



18 April 2016

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

By email: lasc@parliament.qld.gov.au

RE: Human Rights Inquiry, Legal Affairs and Community Safety Committee

About QPP

Queensland Positive People (QPP) is a peer-based advocacy organisation which is committed to actively promoting self-determination and empowerment for all people living with HIV (PLHIV) throughout Queensland.

QPP supports evidence driven, human rights based responses to HIV in all levels of local, state and federal health service delivery as well as being committed to advocating for the human rights of all PLHIV who are socialised in stigmatising environments in QLD. These are rights which are indivisible, inalienable and universal both in scope and application.

The establishment of QPP aligns with State and National HIV policy strategies that recognise HIV prevention, and sustaining improved health outcomes, requires a critical partnership between PLHIV and those responsible for making decisions that affect their access to specialist care, treatment and support.

This partnership is also recognised under Australia's endorsement of the United Nations principle of MIPA: that the *Meaningful Involvement of PLHIV* in program development, implementation and policy-making will improve the relevance, acceptability and effectiveness of the HIV response as they have directly experienced the factors that make individuals and communities vulnerable to HIV.

About QPP's Submission

- QPP strongly supports the introduction of a Human Rights Act in Queensland.
- A Human Rights Act for Queensland should encapsulate, at the bare minimum, the rights mandated in the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.
- A Human Rights Act for Queensland should reflect the principles contained in the *International Guidelines on HIV/AIDS and Human Rights* (2006) as consolidated by the Office of the United Nations.
- The Committee should consider a Human Rights Model that:
 - Ensures all new legislation is compatible with Human Rights principles;
 - Creates avenues for individuals or organisations to pursue human rights violations; and
 - Has a body (or Commission/er) who is able to conduct human rights investigations or audits and make determinations.

Jime Lemoire

Acting Executive Officer

Queensland Positive People

The influence of human rights on the HIV response

HIV and affirmative human rights have influence on individual and systemic factors relating to the HIV response. Enabling a legislative human rights framework in Queensland would decrease some of the most persistent barriers PLHIV have in accessing treatment, testing and care services, whilst also fostering an environment conducive to encouraging those at higher risk of HIV to test frequently and avoid the late presentation of advanced HIV infection.

All people should enjoy full human rights regardless of their HIV status or any other medical condition, to live lives free from discrimination and to fulfil their highest potential. Human rights of PLHIV and key populations most affected by HIV are often more vulnerable to violations because of their status and the stigma associated with HIV. Further, the impact of human rights breaches can result in negative implications for health outcomes for PLHIV and for people at risk of HIV.

States have recognised that stigma, discrimination and violations of human rights are all major barriers to meaningful and effective responses to HIV and have committed to protect the human rights of PLHIV and those at risk of HIV¹. Protecting human rights in this context not only preserves the dignity of PLHIV but also creates social and legal environments that encourage people to take up and use HIV prevention, treatment and care services. These are all vital components to reversing the HIV epidemic and ensuring PLHIV are free to pursue and fulfil their highest potential².

It has been long accepted that an enabling legal and policy environment is essential for an effective response to HIV and promotes the uptake of HIV prevention and testing programs³. Human rights and public health are mutually reinforcing and inextricable in responding to HIV. Where there are laws protecting human rights, PLHIV and people at risk of HIV are better able to access HIV services and participate in prevention, care and support programs⁴. Protective and enabling legal environments ensure that public health measures are sustainable and reach those most impacted or most at risk.

¹ United Nations General Assembly. Implementation of the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS: Intensifying our Efforts to Eliminate HIV/AIDS. 8 June 2011; UNAIDS, Guidance note: Key Programmes to reduce stigma and discrimination and increase access to justice in National HIV responses (2012)

² Ibid.

³ Cameron, S, Are we victims of our own success? Addressing the gaps in Australia's enabling environment, *HIV Australia*, Vol 12, No 2, 2014.

⁴ International HIV/AIDS Alliance and Commonwealth HIV and AIDS Action Group, Enabling Legal Environments for Effective HIV Responses: A Leadership Challenge for the Commonwealth (2010).

The Global Commission on HIV and the Law found that evidence-based laws and policies that were grounded in the human rights are powerful instruments for challenging discrimination, promoting public health and protecting human rights.

The Commission authoritatively stated that structural drivers such as the law have a vital role to play in the epidemic:

“...the legal environment can play a powerful role in the well-being of people living with HIV and those vulnerable to HIV. Good laws, fully resources and rigorously enforced, can widen access to prevention and health care services, improve the quality of the treatment, enhance social support for people affected by the epidemic, protect human rights that are vital to survival and save the public money.”

-UN Global Commission on HIV and the Law⁵

An authoritative commitment to human rights in Queensland through a Human Rights Act would propel efforts and combat HIV related stigma and discrimination, which remains a significant barrier for people living with HIV and people at risk of HIV. HIV stigma impacts people coming forward and test for HIV, to seek care and treatment if they are living with HIV and feel safe to disclose their status. HIV related stigma compromises long term health outcomes for PLHIV and those at risk of acquiring HIV.

A Queensland Human Rights Act would ensure that public health responses to HIV are underpinned by human rights and help HIV prevention, treatment and care programs reach people living with HIV or at risk of HIV. Reaching the ambitious goals and targets set by State and Federal HIV strategies requires protective legislation, such as a Human Rights Act. These HIV targets will not be met unless the legal responses compliment and support public health responses⁶.

⁵ Ibid.

⁶ Ibid.

For this submission, QPP are only highlighting two human rights currently impacting PLHIV. However, there are a number of human rights intersections that have been internationally accepted as impacting PLHIV⁷.

Freedom from discrimination

PLHIV still continue to experience less favourable treatment in many domains of their lives due to their HIV status.

Freedom from discrimination is a key attribute of any democratic society and pivotal to the wellbeing of all citizens. PLHIV who are vulnerable to discrimination and other forms of unequal treatment, prejudice and stigmatisation and are in particular need of the essential legal protections that robust anti-discrimination and human rights laws can only provide.

The right to be free from discrimination can be found in the International Covenant on Civil and Political Rights.⁸ The Commission on Human Rights has confirmed that a person's HIV/AIDS status is a protected attribute in non-discrimination provisions in international human rights treaties⁹.

The HIV Futures 7 survey¹⁰ conducted by the Living with HIV program at the Australian Research Centre in Sex, Health and Society at La Trobe University found:

- 27.6% of respondents had experienced less favourable treatment at a medical service as a result of having HIV;
- 7.4% experienced less favourable treatment in relation to accommodation, 2.8% in the last two years;
- 23.4% experienced less favourable treatment in relation to insurance; and
- 15.4% of respondents had experienced less favourable treatment in the workplace as a result of having HIV.

Whilst the HIV Futures 7 survey is national survey, QPP finds that there are a large number of individuals accessing QPP services in relation to incidents of stigma and discrimination. For example, during the July-December 2015 reporting period, 36 individuals and 1 organisation

⁷ *International Guidelines on HIV/AIDS and Human Rights* (2006), Retrieved from: <http://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx>

⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, Article 26

⁹ Commission on Human Rights resolutions 1995/44 of 3 March 1995 and 1996/43 of 19 April 1996; OHCHR and UNAIDS (2007), *Handbook on HIV and Human Rights for National Human Rights Institutions*. Geneva: Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS.

¹⁰ J Grierson, M Pitts, R Koelmeyer (2013) *HIV Futures Seven: The Health and Well being of HIV Positive People in Australia*, monograph series number 88, The Australian Research Centre in Sex, Health and Society, LaTrobe University, Melbourne, Australia.

were provided support to address instances of stigma and discrimination through information, referral, support and direct advocacy.

“Stigma remains the single most important barrier to public action. It is the main reason too many people are afraid to see a doctor to determine whether they have the disease, or seek treatment if so”¹¹

-Ban Ki Moon, Secretary General, United Nations.

By not affording protections against wide-spread discrimination, stigmatising attitudes relating to HIV are allowed to reign freely. Discrimination based on HIV status often emanates from HIV-related stigma, which is consistent and persistent around the world¹². There is an inextricable link between HIV stigma and discrimination as stigmatising views about HIV or PLHIV invariably lead to discrimination.

The UNAIDS Judicial Handbook on HIV, Human Rights and the Law articulates:

“Understanding the real difficulties, barriers and inequalities faced by people living with HIV also requires recognition of how HIV-related stigma plays out when it combines with stigma based on gender, sexuality, age, race, family status, socioeconomic background, religion, or immigration or other statuses¹³.”

The stakes are high for PLHIV when it comes to the impacts of stigma. A large body of literature exists on the impact of HIV-related stigma on psychological and physical health of PLHIV. Among the most common of these are increased feelings of despair¹⁴, increased rates of depression¹⁵, decreased self-esteem and increased mental health issues¹⁶.

Providing further mechanisms for the protection of freedom from discrimination – such as HIV-related discrimination - would guarantee the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and

¹¹ Ban Ki-moon op-ed (2008, 6th August), 'The stigma factor', The Washington Times.

¹² Judging the epidemic: A judicial handbook on HIV, human rights and the law. (2013) Joint United Nations Programme on HIV/AIDS.

¹³ Ibid at page 30.

¹⁴ Buseh, A.G., & Stevens, P.E. (2006). Constrained but not determined by stigma: Resistance by African American women living with HIV. *Women & Health*, 44(3), 1-18.

¹⁵ Berger, B., Ferrans, C., & Lashley, F. (2001). Measuring stigma in people with HIV: Psychometric assessment of the HIV Stigma Scale. *Research in Nursing and Health*, 24(6), 518-529; Vanable, P.A., Carey, M.P., Blair, D.C., & Littlewood, R.A. (2006). Impact of internalized HIV stigma on health behaviors and psychological adjustment among HIV-positive men and women. *AIDS and Behavior*, 10, 473-482.

¹⁶ Mak, W.S., Poon, C.Y.M., Pun, L.Y.K., & Cheung, S.F. (2007). Meta-analysis of stigma and mental health. *Social Science and Medicine*, 65, 24-261.

democratic society. A Human Rights Act would protect basic rights and freedoms of all Queenslanders that are considered essential to preserving Queensland as a free and democratic society, and would unify residents around a set of principles that embody those rights.

The Right to the highest attainable standard of health

The advent of effective combination antiretroviral therapy (cART) in 1996 changed the course of the HIV epidemic, enabling PLHIV to achieve an undetectable viral load, which slowed disease progression and restored immune functioning.

With proper adherence to HIV medication, HIV is now considered manageable chronic illness with virtually a full life expectancy. HIV treatment can be as simple as taking one pill once a day for many PLHIV. Side effects of modern treatments tend to be low. The vast majority of PLHIV on treatment go on to live a relatively normal lifespan and live a healthy life.

However, access and affordability of medication mean that many PLHIV cannot access medications or on-going monitoring which impacts their ability to reach their highest attainable standard of health.

The right to health can be found in the International Covenant on Economic, Social and Cultural Rights¹⁷. The right to health can be seen to have two tenets; the prevention of diseases and the treatment and control of epidemic, endemic, occupational and other diseases¹⁸.

In the context of HIV, this requires not only affordable and accessible access to HIV treatments but also the availability of HIV prevention programmes.

General comment N° 14 on the right to the highest attainable standard of health, adopted by the Committee on Economic, Social and Cultural Rights on 11 May 2000 states the right to the highest attainable standard of health:

“requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety,

¹⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Article 12.

¹⁸ General comment N° 14 on the right to the highest attainable standard of health, adopted by the Committee on Economic, Social and Cultural Rights on 11 May 2000; Handbook on HIV and Human Rights for National Human Rights Institutions. Geneva: Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS.

education, economic development and gender equity. The right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations.”

The Handbook on HIV and Human Rights for National Human Rights Institutions by the Office of the High Commissioner for Human Rights stipulates:

“The obligations of the State include the provision of appropriate HIV-related information, education and support, access to the means of prevention (such as condoms and clean injecting equipment), to voluntary counselling and testing, as well as access to safe blood supplies, to adequate treatment and to medication. States may have to take special measures to ensure that all groups in society, particularly members of marginalized populations, have equal access to HIV-related prevention, treatment, care and support.”

Early diagnosis and treatment of HIV is vital for PLHIV to fulfill the highest attainable standard of health with studies concluding that early initiation of treatment yields greater health outcomes. On 27 May 2015 the US National Institutes of Health (NIH) halted the largest international study looking at the inferiority of delayed treatment of HIV, called Strategic Timing of Antiretroviral Treatment (START), due to overwhelming conclusive evidence that there was a 53% reduction in the risk of developing serious illness or death amongst the people enrolled into the early treatment arm of the study, and a 70% reduction in AIDS-defining illnesses in the same cohort, compared to those in the delayed treatment arm of the study who waited until their CD4 count fell below 350. The START study offered irrefutable evidence that earlier HIV treatment is superior to delayed initiation of treatment. The START study confirmed that medication is advisable for PLHIV who are ready to consider treatment.

In light of the scientific consensus on the benefits of early treatment, many PLHIV face access and affordability barriers to commencing treatment and therefore compromise reducing mortality rates and AIDS related illnesses.

2.1 Affordable treatment

Currently, treatment for HIV is available throughout Australia at highly subsidised costs for holders of Australian Medicare Cards, through the Pharmaceutical Benefits Scheme (PBS). PLHIV make a small co-payment (when issuing their prescription and collecting their medications) for each item (drug) listed on their prescription. From 1 January 2015, co-payment is approximately \$37.70 for most PBS medicines or \$6.10 if an individual has a concession card. The Australian Government pays the remaining cost. A ‘safety net’ also

applies for individuals and families, which reduces the annual cost of medicines when co-payments reach a certain threshold.

Many PLHIV who have low to middle incomes have difficulties in affording the co-payment required for their medications. Adherence to antiretroviral medications is the best safeguard against drug resistance and attaining the best health outcomes. Patient co-payments and individual financial stress have been identified as a barrier to antiretroviral adherence.

Research conducted at St Vincent's Public Hospital in Sydney and reported in 2012 found that of the 335 out-patients attending the HIV clinic at St Vincent's Hospital between November 2010 and May 2011, 65 patients (19.6%) stated that it was difficult or very difficult to meet pharmacy dispensing costs, (14.6%) reported that they had delayed purchasing medication because of pharmacy costs and (9.0%) reported that they had ceased medication because of pharmacy costs. Of the 65 patients with difficulty meeting pharmacy costs, (29%) had ceased medication verses (4.1%) of the remaining 270 patients. In addition, (5.7%) stated that it was difficult or very difficult to meet travel costs to the clinic. Treatment cessation and interruption were both independently associated with difficulty meeting both pharmacy and clinic travel costs¹⁹.

QPP does not currently have data akin to the New South Wales Report, however, in the period of 1 July – 31 December 2015, QPP provided 201 instances of support and information relating to access to HIV treatment and care. It is a consistent issue that QPP addresses in the provision of its services.

2.2 Accessible treatment, care and prevention services

PLHIV who have Medicare access can have their treatments subsidised through the co-payment, however there are PLHIV residing in Queensland who are unable to access the PBS due to their visa status rendering them ineligible for Medicare. Those PLHIV who are 'Medicare ineligible' can only access treatment by importing generic versions from overseas (if their current regime is available in generic form), pay full cost of medication (which is in the thousands of dollars), attempt to gain compassionate access through Hospital or Pharmaceutical Companies, or *delay treatment*.

Medicare ineligible PLHIV are a vulnerable population. There are higher risks of non-engagement in care and treatment and losses to follow up. This has negative impacts on individual health, and increases the cost of treating comorbidities associated with

¹⁹ J McAllister et al 2012, Financial stress is associated with reduced treatment adherence in HIV-infected adults in resource-rich settings. HIV Medicine (2012)

unmonitored HIV and ageing. Further, as a public health measure, providing affordable treatment to PLHIV renders them virtually un-infectious and provides a biomedical intervention to prevent the onward transmission of HIV.

Compounding this vulnerability, in 2014 UNAIDS announced ambitious new global 'fast track' targets which aim to strengthen previous commitments in the 2011 UN Political Declaration on HIV/AIDS. The new UNAIDS goals are that²⁰:

- 90 percent of people living with HIV will know their status;
- 90 percent of people diagnosed with HIV receive antiretroviral treatment; and
- 90 percent of people on treatment will have suppressed viral loads.

These targets will only be realised if institutions and the State embed human rights driven responses in HIV prevention, treatment and care; it is essential that human rights based responses underlie these targets and programs and affordable treatment is guaranteed to all PLHIV in Queensland.

A Human Rights Act would help PLHIV realise their highest standard of attainable health by being an authoritative statement in which to challenge barriers PLHIV experience when wishing to commence immediate treatment, if that is what they wish to do. Without a Human Rights Act, decision and policy makers are not bound to embed human rights into their HIV policies and responses. A Human Rights Act would ensure that treatment access and affordability are, at the bare minimum, accountable to human rights standards and not infringing on PLHIV's human right to health.

Further experiences demonstrating the need for a Human Rights Act in Queensland

1.1 Condom use and sterile injecting equipment in Correctional Facilities

Queensland Correctional Facilities do not currently provide HIV, STIs or BBV prevention technologies (such as condoms, safe injecting facilities or other HIV prevention measures) to people currently housed in correctional facilities.

There are currently no needle and syringe programs (NSPs) operating in any Australian prisons, despite growing evidence demonstrating that NSPs are safe, beneficial and cost-

²⁰ Joint United Nations Programme on HIV/AIDS (UNAIDS). (2014). Fast-Track: ending the AIDS epidemic by 2030. UNAIDS, Geneva. Retrieved from: www.unaids.org

effective within a variety of prison settings²¹. New South Wales distributes condoms and dental dams within its correctional facilities, yet Queensland distributes none²².

The lack of access to condoms and sterile injecting equipment are an example of a Queensland Government Department policy violating the right to health through not affording adequate prevention measures to people currently in custody and/or correctional facilities.

A Human Rights Act would allow these practices to be brought into the public domain and challenged as a human rights issue. Without the backing of a Human Rights Act, there is no mechanism to make the governing Department accountable for policy choices for people currently housed in correctional facilities.

1.2 Tattooing and Piercing Discrimination

PLHIV in Queensland continue to face systemic discrimination in the provision of tattooing and piercing services, which currently does not have an effective redress mechanism.

PLHIV are being denied tattooing and piercing services due to their HIV positive status, despite the requirement for universal infection control standards that mitigate the transmission risk associated with blood borne viruses (BBV) in such settings. The Anti-Discrimination Commission has jurisdiction to hear individual complaints but due to the confidentiality of conciliation, widespread institutional stigmatising practices like these are unable to be challenged.

Using current protections, if this institutional practice was to be challenged, each operator would have to be taken to the Anti-Discrimination Commission by way of complaint. This example highlights one of the difficulties in resolving wide-spread institutional human rights breaches and the lack of mechanisms available to investigate and make a determination. It also highlights that individual complaint handling is not cost effective and burdens an adjudication system.

QPP suggest that a Human Rights Act and its governing structures should have the ability to investigate wide-spread systemic human rights breaches on a population level, not just on an individual complaint level.

²¹ Duvnjak, Angella, et al. Why are we waiting? The urgent need for NSPs in Australian Prisons, *HIV Australia*, Vol 14, No 1, 2016; AIVL. (2015). *Needle and Syringe Programs in Prisons: An International Review*. AIVL, Canberra. Retrieved from: www.aivl.org.au; 2Stöver, H., Nelles, J. (2003) Ten years of experience with needle and syringe exchange programs in European prisons. *International Journal of Drug Policy*. 14(5–6), 437–444.

²² Donovan, Basil, et al. Prison Sex. Don't believe what you see on TV, *HIV Australia*, Vol 9, No 1, 2011.

Current legislative protections are not adequate

Queensland currently has anti-discrimination laws which make it unlawful to discriminate against a person living with HIV or any person presumed or thought to have HIV in Queensland.

However, in QPP's experience, these protections do not go far enough or provide enough scope to challenge wide-spread institutional breaches and as a result, PLHIV still continue to experience persistent stigma and discrimination as a result of their HIV status.

QPP has supported individuals navigating anti-discrimination complaints with the Anti-Discrimination Commission. In instances of individual redress, the ADCQ can be effective. However, on an institutional and population level, the procedural mechanisms do not create a rights culture or set human rights standards. This is, in part, due to the nature of an anti-discrimination complaint being made to undergo mandatory conciliation. Whilst this allows privacy of an individual and in some cases an adequate way to address their complaint, the conduct that is the subject of the complaint never comes out into the public domain. The onus is on the individual to take the matter to the Queensland Civil and Administrative Tribunal (QCAT) for a public determination.

The Anti-Discrimination Act does not have the authority to make determinations relating to matters that may be in the public interest. For example, an organisation like QPP would have no avenue to approach the ADCQ to have a systematic discrimination issue investigated; it would rely on an individual taking the matter to the Commission.

A Queensland Human Rights Act should have, at a bare minimum, the ability to complete Human Rights audits or investigations into a widespread, systemic human rights issue by a concerned party.

The benefits of a Human Rights Act

A Human Rights Act would be a pivotal mechanism for challenging and asserting human rights in the context of the HIV response and challenge individual and institutional stigma and discrimination. It would begin to make our laws and policies accountable in honouring the commitments our government has declared in human rights instruments, HIV targets and strategies²³.

²³ Seventh National HIV Strategy 2014- 2017, and the Queensland HIV Strategy 2013-2015

A Human Rights Act would create a 'rights culture', which would serve to dispel some of the discriminatory and stigmatising treatment experienced by PLHIV in Queensland.

QPP supports the view of the Human Rights Legal Centre that a Human Rights Act would provide a plethora of benefits to Queensland²⁴:

- (a) improving law making and government policy;
- (b) improving public service delivery;
- (c) protecting marginalised Queenslanders by addressing disadvantage;
- (d) contributing to the development of a human rights culture;
- (e) creating and adding economic value;
- (f) assisting to fulfil Australia's human rights obligations; and
- (g) 'bringing rights home' by enabling human rights complaints to be heard and determined within the State of Queensland.

The application and influence of a Human Rights Act in Queensland

In order for a Human Rights Act to fulfill its aims to provide meaningful and diverse benefits for PLHIV and the wider community, its application and influence must be binding, meaningful, robust and appropriately resourced.

Appropriate application and scope

QPP supports a Human Rights Act binding the Queensland Government and organisations and businesses carrying out the functions of the government.

However, QPP believes that a Human Rights Act needs to go further than the Australian Capital Territory (ACT) and Victorian Model and also bind private entities (including businesses and organisations not carrying out the functions of government). By binding private entities, a Queensland Human Rights Act would create a 'rights rhetoric' whereby a rights culture would be developed.

²⁴ Allens Linklaters and the Human Rights Law Centre (2016) A Human Rights Act for Queensland: A discussion paper, Retrieved from: www.humanrights4qld.com.au

The Human Rights Act should have the ability to set out Human Rights Standards without the need to pursue legal remedies.

QPP strongly supports an appointment of a Queensland Human Rights Commissioner who has the power to review Queensland laws relating to human rights and report in writing to the Attorney-General, as demonstrated in the ACT Human Rights Commission Audits.

Appropriate influence on the mechanisms of government

At the bare minimum, a Human Rights Act should apply to all arms of government and equally to the Parliament, Executive and the Courts.

QPP is supportive of adopting similar provisions as seen in the ACT and Victorian model where Parliament is required to ensure that every new Bill introduced is consistent with human rights and any Human Rights Act²⁵.

Further, the Courts should be able to intervene and adjudicate in matters where breaches of a Human Rights Act are being alleged, regardless of whether other legal actions are available or are currently being undertaken.

Lastly, the Executive and public authorities must act compatibly with human rights and should ensure that policy development and decision making have affirmative consideration to the Human Rights Act.

Resolving human rights issues using a Human Rights Act in Queensland

In order for a Human Rights Act to be fully realised, the process of resolving human rights breaches must be accessible, restorative and appropriately resourced.

Resolution of rights breaches

QPP calls for a body or commission to be authorised to carry out the functions of the Act. The body or commission should be appropriately resourced and empowered to investigate, report on and conciliate human rights complaints, intervene in relevant legal proceedings, conduct

²⁵ Human Rights Act 2004 (ACT) s 37 and 38; Charter of Human Rights and Responsibilities Act 2006 (Vic) Victorian Act, s 28, 30.

alternative dispute resolution processes, and research and report on compliance and reform of the Act²⁶.

Stigma and discrimination are further perpetuated if discriminatory and stigmatising practices are not addressed at an administrative or structural level such as through complaint mechanisms and processes. PLHIV experience large amounts of stigma, which often result in acts of discrimination that can leave lasting impacts and perpetuate vulnerabilities.

Remedies

QPP supports the remedies proposed by the Human Rights Law Centre, which include/replicate the UK Act Section 8²⁷:

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

Conclusion

Queensland has the opportunity to write the history of HIV and be a leader in affording and safeguarding human rights of PLHIV and all people living in Queensland. A robust Human Rights Act would allow for organisations to call for investigations into wide-spread institutional practices that are inconsistent with human rights that have currently been unable to be examined, challenged and rectified. Further, a considered and meaningful Human Rights Act would enable and develop human rights-based, evidence-driven HIV responses in Queensland that would help reach the ambitious epidemic ending targets set by the State Health Department as well as strengthening community based organisation's responses to HIV prevention, treatment and care.

²⁶ Allens Linklaters and the Human Rights Law Centre (2016) A Human Rights Act for Queensland: A discussion paper, Retrieved from: www.humanrights4qld.com.au.

²⁷ Human Rights Act 1998 (UK).

If a Human Rights Act were to be introduced, Queensland would have a transparent commitment to human rights, which would have an immeasurable impact for the HIV response. It would decrease some of the most persistent barriers people have in accessing treatment, testing and care services. It would help to reverse the damage the effects of HIV related stigma and discrimination has on testing rates and retention in care. It would further the State's investment in HIV programs by providing a mechanism to challenge structural barriers to the HIV response. Lastly, it would be a practical way to implement some of the commitments made by the Australian Government in the *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS* (2011).