia, or Constitutional recognition.

## Limitation Clauses

110. Many human rights jurisdictions include general provisions to limit the application of human rights, in order to allow for the balance of competing, relevant considerations. The ACT, Victorian and New Zealand Acts provide for the reasonable limiting of

---

(<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/170-indigenous-self-determination-and-the-charter-of-human-rights-and-responsibilities-a-framework-for-discussion-mar-2010>).



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

human rights where it is demonstrably justified in a free and democratic society, taking into account relevant factors.<sup>49</sup> Relevant factors could include:

- the nature of the right; and
- the importance of the purpose of the limitation; and
- the nature and extent of the limitation; and
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

111. Some examples of limitations of human rights in practice are:

- Freedom of expression may be balanced against the protection of reputation in defamation laws, and against the protection of children through standards limiting adult content on television.
- Freedom of movement may be balanced against public safety when establishing quarantine zones or in cases of criminal arrest.

112. Any limitations should be explicit in law, and should be necessary and proportionate to protect the legitimate aim of the limitation, and must be the least intrusive means of achieving the desired result.

113. Some rights should not be limited. The National Human Rights Consultation Committee recommended that certain, non-derogable civil and political rights be protected without limitation, including, but not limited to, the right to life, protection from torture and freedom from slavery.

114. Such non-derogable rights should be entrenched in the Human Rights Act. Their limitation or override should be explicitly excluded from the operation of the limitation clause.

## Making of laws, courts and tribunals and other entities

**Terms of reference 3b: how the legislation** would apply to the making of laws, courts and tribunals, public authorities and other entities.

### The making of laws

115. A Human Rights Act should require the Parliament to consider how laws impact on human rights and how effectively rights are protected and balanced. Each Bill tabled in parliament should be accompanied by a Statement of Compatibility setting out whether and how the Bill is compatible with, or contravenes human rights. These proposals reflect the central role of Parliament in a Human Rights Act dialogue model. They also protect and preserve parliamentary supremacy.

116. All legislation ought to be considered by a specialist parliamentary committee, for the purpose of reporting to parliament on whether the legislation is compatible with human rights. For this committee to function effectively, it is extremely important that it is given

---

<sup>49</sup> *Human Rights Act 2004 (ACT)*, section 28; *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, section 7; *New Zealand Bill of Rights Act 1990 (NZ)*, section 5.



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

sufficient time to do so. In the ACT, where this type of committee has had the greatest impact, there is a requirement that no Bill proceeds to debate until the committee has reported.<sup>50</sup>

117. There ought to be a requirement that the government responds publically to a declaration of incompatibility within a prescribed time frame.
118. Human rights monitoring reports, for example by a Human Rights Commissioner, would be tabled in Parliament for consideration. Annual reporting obligations for all departments and public authorities required to take steps to implement the Act would also be tabled in Parliament for consideration.
119. A Human Rights Commission, or equivalent, could perform an educative and assessment function. In Victoria this role is performed by the Victorian Equal Opportunity & Human Rights Commission, which provides information, education, and training programs to the public. It also has the role of regular and the independent assessment of steps taken by government to meet their human rights responsibilities. In the ACT the Human Rights Commissioner performs a similar role.
120. The ACT and Victoria have mandatory review provisions for their human rights legislation. Such a requirement reflects the flexible and responsive nature of human rights, and would assist a Queensland Human Rights Act to remain reflective of contemporary standards and trends in human rights.
121. The effect of these proposals would be improved quality of law-making, and cultural change in Parliament. The Victorian government, during its recent review, found that when drafting legislation that 'the Charter has increased the focus on rights concerns' and 'provided a legislative basis for raising rights issues.'<sup>51</sup> During the five-year review of the ACT *Human Rights Act* it was found that 'One of the clearest effects of the HRA has been to improve the quality of law-making in the Territory.' The ACT Human Rights Commissioner has recently commented:

'By all accounts, the HR Act's main influence remains clearest within the Legislature, where there are signs that it has made a genuine cultural difference to the way the Assembly goes about its work. The Act and the standards that it upholds are frequently invoked in parliamentary debates by members across the political divide.'<sup>52</sup>

## Courts and Tribunals

### Judicial interpretation

122. Courts and tribunals ought to be required to interpret and apply legislation consistently with human rights. Requiring courts and tribunals to interpret laws consistently with human rights is a characteristic of the Victorian and ACT Acts, and is consistent with a dialogue model of rights protection. A court or tribunal should be empowered to issue a declaration of incompatibility where an interpretation consistent with human rights is

---

<sup>50</sup> See George Williams and Daniel Reynolds, above n 22, where it is stated that, in the ACT, government members have moved almost 100 amendments to Bills in response to Committee comments in 2014 alone.

<sup>51</sup> Victorian Government, Submission, Submission No. 324 to the *Review of the Charter of Human Rights and Responsibilities Act 2006*, 2015, 18-29.

<sup>52</sup> Human Rights & Discrimination Commissioner, [Look who's talking: a snapshot of ten years of dialogue under the Human Rights Act 2004](#), ACT Human Rights Commission, 2014.

(<http://www.hrc.act.gov.au/res/HRA%2010%20yr%20snapshot%20HRDC%20webversion.pdf>)

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

not possible. This declaration is tabled in Parliament. As discussed previously, it is important that the drafting of this judicial interpretative provision is clear.<sup>53</sup>

## Judicial decision making function

123. The courts and tribunals ought to be required to take into account human rights when performing their judicial functions.
124. It is noted that in the ACT and Victoria, courts are excluded from the definition of public authority, except when acting in an administrative capacity. This is not the case in New Zealand and Canada. This exclusion promotes an inconsistent approach to compliance with human rights.
125. Instead, consideration should be given to the alternative position, canvassed in the Tasmanian review, that courts be included in the definition of public authority as for other government entities. It was recognised in the Tasmanian review that any problems associated with the common law could be dealt with by Parliament making common law susceptible to the application of human rights precepts. This would mean the Human Rights Act would apply to the courts like any other public authority. Such an approach under a Human Rights Act would assist in the elimination of inconsistent interpretations in the decisions of public authorities and inferior and superior courts.
126. A uniform Human Rights Act, as Lord Steyn stated, 'reflects the reality that ultimately common law, statute law and human rights law coalesce in one legal system.'<sup>54</sup>
127. Examples of where the courts at first instance failed to consider human rights in Queensland have been demonstrated in two recent cases.
128. *Bulsey & Anor v State of Queensland* is a case arising out of the 2004 Palm Island riots. Following the riots, a police Special Emergency Response Team raided the home of two Palm Island residents. Mr Bulsey was dragged into the street in handcuffs, transported to Townsville, and held in custody. His pregnant partner, Ms Lenoy, was in the house with their children. The police ultimately conceded that they did not have a case against Mr Bulsey and discharged him.
129. Mr Bulsey and Ms Lenoy sued the State of Queensland for damages for assault and false imprisonment.
130. In 2015, the Queensland Court of Appeal found that the conduct of the police in detaining and imprisoning Mr Bulsey was not authorised or excused by law, and awarded Mr Bulsey \$165,000 and Ms Lenoy \$70,000.
131. The Court of Appeal found:

'... the treatment of the appellants breached their most fundamental right, the right to personal liberty which is the most basic and fundamental of the human rights recognised by the common law... The appellants in this case were not treated as one might expect in a civilised society governed by the rule of law and it is appropriate that they should be adequately compensated for the grievous wrong done to them.'

---

<sup>53</sup> See George Williams and Daniel Reynolds, above n 22.

<sup>54</sup> Lord Steyn, 'Laying the Foundations of Human Rights Law in the United Kingdom' (2005) 4 *European Human Rights Law Review* 349, 354.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

132. The Court said:

‘the executive, through the police, wielded enormous power. It is essential that that power be used within the confines of the law. It is important that the courts acknowledge fully the hurt that can be done when the power is misused. ... This is not a case of human fallibility. A deliberate decision was made to make a dawn raid on a citizen's home by armed, masked men and to treat those found within as one would dangerous criminals with no regard whatever for their dignity or rights. The imprisonment continued for days. The hurt was great.’<sup>55</sup>

133. In the *Abrahams* case, the Court of Appeal overturned a decision of the District Court that refused to sanction a settlement agreement in a claim by a disabled adult son for provision out of his deceased father's estate.

134. There were five children, the youngest of whom has Down Syndrome and other medical conditions. He was cared for by his parents at home until he was 41 years of age. His mother was his primary carer until she died, and his father continued to care for him until the father suffered a stroke. After the stroke, the Public Trustee was appointed administrator of the son for financial matters and he was placed in government funded accommodation. In his Will, the father said he did not provide for his disabled son, because he was being taken care of by the government. The Public Trustee applied to the District Court on behalf of the disabled son, for provision for him out of the estate. The estate was valued at around \$412,000. An agreement was reached between the Public Trustee and the three other children (who were beneficiaries of the estate) to settle the court action on the basis that the disabled son received \$140,000 from the estate. An application was made to the court to approve the agreed settlement, but the District Court refused the application on the basis that the son had no needs as he was being cared for by the State. The Public Trustee appealed to the Court of Appeal against that decision.

135. The Court of Appeal found there had been a denial of natural justice, and that the District Court had failed to properly exercise its jurisdiction based on the evidence. Also, the District Court should have taken into account human rights principles in making a decision about a person with a disability. The following is an extract from the Court of Appeal decision:

[26] Furthermore, the primary judge's reasons for refusing to sanction the settlement failed to acknowledge the significance of contemporary International Human Rights Instruments, which recognise the rights of people with disabilities, and failed to show an appreciation of the principles which should have been taken into account in making a decision in respect to a person with a disability. The primary judge failed to recognise that the applicant has the same basic human rights as anyone else and that he has a right to respect for his human worth and dignity.

[27] That dignity would be enhanced by extra financial assistance to provide him with new clothes and furniture including a functional television set. The applicant is a valuable member of the community. He should be recognised as such by being encouraged and supported to participate more actively in the community. Such participation would be facilitated by financial assistance from the estate of his late father to attend social and recreational activities and to undertake an annual holiday.

---

<sup>55</sup> *Bulsey & Anor v State of Queensland* [2015] QCA 187.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

[28] The relevant human rights principles emphasise the importance of the applicant being encouraged and supported to achieve his maximum, physical, social, emotional and intellectual potential and becoming as self-reliant as possible. The provisions of funds would allow him to have access to a podiatrist and better dental care as well as allowing a reassessment of his ability to communicate so that his views and wishes could be taken into account with respect to decisions affecting his life.<sup>56</sup>

136. With a Human Rights Act, a court at first instance could consider relevant human rights. Just as importantly, parties and their advocates would have been cognisant of their clients' human rights being relevant in the proceeding, and would have been entitled to put those arguments before the courts.

137. The Abrahams' case does not mean that human rights will always be upheld by the Court of Appeal. In one matter, Justice Muir confirmed that it is abundantly plain that:

'a court is obliged to observe the statute's dictates irrespective of the content of any international treaty to which Australia may be a party.'<sup>57</sup>

Under a Human Rights Act, this may still be the case, but the courts could issue a declaration of incompatibility.

## Breaches of human rights by public authorities

138. A Human Rights Act ought to provide avenues for complaint and enforceable remedies if a relevant entity breaches human rights.

139. The Commission advocates a multi-layered approach for dealing with breaches of human rights. The layers within that system should ensure that dealing with breaches of human rights should be as accessible, inexpensive, and as speedy as possible, and should not result in increased litigation. The emphasis at first instance should be to promote a culture of human rights by increasing the ability of people to seek some remedy for a breach of their human rights, without resort to litigation. Many people cannot afford to pursue an action against a government agency in a court or tribunal. Even if funding was available, many disadvantaged people, do not have the knowledge, confidence, capacity or time to pursue litigation to vindicate their human rights.

140. However, it is important that breaches of human rights by government agencies have consequences, and courts and tribunals have an important role in rights enforcement.

141. This multi-layered system should consist of the following layers, namely:

- a) internal processes within government agencies and contractors for trying to resolve human rights complaints;
- b) a conciliation process run by an independent agency such as the Anti-Discrimination Commission; and
- c) rights to take legal action against government agencies in courts and tribunals for a breach of human rights.

---

<sup>56</sup> Abrahams (by his litigation guardian The Public Trustee of Queensland) v Abrahams [2015] QCA 286.

<sup>57</sup> Yeo v Attorney-General for the State of Queensland [2011] QCA 170.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

142. It should be possible for people to rely on human rights in legal proceedings in courts and tribunals. They should also be able to institute an independent cause of action, and obtain remedies, including judicial review, relief, and damages where appropriate. In order to be effective in the protection of human rights, direct remedies should be available in both inferior and Supreme courts. If the court concludes that a decision is unlawful it could, among other things, declare that the public authority acted unlawfully, cancel the decision, or prevent a public authority from acting in a certain way. In most situations if a decision is found to be unlawful the court would remit the issue back to the public authority to make the decision again.
143. Having a free standing cause of action for human rights contraventions would ensure that breaches are dealt with in a consistent and fair manner. The United Kingdom, New Zealand and the ACT jurisdictions all have a free-standing cause of action.
144. The availability of both judicial and non-judicial responses provides the legal redress identified as essential in the ICCPR, but also allows people to seek a resolution of their complaint without having to resort to litigation. Under the multi-layered enforcement system, formal court-based complaints processes and informal complaints processes outside the courts, would be complementary.

## Damages

145. Including damages would ensure that meritorious claims are not discouraged by the cost and stress associated with litigation. It is common place in human rights jurisdictions across the world to include damages for victims of human rights abuses, although the ACT and Victoria are exceptions to this rule. The UK allows for limited damages under section 8 of its Act. Both the Tasmanian and National consultation reports recommended following the UK model. In jurisdictions where damages are allowed, there has not been a 'flood' of litigation. For example, in the first 10 years of the UK Human Rights Act, only three cases resulted in the payment of compensation, totalling 39,000 pounds.
146. If damages are included in a Human Rights Act, they could be limited to civil and political, rather than economic social and cultural rights.
147. As discussed above, in order to allow early intervention and efficient resolution of human rights complaints before court and tribunal intervention, a Human Rights Act could provide a process for independent investigation and resolution of human rights complaints. The Commission would be well placed to handle this function, which would complement the existing role and processes under the *Anti-Discrimination Act*.

## Public Authorities

148. A Human Rights Act should require the executive government to consider how to address human rights issues when it develops policy. All government agencies should be required to develop policy, guidelines and procedures in a way that is consistent with human rights.
149. The first review of the ACT Act considered that one of the most significant impacts of the Act was at the level of policy formation. Policy change has also resulted from the findings of courts and tribunals. In Victoria, the Mental Health Review Board changed its review policy after a case where VCAT declared that reviews of involuntary and

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

community treatment orders were not conducted within a reasonable time, resulting in a breach of the right to a fair hearing.

150. This broader change was anticipated by the Justice Bell, who commented:

When a human right is breached, the individual is injured. Because of the broader role of human rights, society is injured as well. Human rights protect interests and values which society in Parliament considers to be fundamental, both to the individual and to the maintenance of democratic society based on the rule of law. Where human rights are breached, both the individual and society have a strong interest in the remedy of a declaration, in which inheres their final vindication.'

151. A Human Rights Act should also require public servants to comply with human rights when making decisions and delivering services. Decision makers covered by the Act should be obliged to act in a way that is compatible with human rights.

152. A Human Rights Act should require each public authority to establish internal systems for receiving, considering and responding to, complaints about human rights. Internal complaints processes represent a simple, speedy and cost free means by which complaints about human rights can be pursued. Internal complaints processes would need to be accessible to all members of the community. In order for such informal complaints systems to operate successfully, it would be essential that officers designated to receive and respond to complaints have adequate education in relation to human rights.

153. Public Authorities should be required to report on their implementation of human rights in annual reports to parliament.

## Other Entities

154. A Human Rights Act ought to provide for private entities to be able to 'opt in' to be bound by the human rights obligations under the Act. This is the model for the Victorian and ACT Acts.

## Inconsistency of laws and decisions

**Terms of reference 3c: the implications of laws and decisions not being consistent with the legislation.**

155. The implications of laws and decisions not being consistent with a Human Rights Act have already been canvassed above in this submission.

## Existing statutory complaints processes

### Existing Internal complaints mechanisms

156. Where a person feels their rights have been breached, under a Human Rights Act their first option would often be to complain directly to the agency responsible. Agencies ought to incorporate human rights into their existing complaints processes. There should be a consistent internal complaint handling process. Guidelines ought to be



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

provided to assist public authorities to deal with internal human rights complaints. However, there still remains a need for external independent avenues of complaint.

## Anti-Discrimination Commission

157. Alternative dispute resolution should be included in the Human Rights Act as the first level of redress in any remedies provision. Alternative dispute resolution provides a quick, cheap, accessible, informal and easy-to-navigate method of redress outside the traditional court system. Parties can negotiate an outcome that is mutually acceptable and which can provide a personal remedy for the complainant, such as compensation or an apology, or systemic change such as changes to customer practices and procedures, changes to internal or staff practices and procedures, modification of facilities and/or premises and the introduction or review of policies and provision of training.
158. Dispute resolution provided under the Human Rights Act should follow the model set out in the current *Anti-Discrimination Act 1991*, which currently exists for complaints of discrimination, sexual harassment, victimisation and vilification.
159. The principles of dispute resolution offered by the Commission are that dispute resolution:
- should be provided as early as possible
  - should be appropriate to the nature of the dispute
  - is fair to all parties
  - should be consistent with the objectives of the Act.

## Queensland Ombudsman

160. The Commission considers that the proposed dispute resolution framework would sit alongside and coexist with the Queensland Ombudsman's current investigation functions.
161. The Commission would expect that if it were given the function to undertake dispute resolution under a Human Rights Act, the Ombudsman would generally refer human rights complaints to it for resolution, where appropriate. However, the Ombudsman should retain broad discretion to investigate human rights complaints where he is satisfied that the matter merits investigation.

## Crime and Corruption Commission

162. In relation to police personnel conduct complaints, the Crime and Corruption Commission is responsible for identifying, exposing and investigating serious corrupt conduct and police misconduct.
163. If a Human Rights Act is passed in Queensland it is suggested the Anti-Discrimination Commission (as is already the case with discrimination complaints), be given the function to receive and conciliate complaints about police personnel conduct involving human rights. If the Commission is given an alternative dispute resolution function under a Human Rights Act, the Commission should be able to refer complaints back to the Crime and Corruption Commission where appropriate.



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Relationship with other complaints handling bodies

164. There are other statutory agencies in Queensland that can receive and conciliate complaints which may involve a narrow range of human rights issues, for example, the Privacy Commissioner, the Health Ombudsman, and the Public Guardian. If the Anti-Discrimination Commission is given an alternative dispute resolution function under a Human Rights Act, the Commission should be able to refer complaints to these agencies where appropriate.

## The functions and responsibilities under a Human Rights Act

165. Under a Human Rights Act, all levels of government would be required to integrate human rights in the development of legislation and policy, and in the implementation of policy.

## The Legislative Assembly

166. It is recommended that a Human Rights Committee be established either under the Human Rights Act or under the *Parliament of Queensland Act 2001* as a separate specialist bipartisan committee with roles to include the examination of all Bills and subordinate legislation for compatibility with fundamental legislative principles which include human rights protected under the Human Rights Act.

167. There ought to be a requirement under the Human Rights Act that no bill is to proceed to debate until the Committee has reported.

168. Parliamentary Counsel ought to be given a new function under the Human Rights Act or the *Legislative Standards Act 1992* to provide advice to Ministers, government entities, and members of the Legislative Assembly on the application of fundamental legislative principles which include human rights protected under the Human Rights Act.

## The Judiciary

169. Under a Human Rights Act the Courts ought to be required to interpret legislation in a way that is compatible with human rights. Professor Williams in his submission to this inquiry has made suggestions on how this interpretive function should be drafted for a Queensland Human Rights Act, so as to avoid the confusion that has arisen in both ACT and Victoria on how this interpretative function ought to be carried out.<sup>58</sup> He has suggested there are multiple ways this might be done, and has offered the following provision:

### Interpretation

(1) So far as is possible to do so consistently with their language, context and purpose, all statutory provisions must be interpreted in the way that is most compatible with human rights.

(2) For the purpose of this section, international law and the judgements of domestic, foreign and international courts and tribunals relevant to a human right may be considered.

---

<sup>58</sup> George Williams and Daniel Reynolds, above n 22.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

170. As discussed earlier in this submission, the courts and tribunals also ought to be required to take into account human rights when performing their other judicial functions.

## The Public Sector

171. The introduction of a Human Rights Act would necessitate the introduction of measures to ensure that the public sector is in a position to comply with its new obligations. For example, there would need to be:

- better education of the public sector on human rights and its legislative obligations;
- a requirement that government departments and agencies develop human rights action plans, conduct annual human rights audits, and to prepare annual reports on compliance with the Act; and
- the integration of respect for human rights into public sector values and codes of conduct.

## The Anti-Discrimination Commission

172. The Queensland Anti- Discrimination Commission could have the following functions in relation to a Human Rights Act:

- providing annual reviews of its operation to the Attorney General
- examining all declarations of inconsistent interpretation made by courts and all override declarations for new legislation
- reviewing the programs and practices of public authorities when requested to do so, and on the Commission's own initiative to check their compatibility with human rights
- providing education about the Act and human rights
- a complaint handling and conciliation function to deal with complaints about alleged breaches of human rights.

## Other Complaint handling entities

173. Queensland complaint handling bodies – such as the Ombudsman, the Health Ombudsman, the Public Guardian, the Public Advocate and the Crime and Corruption Commission and the office of the Privacy Commissioner—should also give consideration to human rights issues in the complaints they are responsible for resolving.

174. If the Anti-Discrimination Commission is given a role of dealing with human rights complaints it should be able to refer complaints to these agencies where appropriate, for example, if a complainant alleges breach of the right to privacy that involves information privacy or his or her health records, or where a complainant alleges they have been mistreated by a staff member in the provision of a disability service by a public entity.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Recommendations

175. The Commission recommends that:

1. The Queensland Parliament passes a Human Rights Act.
2. The Act reflects our key Human Rights obligations, including civil, political, economic, social and cultural rights, property rights, and the right to self-determination for Aboriginal and Torres Strait Islander Queenslanders.
3. The Act requires compliance with human rights at all levels of government policy and decision making.
4. The Act provides a process for Parliament to explain how new laws impact on human rights, while retaining parliamentary sovereignty.
5. The Act provides a process for independent investigation and resolution of human rights complaints
6. The Act allows people to bring freestanding human rights matters to the courts and receive enforceable remedies, including damages, for breaches of human rights.
7. The Act requires courts to interpret laws consistently with human rights.
8. The Act provides a regular and independent assessment of steps taken by government to meet human rights responsibilities.
9. The Act provides a process for education, training and information dissemination.
10. In implementing the Act, a holistic and unified approach is taken to maximise cultural change and educative function.
11. The Act allows private entities the opportunity to comply with human rights obligations.

176. Alternatively, if it is determined that the protection of all economic social and cultural rights is not considered immediately appropriate, the Commission recommends staged approach be considered where priority is given to some, immediately realisable ESC rights, for example the right to basic education and emergency medical treatment.

177. If Parliament chooses not to proceed with recommendations 1 to 12 above, the Commission recommends that measures be adopted to increase human rights accountability in the scrutiny of legislation, the interpretation of legislation and in the making of administrative decisions by government agencies. The Commission recommends that:

1. In the *Legislative Standards Act 1992*, include as an express objective that Queensland legislation is consistent with the promotion and protection of human rights.

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

2. In the *Legislative Standards Act 1992* replace the expression 'rights and liberties of individuals' with 'human rights.'
3. In the *Legislative Standards Act 1992* add to the definition of fundamental legislative principles 'the separation of powers.'
4. In the *Legislative Standards Act 1992* define 'human rights' in an inclusive way such as 'the personal rights and liberties recognised or expressed under the Constitutions of Queensland and Australia, in statutes of the parliaments of Queensland and Australia, or in treaties ratified by the government of Australia.'
5. A guidance note be developed and implemented to assist in identifying human rights issues.
6. In the *Legislative Standards Act 1992* the requirement for explanatory notes to include a 'brief assessment of consistency' be replaced with a requirement of a 'statement of compatibility' with fundamental legislative principles for all Bills and amendments.
7. Under the *Parliament of Queensland Act 2001* a separate specialist bipartisan committee (a Human Rights Committee) be established with roles to include the examination of all Bills and subordinate legislation for compatibility with fundamental legislative principles.
8. The *Parliament of Queensland Act 2001* be amended to require the Member promoting a Bill to respond to any recommendations or concerns raised by the specialist human rights committee.
9. The *Judicial Review Act 1991* be amended to make listed human rights obligations a relevant consideration in government decision making.
10. The *Acts Interpretation Act 1954* be amended to require that, as far as it is possible to do so consistently with the legislation's purpose, all state legislation be interpreted in a way that is compatible with listed human rights obligations.

The Commission thanks the Legal Affairs and Community Safety Committee for the opportunity to make this submission

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

## Examples of Cases that have used human rights legislation

### Helping an older couple live in the same care home

*Helping an older couple live in the same care home. An advocacy example, without court action*

Dora and Simon had been married for 59 years. Dora was blind and had recently developed Alzheimer's. She and Simon were injured in a fall at home, and Simon was no longer able to care for her while he recovered. During this time, Dora was moved into a local publically funded nursing home.

It became clear that Dora would have to stay in a nursing home, but Simon visited her every day. However, their relationship was threatened when the local authority decided to move Dora into a permanent nursing home that was too far away for Simon and their children to visit.

Simon contacted Counsel and Care. They helped Simon to challenge the decision to move Dora on the basis that his and Dora's right to family life under Article 8 of the Human Rights Act was threatened by the move and the local authority needed to consider this right when making their decision. This helped Simon to persuade social services to allow Dora to remain in the nursing home close to her family and to Simon.

Source: BIHR & EDF 'Human Rights and Equality in the Voluntary Sector' (2010)

### Reuniting separated older couple

*Protecting the right to family life of an older couple who relied completely on each other. An advocacy example, without court action*

Beryll and Richard Driscoll had been married for over 65 years. They had spent very little time apart and by 2006 she was blind and he could not walk unaided. He was her eyes and she helped him to walk. When Mr Driscoll fell ill, the local authority moved him to a residential care home. Mrs Driscoll was not allowed to go with him, as she did not fit the criteria, and they only saw each other twice a week for 7 months.

Speaking to the media, she said 'We have never been separated in all our years and for it to happen now, when we need each other so much, is so upsetting. I am lost without him – we were a partnership'.

A public campaign launched by the family, supported by the media and various human rights experts, and older people's organisations, argued that the local authority had breached the couple's right to respect for family life (Article 8). The authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

### Supporting an older woman strapped into her wheelchair against her wishes

*Challenging the use of restraint on an older woman in hospital. An advocacy example, without court action.*

During her afternoon ward round at a London hospital, a consultant came across an older woman, Mrs. Jones, who was crying out in distress. Mrs. Jones was in a wheelchair and

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

when the consultant looked more closely, she discovered that she had been strapped in, and this was the reason for her distress. The consultant asked staff why the woman was being restrained in this way. They explained that they had strapped her into the wheelchair to stop her walking around, because they were worried she might fall over and hurt herself. The consultant told staff that while their concerns were understandable, strapping Mrs. Jones into a wheelchair for long periods was not an appropriate response, because her human rights, and in particular her right to be free from inhuman and degrading treatment (Article 3) had not been taken into account. Staff quickly agreed to unstrap Mrs. Jones and, after she was assessed by a physiotherapist, they were encouraged to actively support her to improve her mobility

## Investigating unexplained bruising on a boy living in a care home

*Challenging the treatment of a young man in residential care. An advocacy example, without court action.*

Amrit is a young man who was placed in residential care on a short-term basis, due to mental health problems. During a visit one day, his parents noticed bruising on his body, which no one seemed to be able to explain. They raised the issue with the managers at the home but their concerns were dismissed. They were also told that they were no longer permitted to visit Amrit. After participating in a BIHR training session the parents approached the care home once again and invoked Amrit's right not to be treated in an inhuman and degrading way (Article 3) and their own right to respect for family life (Article 8). As a result, the ban on their visits was revoked and an investigation was conducted into the bruising on their son's body.

## Securing safe housing for a family fleeing domestic violence

*Using the Human Rights Act to ensure that a mother and her children, who have fled domestic violence, are supported by social services to access safe housing. An advocacy example, without court action.*

Yolande and her children were fleeing domestic violence, and her husband's attempts to track them down as they moved from town to town across the UK. Time and again the family would be uprooted, having to move on every time he discovered their whereabouts.

Eventually, they arrived in London, and were referred to social services in their borough. However, what could have been the family's first reprieve after months of uncertainty and fear turned into another ordeal in itself.

Social workers told Yolande that the constant moving of her children meant she was an unfit parent and that she had made the family intentionally homeless. They said that they had no choice but to place her children in foster care.

Yolande sought independent advice from a charity working with women who have experienced domestic violence, who had been supported through BIHR training on the Human Rights Act. A support worker helped Yolande to challenge social services' decision. Yolande said she thought the decision had failed to respect her own right to respect for family life (Article 8), and the right to family life of her children.

Looking at the situation from a human rights perspective helped change the conversation. Social services reconsidered the issue, taking the family's human rights into account, and worked with Yolande and her children to find a suitable solution. They all agreed that the



# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

family would remain together, and that social services would help cover some of the essential costs of securing private rented accommodation.

For Yolande and her children, being supported to find a new home was an essential step in rebuilding a new life in safety after a distressing and turbulent time.

## **Preventing a woman and her newborn baby being made homeless**

*Challenging a housing provider's decision to make a family homeless while the mother, a failed asylum seeker, was giving birth in hospital. An advocacy example, without court action*

Lola, a pregnant woman who had been refused asylum, was living in government-arranged accommodation. She was issued a 'termination of support' notice while she was giving birth in hospital. She was a lone parent and this was her second child. The notice period expired while she was still in hospital and on returning home, she and her children faced eviction. After receiving BIHR training, a manager at a voluntary sector organisation supporting Lola suggested to the housing provider that evicting the family in these circumstances might breach their right not to be treated in an inhuman and degrading way (Article 3). The manager suggested that the housing provider reconsider its decision before taking enforcement action. The provider decided to amend the status of the notice, giving Lola's voluntary sector advocate time to apply for further support for the family under section 4 of the Immigration and Asylum Act 1999. The application was successful and alternative accommodation for the family was secured.

## **Supporting children to visit their mum in a mental health care home**

*Challenging a reduction in supported visits between two children and their mum, who was living in a mental health care home. An advocacy example, without court action.*

Kay, who has mental health problems, was struggling more and more after the death of her husband. She was placed in 24-hour supported care and her children, Jimmy and Jess were fostered. It was agreed that the children could visit their mum three times a week, but this gradually dwindled to one visit per week because the local authority did not have enough staff to supervise the visits. Both Kay and her children were very distressed by this. Kay's advocate noted that the local children's services department had not been invited to regular meetings to discuss Kay's care, and that Jess and Jimmy's interests were not being properly represented as a result. After attending a BIHR training session, the advocate referred to the children's right to respect for family life (Article 8) in her discussions with the mental health team and convinced them to invite children's services to the next meeting. Following this the three visits each week were restored. From this point onwards, the manager of the children's care team personally saw to it that each visit took place as promised. Kay and her children have remained very close and recently were able to enjoy a holiday together.

## **Getting justice for a war veteran unlawfully detained by the Council**

*Using the Human Rights Act to challenge the unlawful detention of a 91-year-old veteran.*

Peter is a 91-year-old veteran of the Second World War. Peter has health problems, including dementia, but he likes living in his own home. He sees friends and enjoys looking after his pet cat Fluffy.

Some of Peter's friends became concerned that Peter was being financially abused and they were worried about his ability to look after himself. His local council then took action which

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

meant he was held in a locked unit for 17 months. Although the records said Peter went with them voluntarily, he was clearly reluctant to do so, and distressed. Facts are disputed but he is said to have been wearing his dressing gown at the time, without trousers or pyjama bottoms.

This case went to Court, where it was decided that the council's treatment of Peter amounted to breaches of his human rights to liberty and to respect for private and family life (Articles 5 and 8 of the HRA). These breaches were said to be made worse because had they not happened, Peter would have continued to live at home, where he was happy, with support. The council ended up giving Peter £60,000 in damages for false imprisonment. But most importantly, Peter was able to return home, reunited with Fluffy and his friends. He now has the right care support package and is reportedly happy and contented.

## Challenging unannounced daily visits from social workers

*Using the Human Rights Act to challenge unannounced daily visits by social services to a learning disabled couple and their children. An advocacy example, without court action.*

Priya and Sunil have two young children who they adore. They also both have learning disabilities. Social services wanted to make sure the children were safe and being well-cared for by Priya and Sunil. The decision to monitor the situation turned into staff arriving at the family's home every day without warning. Priya and Sunil found this very distressing. They ended up being in a near constant state of anxiety and were frightened to open the door. Understandably, this had a real impact on their family time and it was difficult for them to enjoy things with their children.

Priya was in touch with an advocacy service who had received training from BIHR. Priya's advocate explained how the Human Rights Act protected the rights of the family members to respect for family and private life (Article 8). With the advocate's support, Priya and Sunil explained to social services that they understood their right to respect for private and family life could be restricted to safeguard their children's right not to be harmed, but that such restrictions need to be proportionate. They felt the daily unannounced visits weren't proportionate, and explained how the visits were having a negative impact on them and the children.

Social services agreed that in the future, they would arrange their visits with Priya and Sunil in advance so that they could get some control back over their lives, unless there was an emergency. Priya and Sunil feel like they have been able to regain their privacy and family time.

## Protecting the dignity of a learning disabled man in residential care

*Using the Human Rights Act to protect the dignity of a learning disabled man living in a residential care home. An advocacy example, without court action.*

Philip is a learning disabled man living in a residential care home. One evening he slipped and hurt himself while bathing, and subsequently became very anxious about getting in the bath. In order to reassure him and rebuild his confidence the care home managers arranged for a carer, usually female, to sit in the room with him as he bathed.

Philip's female carers felt uncomfortable with the arrangement. One carer, Jane, reflected during a BIHR training session: 'I knew in my heart he was being treated without dignity, and now I recognise that his human rights are perhaps being violated.'

# Human Rights Inquiry

Anti-Discrimination Commission Queensland

---

A discussion of the human rights principle of dignity had served as a ‘trigger’ for Jane and together with co-workers she was able to develop solutions that would both protect Philip’s dignity, whilst also providing him with the support he needed.

She decided to use human rights language in her discussions with the care home managers about Philip’s care. Specifically, Jane explained that Philip had a right not to be treated in an inhuman and degrading way (Article 3), and a right to respect for his private life (Article 8). She suggested that in order for Philip’s rights to be respected, a new care assessment should be carried out, as in her view he needed proper manual assistance with getting in and out of the bath. In the meantime she resolved to erect a screen in the bathroom for herself and other carers to sit behind while Philip bathed, to preserve his dignity.

## **Supporting a disabled man to visit a gay pub**

*Supporting a disabled man to visit a gay pub. An advocacy example, without court action*

A physical disabilities team at a local authority had a policy of assisting the people they worked with to participate in social activities, when they wanted to. A gay man, Robert, asked if a support worker could accompany him to a gay pub. His request was denied even though other heterosexual service users were regularly supported to attend pubs and clubs of their choice. During a BIHR training session, Robert’s advocate realised that Robert could challenge the decision by invoking his right to respect for private life (Article 8) and his right not to be discriminated against (Article 14) on grounds of his sexual orientation.