



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

A.B.N. 42 109 450 961

Address: PO Box 1062, Townsville Qld 4810 Phone: (07)4721 6007 Freecall: 1800 082 600 Fax: (07)4724 5112
Email: admin@atsiwltnq.org.au

Your reference :
Our reference : submission

18 April 2016

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

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

Dear Research Director

RE: Submission to a Human Rights Act for Queensland

Please find attached the Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc's comments to the Human Rights Act for Queensland.

If you would like to discuss any of the issues raised in our submission in more detail please contact me on [REDACTED]

Yours sincerely,

[REDACTED]

Catherine Pereira
Principal Solicitor
ATSIWLSNQ INC.

Encl.

Aboriginal & Torres Strait Islander Women’s Legal Services NQ Inc.

Submission to

A Human Rights Act for Queensland

Contents

Introduction3

About the Aboriginal and Torres Strait Islander Women’s Legal Services NQ Inc.3

General Comments3

 Family Violence.....4

 Access to justice and legal assistance services6

 Right to self-determination and consultation8

 A Human Rights Action Plan.....8

Specific Responses to the Discussion Paper Questionnaires.....9

 Does your organisation support the introduction of a Human Rights Act for Queensland? .9

 Does your organisation have a view about the effectiveness of the current protection of human rights in Queensland?.....10

 Has your organisation come across any situations that demonstrate the need for a Human Rights Act in Queensland? If so, please provide de-identified outlines of these situations.11

 Can you comment on the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and internationally?.....13

 What does your organisation see as the benefits of a Human Rights Act for Queensland?14

 Which rights should be protected in a Human Rights Act for Queensland?16

 If a Human Rights Act is introduced, who should be required to act compatibly with it?17

 If a Human Rights Act is introduced, what impact should it have on the development of new laws?17

 If a Human Rights Act is introduced how should it impact the work of courts and tribunal in Queensland?18

Aboriginal & Torres Strait Islander Women’s Legal Services NQ Inc.

Submission to

A Human Rights Act for Queensland

Contents

- Introduction.....3
- About the Aboriginal and Torres Strait Islander Women’s Legal Services NQ Inc.3
- General Comments3
 - Family Violence.....4
 - Access to justice and legal assistance services6
 - Right to self-determination and consultation8
 - A Human Rights Action Plan.....8
- Specific Responses to the Discussion Paper Questionnaires.....9
 - Does your organisation support the introduction of a Human Rights Act for Queensland? .9
 - Does your organisation have a view about the effectiveness of the current protection of human rights in Queensland?10
 - Has your organisation come across any situations that demonstrate the need for a Human Rights Act in Queensland? If so, please provide de-identified outlines of these situations.11
 - Can you comment on the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and internationally?13
 - What does your organisation see as the benefits of a Human Rights Act for Queensland?14
 - Which rights should be protected in a Human Rights Act for Queensland?16
 - If a Human Rights Act is introduced, who should be required to act compatibly with it?17
 - If a Human Rights Act is introduced, what impact should it have on the development of new laws?17
 - If a Human Rights Act is introduced how should it impact the work of courts and tribunal in Queensland?18

If a Human Rights Act is introduced how should complaints about breaches of human rights be resolved?19

If a Human Rights Act is introduced what kinds of outcomes should people be able to obtain when their human rights are breached?19

How could a Human Rights Act help Aboriginal and Torres Strait Islander peoples?.....20

Summary of Recommendations21

Introduction

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. (ATSIWLSNQ) welcomes the opportunity to comment on A Human Rights Act for Queensland Discussion Paper (Discussion Paper). Our submission focuses primarily on human rights issues affecting Aboriginal and Torres Strait Islander women.

In structuring this submission we have loosely followed the structure provided in the Discussion Paper. We open with some general comments and go on to address the Questionnaire questions from the Fact Sheets to the Discussion Paper. We also provide comments and responses to the Questionnaire questions from the Fact Sheet regarding Aboriginal and Torres Strait Islander people as well as responses in relation to Aboriginal and Torres Strait Islander women.

About the Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc.

ATSIWLSNQ is a not for profit community based women's legal service developed by Aboriginal and Torres Strait Islander women, managed by a committee of Aboriginal and Torres Strait Islander women and providing legal services for Aboriginal and Torres Strait Islander women in North Queensland. Based in Townsville, we provide free legal services from Mackay to the Torres Strait and other northern regions, from Mount Isa in the west, to Palm Island in the east in the areas of domestic and family violence, family law, discrimination, victims' compensation, and child protection. Our services also include community legal education and advice in regional outreach areas of North Queensland.

General Comments

ATSIWLSNQ recommends that the Queensland Government should adopt a Human Rights Act to protect the rights of the people within its borders to support Australia's international obligation to protect the human rights of its people as well as to provide legal remedies when Queenslanders' rights are breached.

Aboriginal and Torres Strait Islander people are among the most disadvantaged people in Australia. However, Aboriginal and Torres Strait Islander women are even more

disadvantaged due to the intersection of racial and gender discrimination and distinctly lower socio-economic status.¹²

ATSIWLSNQ welcomes a Human Rights Act for Queensland. The discussion on whether to implement a Human Rights Act, is a step in the right direction. It is essential however, that prior to tabling a Human Rights Act, a comprehensive Human Rights Action Plan examines the most urgent issues with respect to equality and anti-discrimination in Queensland through a gender based perspective. The Human Rights Action Plan should reflect the recommendations contained within the Convention on the Elimination of All Forms of Discrimination against Women's ("CEDAW") Action Plan The CEDAW Action Plan was developed by NGOs as a practical guide to responding to and implementing the CEDAW Committee's 2010 Concluding Observations on Australia. It is targeted, specific and measurable, and serves as an example of a strong action plan.

The Human Rights Act must address the human rights issues of all Queenslanders as well as the human rights issues faced by Aboriginal and Torres Strait Islander women in particular. These issues include, but are not limited to, freedom from violence, access to justice and legal services and the right to self-determination and consultation. Some detail on each of these issues is set out below, followed by a list of recommendations that the Human Rights Act should address.

Family Violence

Aboriginal and Torres Strait Islander women experience family violence at a significantly higher rate than non-indigenous women.³

It has been reported by the CEDAW Committee that:

"..despite strengthened efforts to address the issue [...], socio-economic indicators consistently show that the Aboriginal and Torres Straits Islander communities continue to be among the most disadvantaged among Australians, with indigenous women being particularly disadvantaged. [...] Indigenous women and girls face the highest levels of

¹ Concluding observations of the Committee on the Elimination of Discrimination against Women, 12-30 July 2010, accessed on 19 February 2016 at:

http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian_ATSI_Women.pdf

² Australian Aboriginal and Torres Strait Islander Women's Parallel NGO Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, August 2009, accessed on 19 February 2016 at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian_ATSI_Women.pdf

³ Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021, March 2009, accessed on 19 February 2016 at:

https://www.dss.gov.au/sites/default/files/documents/05_2012/background_paper_to_time_for_action.pdf

violence, especially at home where indigenous women are 35 times as likely to be hospitalized as a result of family violence-related assaults as non-indigenous females.”⁴

Aboriginal and Torres Strait Islander women remain chronically disadvantaged in terms of their access to justice, especially in relation to family violence. ATSIWLSNQ supports the Government’s commitment in implementing the recommendations of the *‘Not Now Not Ever: Putting an End to Domestic and Family Violence in Queensland’* report which was delivered by the Special Taskforce on Domestic and Family Violence.

However, for a Human Rights Act to effectively work an Action Plan should be developed and implemented and reflect the following recommendations by the Domestic and Family Violence Taskforce:

- Recommendation 1 regarding the Queensland Government developing a Domestic and Family Violence Prevention Strategy which:
 - is developed through a robust community consultative process;
 - lays the foundations and creates the building blocks for a Queensland that is free from violence and abuse;
 - includes a robust implementation plan; and
 - includes a comprehensive evaluation framework.

The Action Plan should also implement the following CEDAW Action Plan recommendations:

- Point 3 regarding training and targets to increase the representation of Aboriginal and Torres Strait Islander women on public and private boards.
- Point 4 regarding the need for a temporary special measure to increase the role of Aboriginal and Torres Strait Islander women in public and political life.
- Point 5a regarding adequate funding to programs aimed at reducing violence against Women and Children, especially for family violence specialist services that are culturally appropriate for Aboriginal and Torres Strait Islander women.
- Point 6b regarding the need to provide sufficient funding for culturally appropriate services to alleviate homelessness for Aboriginal and Torres Strait Islander women, particularly those in rural and remote areas.
- Point 11 regarding the need for culturally appropriate Aboriginal and Torres Strait Islander women’s legal services in urban, rural and remote areas.

⁴ UN Committee on the Elimination of all Forms of Discrimination against Women Concluding observations CEDAW/C/SR.935 and 936, para 40.

The CEDAW Action Plan recommendations are supported and complemented by the following United Nations Human Rights Council Universal Periodic Review ("UPR")⁵ and CEDAW review recommendations, which should also be reflected in the Action Plan:

- Adopt temporary special measures to ensure equal participation and representation of women in public and political life, with a particular focus on Aboriginal and Torres Strait Islander women, and to improve Aboriginal and Torres Strait Islander women's enjoyment of human rights in all sectors (CEDAW paras 27, 35 and 41; see also UPR 86.109, 86.110 and 86.120).
- Implement specific strategies that aim to reduce violence against women and children and address violence against Aboriginal and Torres Strait Islander women, including funding culturally-appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas (CEDAW para 41; also UPR 86.92).
- Ensure Aboriginal and Torres Strait Islander women have access to accommodation, health, employment and education support services (UPR 86.101 and 86.119).
- Develop and implement policies to ensure gender equality throughout society and strengthen the promotion and protection of the rights of women, especially women from Aboriginal and Torres Strait Islander communities (UPR 86.53).

Access to justice and legal assistance services

Aboriginal and Torres Strait Islander women and children remain chronically disadvantaged in terms of their access to justice, especially in regards to situations of family violence. Access to justice is particularly limited for Aboriginal and Torres Strait Islander women, and women living in rural and regional areas. ATSIWLSNQ acknowledges the Government's commitment to continue to support specific initiatives to empower Aboriginal and Torres Strait Islander women, such as gender specific legal services for Aboriginal and Torres Strait Islander women.

The 2011 Census reported that there were 155,825 Aboriginal and Torres Strait Islander people living in Queensland, being 3.6% of the Queensland population⁶. Of these, 79,081 (or 50.7%) were females.⁷

⁵ UN General Assembly Universal Periodic Review A/HRC/WG.6/10/L. 8, http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf

⁶ Australian Bureau of Statistics, Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians, 2011, accessed 22 February 2016 at: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2076.0Main%20Features1102011?opendocument&tabname=Summary&prodno=2076.0&issue=2011&num=&view=>

The 2011 Census reported that “34.2% of Queensland’s Aboriginal and Torres Strait Islander population lived in the Brisbane Indigenous Region. A further 41.5% lived in the three Indigenous Regions of Cairns-Atherton, Townsville-Mackay and Rockhampton. Although fewer Aboriginal and Torres Strait Islander peoples resided in far north and far west Queensland than in other areas, the proportion of the overall population they represented in these regions was higher. In the Torres Strait Indigenous Region, 79.1% of all residents identified as being of Aboriginal and/or Torres Strait Islander origin, as did 55.5% and 22.8% in the Cape York and Mount Isa Indigenous Regions respectively”.⁸

The 2004 Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice reported that there is significant “evidence concerning Indigenous women’s chronic disadvantage in their ability to access justice, including in relation to domestic/family violence and sexual assault. In this regard, the committee considers it highly important for governments to provide Indigenous women with appropriate victim support measures, as well as addressing their legal needs.”⁹

Furthermore, the CEDAW Committee has recognised that Aboriginal and Torres Strait Islander women have a more restricted access to legal aid services (paragraph 40) and recommends that the Australian Government fund culturally appropriate Aboriginal and Torres Strait Islander women’s legal services to ensure that they have access to justice (paragraph 41). See also CEDAW Action Plan Point 11. Although, this recommendation was aimed at the Australian Government we submit that the Queensland Government should continue to fund culturally appropriate Aboriginal and Torres Strait Islander women’s legal services to assist Australia in meeting its international human rights obligations.

In addition, we refer to the 2009 ICCPR Concluding Observations which recommended that the Australian Government take effective measures to ensure equality in access to justice by providing adequate services to assist marginalised and disadvantaged people, including Aboriginal and Torres Strait Islander people. Effective measures to be taken include adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.¹⁰ UPR recommendation 86.92 also requires an increase in the provision of legal

⁷ Australian Bureau of Statistics, 2011 Census Quick Stats, accessed 22 February 2016 at: http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/3?opendocument&navpos=95

⁸ Queensland Government, Queensland Treasury and Trade Office of Economic and Statistical Research, Census 2011: Aboriginal and Torres Strait Islander Population in Queensland <http://www.qcso.qld.gov.au/products/reports/atsi-pop-qld-c11/atsi-pop-qld-c11.pdf>

⁹ Senate Legal and Constitutional Affairs Committee (2004) Inquiry into Legal Aid and Access to Justice, p xix.

¹⁰ UN Human Rights Committee Concluding Observations CCPR/C/AUS/CO/5 2 April 2009 para 25.

advice to Aboriginal and Torres Strait Islander peoples with due translation services reaching especially Aboriginal and Torres Strait Islander women of the most remote communities.

The Action Plan should note the Senate Legal and Constitutional Affairs Committee's recognition of the chronic disadvantage faced by Aboriginal and Torres Strait Islander women and children in their ability to access justice, including justice in relation to domestic/family violence and sexual assault. The Action Plan should also implement the CEDAW Committee and UPR recommendations.

Right to self-determination and consultation

ATSIWLSNQ reiterates the importance that Aboriginal and Torres Strait Islander peoples must always be consulted about programs and policy matters that directly affect them. Failure to do so is a breach of the Aboriginal and Torres Strait Islander peoples' right to self-determination and consultation. More importantly, the Government must ensure that the views of Aboriginal and Torres Strait Islander women are heard. This requires that Aboriginal and Torres Strait Islander women are equally represented in the public and political sphere and have the opportunity to be consulted on the development of programs as well as legislative, political and policy issues.

A Human Rights Action Plan

A Human Rights Act should be complemented by an Action Plan so that the implementation of a Human Rights Act is more effective and addresses the key human right issues faced by all Queenslanders and, particularly, Aboriginal and Torres Strait Islander women.

We iterate that the Action Plan should implement and reflect the Convention on the Elimination of All Forms of Discrimination against Women's ("CEDAW") Action Plan recommendations¹¹, including:

- Point 3 regarding training and targets to increase the representation of Aboriginal and Torres Strait Islander women on public and private boards.
- Point 4 regarding the need for a temporary special measure to increase the role of Aboriginal and Torres Strait Islander women in public and political life.

¹¹ Convention on the Elimination of All Forms of Discrimination against Women Action Plan, March 2011, accessed 19 February 2016 at: <http://www.ywca.org.au/sites/ywca.org.au/files/CEDAW%20Action%20Plan%20final.pdf>

- Point 5a regarding adequate funding to reduce violence against women and children, especially for family violence specialist services that are culturally appropriate for Aboriginal and Torres Strait Islander women.
- Point 6b regarding the need to provide sufficient funding for culturally appropriate services to alleviate homelessness for Aboriginal and Torres Strait Islander women, particularly those in rural and remote areas.
- Point 11 regarding the need for culturally appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas.

The CEDAW Action Plan recommendations are supported and complemented by the following the Universal Periodic Review ("UPR") and CEDAW review recommendations, which should also be reflected in the Action Plan:

- Adopt temporary special measures to ensure equal participation and representation of women in public and political life, with a particular focus on Aboriginal and Torres Strait Islander women, and to improve Aboriginal and Torres Strait Islander women's enjoyment of human rights in all sectors (CEDAW paras 27, 35 and 41; see also UPR 86.109, 86.110 and 86.120).
- Implement specific strategies to address violence against Aboriginal and Torres Strait Islander women, including funding culturally-appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas (CEDAW para 41; also UPR 86.92).
- Ensure Aboriginal and Torres Strait Islander women have access to accommodation, health, employment and education support services (UPR 86.101 and 86.119).
- Develop and implement policies to ensure gender equality throughout society and strengthen the promotion and protection of the rights of women, especially women from Aboriginal and Torres Strait Islander communities (UPR 86.53).

Specific Responses to the Discussion Paper Questionnaires

Does your organisation support the introduction of a Human Rights Act for Queensland?

ATSIWLSNQ is of the view that the Australian Government should adopt a Human Rights Act as recommended by the National Human Rights Consultation, the United Nations Human Rights Council through the Universal Periodic Review (UPR) process, and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its

review of Australia. Since the Australian Government has yet to come through with a National Human Rights Act, ATSIWLSNQ welcomes and supports the introduction of a Human Rights Act for Queensland.

A Human Rights Act should include, at the very least, the rights that Australia has an international obligation to protect as well as provide for legal remedies when rights are breached. A Human Rights Act for Queensland should also include rights which are of urgent issues with respect to equality and anti-discrimination within Queensland, including through a gender-based perspective.

In order to address the urgent issues faced by Queensland, and more particularly, Aboriginal and Torres Strait Islander women, an Action Plan should be developed to examine those urgent issues. The Action Plan should also:

- address how the Plan is to be financed and who will be responsible for implementing different activities;
- include activities that are specific, realistic and measurable and should include targets and timelines for achievement;
- include a monitoring and evaluation framework to monitor the plan's progress, and that this framework should:
 - include baselines and indicators;
 - be transparent, accountable and participatory; and
 - include feedback from people affected by the Plan;
- include reference to evidence and recommendations in existing reports and studies on human rights in Australia and Queensland;
- include reference to the recommendations of United Nations human rights mechanisms – especially those made by the CEDAW Committee; and
- Include mechanisms for collecting and analysing data as well as include gender based indicators and targets.

Does your organisation have a view about the effectiveness of the current protection of human rights in Queensland?

ATSIWLSNQ submits that there are serious weaknesses in current human rights protections in Australia. For instance, there is currently no National Human Rights legislation protection for the rights of people within the Australian border. Furthermore, there is no State or Territory specific human rights legislation other than in Victoria and the ACT.

ATSIWLSNQ acknowledges that some of the State laws reflect human rights principles, for example, child protection law makes the "best interests of the child" a paramount consideration and anti-discrimination laws provide an avenue for remedy of human rights which have been breached in specified areas of activity.

A significant problem in the effectiveness of current protections is the piecemeal nature of the rights protected. There is no overarching mechanism for legislation to be consistent with Australia's international human rights obligations or of the overall need for public (or private) activity to comply with human rights principles. In the absence of legislative and public activity being founded on fundamental human rights principles, the protection of human rights is limited both in the scope of the rights protected and in the lack of a human rights based scrutiny of new legislation and in terms of individual and legislative remedies for breaches of human rights. Of those rights currently protected, protection depends largely on individuals seeking legal remedies in cases where rights are breached.

Given the problems with existing protections of human rights in Queensland, including the human rights noted above, ATSIWLSNQ supports the enactment of State legislation protecting human rights in Queensland.

Has your organisation come across any situations that demonstrate the need for a Human Rights Act in Queensland? If so, please provide de-identified outlines of these situations.

In the work that ATSIWLSNQ does, the need for a Human Rights Act has been demonstrated numerous times through delivery of public services in a manner inconsistent with human rights and by the failure to implement steps to protect women and children's rights, for example the right to participate in their culture. The need for a cultural change in public service delivery may be demonstrated by some of the everyday experiences of women who have utilised the services of ATSIWLSNQ.

About one third of the work undertaken by ATSIWLSNQ involves child protection issues and cases. Although child protection legislation recognises the rights of the child and the right of Aboriginal and Torres Strait Islander children to be placed as a first priority within a family or cultural environment ("the indigenous child placement principle"), some of these principles are not implemented unless the parent or the family raises the issues. For example, it is still commonplace for preference to be given to non-indigenous child placements and for children to be given placements which may seem appropriate or convenient to departmental workers, but which fail to keep the child within his or her cultural and community environment.

In some cases where children have been removed from family and community it is too late to reunify the children by the time the mother seeks legal advice as children may have spent years in a placement and the children become casualties of inadequate implementation of human rights principles, a new stolen generation.

A common and disrespectful practice is for child protection workers offering supervision for Aboriginal or Torres Strait Islander child contacts to interfere with the manner in which parents interact with children, sometimes undermining parents in front of their children. One example was an indigenous woman who brought a cooked chicken to a one hour contact with her children. Workers considered this inappropriate as it may interfere with the children's appetite for dinner, although it was a very normal and appropriate fare for the family. This instance of interference was not a stand-alone instance but part of an ongoing pattern of negativity by staff and conflict between the mother and the department.

Aboriginal and Torres Strait Islander people continue to be more likely to be regarded with suspicion by police. Although police may not be conscious of making choices based on racial identification, appropriate and consistent training and the implementation of fundamental principles of human rights may offer some assistance in this area. One example was a woman who went to police and complained that her car had been interfered with and the motor had blown up. Instead of investigating, police accused her of lying and sent her away. She made a formal complaint. The failure of police to investigate meant that no perpetrator was ever identified.

Aboriginal and Torres Strait Islander women are frequently the target of prejudice by real estate agents and home owners, who make racist generalisations about them as tenants. This is more particularly a problem for women with children. Homelessness remains a key indicator of disadvantage and one in which Aboriginal and Torres Strait Islander women are over-represented. Homelessness impacts negatively on women's and children's safety and security and their children's capacity to participate in school.

There continues to be inadequate funding available for safe houses for Aboriginal and Torres Strait Islander women and their children escaping domestic violence. In a social environment where Aboriginal women are 35 times more likely to be hospitalised for assaults and injury than non-indigenous women and where Aboriginal and Torres Strait Islander women are overwhelmingly more likely to be homeless than non-indigenous women, the need for adequate temporary safe houses is imperative.

Aboriginal children who were racially vilified on school grounds were left with no remedy from the school which denied any avenue for resolution. The matter was resolved by complaint to the ADCQ.

In most of the above cases, there are avenues for complaint, but the absence of a human rights culture and fundamental principles of human rights entrenches prejudice and disadvantage and places additional barriers for Aboriginal and Torres Strait Islander women attempting to access public services.

Can you comment on the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and internationally?

The Victorian human rights legislation does not create a new right to begin legal action for a breach of human rights. Instead, its goal is to “get things right at the planning and policy stages”¹². ATSIWLSNQ is of the view that the Victorian legislation falls short of providing effective access to justice and remedies for individuals who have had their human rights breached.

Further, the Victorian and ACT legislation falls short in its failure to extend human rights compliance into the private sphere. ATSIWLSNQ supports the view that human rights legislation should not be limited to public areas of activity. Apart from the nature of human rights as inherent and indivisible, the private sphere is increasingly assuming public roles and functions in a socio-political environment in which private corporations and community organisations are to a greater extent working in partnership with government to achieve public policy outcomes set by governments.

While the definition of a “public authority” in section 4 of the Victorian legislation would be sufficient in scope to include private organisations carrying out functions of a public nature and should be included in a Queensland Human Rights Act, ATSIWLSNQ endorses the ACT approach of having a non-exhaustive list of functions which may be considered to be “public” in nature. Furthermore, it is the view of ATSIWLSNQ that extending the definition of “public authority” by applying a function test, does not go far enough and that the aim should be to include private functions in addition to those defined as “public”. One example is the ongoing denial of access to private housing for Aboriginal and Torres Strait Islander women. In the

¹² Victorian Equal Opportunity and Human Rights Commission, ‘Victoria’s Charter of Human Rights and Responsibilities, accessed 24 February 2016 at: <http://www.humanrightsccommission.vic.gov.au/index.php/the-charter>

absence of an existing or robust human rights culture, the extension of human rights into the private sphere may be achievable by review aimed at phasing in human rights protections and compliance in the private sphere.

A further weakness in the Victorian legislation is the ability of parliament to override human rights compliance of new legislation. This would appear to undermine fundamental principles of human rights and create an opt-out option for legislators, vulnerable to manipulation by pressure groups and populist campaigns.

What does your organisation see as the benefits of a Human Rights Act for Queensland?

A Human Rights Act should clearly set out fundamental human rights in one piece of legislation and make it a legal obligation for the Queensland Government to comply with the Act. A Human Rights Act would, at a minimum, improve transparency and accountability in government by giving all Queenslanders the tools to question and challenge laws, policies and decisions made by public authorities that have the potential to impact their human rights.

The introduction of a Human Rights Act would not only enshrine human rights law but would also provide the following benefits:

(a) The introduction of a Human Rights Act would contribute to the development of a human rights culture

The introduction of specific statutory human rights protections will contribute to the development of a human rights culture.

The enactment of a Human Rights Act will assist in raising awareness of human rights law. However, education and community engagement will help create a culture of respect for human rights provided that an appropriate framework and effective strategies have been developed and implemented in this regard.

Strategies to promote a human rights culture should firstly target the most urgent issues affecting Queenslanders, including Aboriginal and Torres Strait Islander women. Strategies targeting Aboriginal and Torres Strait Islander women should be made in consultation with Aboriginal and Torres Strait Islander women.

(b) The introduction of a Human Rights Act would protect marginalised Queenslanders

The introduction of specific statutory human rights protection would protect marginalised Queenslanders by addressing disadvantage. Aboriginal and Torres Strait Islander women are even more disadvantaged due to the intersection of racial and gender discrimination and distinctly lower socio-economic status. A Human Rights Act would protect their rights by ensuring more inclusive legislation which is consistent with fundamental human rights and provide a remedy where such rights have been breached.

(c) The introduction of a Human Rights Act would assist to fulfil Australia's human rights obligations

A Human Rights Act in Queensland would contribute to, and improve upon, Australia's fulfilment of its international human rights obligations. Furthermore, Article 50 of the International Covenant on Civil and Political Rights ("ICCPR") and Article 28 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") state that human rights protections "extend to all parts of federal States without any limitations or exceptions." Consequently, by extension, the Queensland Government has a responsibility to respect, protect and fulfil the human rights obligations under these international treaties.

(d) The Introduction of a Human Rights Act would improve law making and government policy

A Human Rights Act for Queensland should require the Queensland Government and other public authorities to act compatibly with human rights, and to consider human rights when developing policies, making laws, delivering services and making decisions. All laws will need to be consistent with the human rights enshrined in a Human Rights Act.

ATSIWLSNQ supports Members of Parliament being held accountable for the human rights impact of legislation by requiring that all new bills be referred to a human rights standing committee and, on being presented to parliament, to be accompanied by a Statement of Compatibility with human rights principles enshrined in the Human Rights Act.

(e) The introduction of a Human Rights Act would improve public service delivery

A Human Rights Act for Queensland should require the Queensland Government and other public authorities to consider human rights when delivering services.

The implementation of human rights principles underpinning public policy and service delivery, will compel the Queensland government and government agencies to take steps to ensure delivery of services in a way that is consistent with human rights. The Queensland government is likely to introduce human rights training for those delivering public services, as well as providing other on-the-job guidance to delivery of public services. Agencies undertaking public functions, whether in partnership with government or otherwise, will also need to demonstrate steps taken to protect compliance with human rights principles in service delivery. Undoubtedly, organisations which are human rights compatible are more likely to be preferred for government contracts.

(f) The introduction of a Human Rights Act would enable human rights complaints to be heard and determined in Queensland

Access to justice for Queenslanders who have had their human rights breached is imperative. A Human Rights Act would allow Queenslanders to lodge complaints against the Queensland Government and other public authorities at the state level.

ATSWLSNQ submits that the alternatives for overseeing the implementation and enforcement of a Human Rights Act in Queensland could be either through a broadening the role of the Anti-Discrimination Commission Queensland. In the alternative, a Queensland Human Rights Commission could be equipped to hear and determine human rights complaints as well as award remedies when a breach has been found.

Which rights should be protected in a Human Rights Act for Queensland?

A Human Rights Act should enshrine the rights contained in the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") and the Declaration on the Elimination of Violence against Women. A Human Rights Act for Queensland must also incorporate the rights contained in the Declaration on the Rights of Indigenous Peoples, including the right of Aboriginal and Torres Strait Islander people to self-determination in decisions affecting them.

Absolute rights as conferred in various international human right treaties cannot be derogated from.¹³ Derogable rights, however, must only be limited in exceptional circumstances and in accordance with permissible limitations under international law principles.¹⁴

If a Human Rights Act is introduced, who should be required to act compatibly with it?

ATSIWLSNQ primarily supports the articulation, and enforcement, of obligations on the Queensland Government and other public authorities to comply with the rights under a Queensland Human Rights Act. The legislation should also extend to persons and entities whilst exercising public functions as defined within the Act.

ATSIWLSNQ further supports the implementation of human rights in the private sphere by phasing in of such rights by regular review.

If a Human Rights Act is introduced, what impact should it have on the development of new laws?

The introduction of a Human Rights Act should require all new legislation tabled within the Queensland Legislative Assembly to be subject to the scrutiny of a standing committee on human rights and when a new bill is introduced into Parliament, to include a statement outlining its compatibility with the operation of the Human Rights Act, similarly to the ACT legislation.

We also refer to the above section entitled 'The introduction of a Human Rights Act would improve law making and government policy'.

¹³ The HRC stresses that the list of non-derogable rights 'does not mean that other articles in the Covenant may be subjected to derogations at will, even where a threat to the life of the nation exists'. See General Comment 29 (72), UN Doc. A/56.40, Vol. I, 202 adopted in July 2001, para. 2.

¹⁴ Any permitted measures restricting rights need to (a) be prescribed by law; (b) be on grounds permitted in relation to the right concerned; and (c) be a reasonable, necessary and proportionate means for pursuit of a legitimate objective. See: Australian Human Rights Commission, Permissible Limitation on Rights, accessed 23 February 2016 at: <https://www.humanrights.gov.au/permissible-limitations-rights#More>

If a Human Rights Act is introduced how should it impact the work of courts and tribunals in Queensland?

Given the support for the credible view that it would be unconstitutional for a Queensland Act to require courts adjudicating common law causes to apply the State Charter¹⁵, ATSIWLSNQ supports the position of the Victorian and ACT legislation not to include courts and tribunals in the definition of "public authority".

Courts and tribunals may currently consider Australia's international human rights obligations when interpreting laws, including domestic law. ATSIWLSNQ supports the approach taken by the Victorian legislation by including a requirement that Queensland Courts and Tribunals must interpret laws in a way consistent with the rights protected in Queensland's Human Rights Act when making decisions.

ATSIWLSNQ further supports the Supreme Court being empowered to consider questions of law or interpretation of laws in relation to the Queensland Human Rights Act on referral from lower courts and tribunals. In this regard, ATSIWLSNQ takes the view that, while all courts and tribunals should interpret laws in a manner consistent with the Human Rights Act in Queensland, where a question of interpretation is in dispute, the matter should be referred to the Supreme Court.

Furthermore, ATSIWLSNQ submits that the Queensland Attorney-General and the Queensland Human Rights Commissioner, (if one is appointed), should be empowered to intervene on referral to the Supreme Court of a question of interpretation involving the application of the Queensland Human Rights Act. This approach is likely to lead to greater clarity and certainty and is also consistent with the Victorian and ACT position. Like the Victorian and ACT Charter, ATSIWLSNQ submits that it would be appropriate to require that a party to the proceedings on referral to the Supreme Court must give notice to the State Attorney-General and the (Queensland) Human Rights Commission.

In cases where legislation or subordinate legislation is referred to the Supreme Court and found by that court to be inconsistent with the Queensland Human Rights Act, ATSIWLSNQ supports the ACT Charter's position, namely that the Supreme Court be empowered to make a declaration of incompatibility. It is submitted that in the absence of such a power, interpretation and the right of referral to the Supreme Court would be a meaningless exercise.

¹⁵ Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006 (2015)*, 79 as cited in Allens Linklaters, *Options Paper (17.2.16)*, 3

ATSIWLSNQ further supports a process similar to that which is implemented under the ACT Charter, namely that on a declaration of incompatibility being made by the Supreme Court, the Attorney General must respond to the declaration within a nominated time period.

If a Human Rights Act is introduced how should complaints about breaches of human rights be resolved?

Currently, individuals can complain to the Anti-Discrimination Commission of Queensland (ADCQ) and the Australian Human Rights Commission about human rights violations but only if the complaint is covered by relevant legislation. In the case of the ADCQ, a complaint may only be made (in most cases) where the discrimination complained of is unlawful and relates to a particular area of activity.

It is submitted that complaints mechanisms must provide affordable access to persons whose human rights are breached or proposed to be breached. In many cases, matters can be resolved by conciliation, which is affordable, accessible and currently available for complaints made to the Australian Human Rights Commission and the ADCQ.

ATSIWLSNQ supports the provision of a complaints mechanism through conciliation and remedies for breach in the courts, in cases where there has been an actual breach of the Human Rights Act or a breach is proposed by a public authority. In the case of a proposed breach, it is submitted that the courts must be able to offer injunctive relief pursuant to the Human Rights Act.

If a Human Rights Act is introduced what kinds of outcomes should people be able to obtain when their human rights are breached?

ATSIWLSNQ submits that in order that the Queensland Charter be effective in providing avenues for relief from breaches or proposed breaches of human rights, and that there be adequate deterrent for breaches of human rights, available remedies must include injunctive relief and damages (where the court is satisfied that an award of damages is appropriate).

Currently, an award of damages may be made by the courts on a finding of unlawful discrimination or breaches of the Anti-Discrimination Act (Qld). Similarly, parties to conciliation may agree on a monetary settlement of matters involving discrimination. While the Victorian and ACT Human Rights legislation seem loathe to include damages as part of the remedies, this appears to be consistent with current practices and each case must be

assessed and the court must be satisfied that an award of damages is appropriate in all of the circumstances.

How could a Human Rights Act help Aboriginal and Torres Strait Islander peoples?

In April 2009, the Australian Government formally endorsed the United Nations Declaration on the Rights of Indigenous Peoples.¹⁶ The Declaration articulates the rights of Indigenous peoples to all human rights outlined in the Universal Declaration of Human Rights, the right to live free from discrimination, to self-determination, and the right to diversity of culture. Crucially, Article 19 stipulated that all signatory states must:

*Consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*¹⁷

The United Nations Declaration on the Rights of Indigenous Peoples has yet to be implemented in law, policy and practice at the National level.¹⁸

ATSIWLSNQ supports the adoption of key rights articulated within the United Nations Declaration on the Rights of Indigenous Peoples within a Human Rights Act for Queensland.

ATSIWLSNQ supports the recommendation made by the Australian Human Rights Commission regarding the Commonwealth Government developing, in partnership with Aboriginal and Torres Strait Islander peoples, a National Strategy to give effect to the Declaration and review existing legislation, policies and programmes for conformity with the Declaration.¹⁹

¹⁶ Australian Human Rights Commission, The Declaration on the Rights of Indigenous Peoples Aboriginal and Torres Strait Islander Social Justice Commissioner's Submission to the Expert Mechanism on the Rights of Indigenous Peoples, 4th session (11 July 2011), accessed 23 February 2016 at: <https://www.humanrights.gov.au/declaration-rights-indigenous-peoples>

¹⁷ United Nations, General Assembly resolution 61/295, *The Declaration on the Rights of Indigenous Peoples*, A/61/L.67 and Add.1 (13 September 2007), available from http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

¹⁸ Australian Human Rights Commission, Australia's Second Universal Periodic Review (2015) accessed 23 February 2016 at: https://www.humanrights.gov.au/sites/default/files/document/publication/WEB_Australias_Second_UPR_Review_2015.pdf

¹⁹ Australian Human Rights Commission, Australia's Second Universal Periodic Review (2015) accessed 23 February 2016 at: https://www.humanrights.gov.au/sites/default/files/document/publication/WEB_Australias_Second_UPR_Review_2015.pdf

ATSIWLSNQ recommends that the Queensland Government be the forerunner in this area and incorporate the Declaration on the Rights of Indigenous Peoples within a Human Rights Act for Queensland.

ATSIWLSNQ recommends that in implementing a Strategy, the right to self-determination be the driving force and that protections be implemented to ensure the equal voice of Aboriginal and Torres Strait Islander women together with men in the implementation of the Strategy.

Further, ATSIWLSNQ submits that in implementing a Strategy, cultural protocols be respected and safeguarded to ensure that the Strategy is able to give effect to self-determination.

Summary of Recommendations

Recommendation 1: Legal Protection of Human Rights

ATSIWLSNQ supports the development of legislation to protect and promote human rights in Queensland.

Recommendation 2: Implementation of a Human Rights Action Plan

ATSIWLSNQ supports the implementation of a Human Rights Action Plan consistent with the recommendations of the Queensland Government's recommendation for a Domestic and Family Violence Prevention Strategy and consistent with the CEDAW Action Plan recommendations and the right to self-determination and consultation of Aboriginal and Torres Strait Islander people.

Recommendation 3: A Human Rights Act which enshrines Australia's international human rights obligations

ATSIWLSNQ supports the development of a Human Rights Act which enacts the protection of human rights which Australia is obliged to protect under international law, including the International Covenant on Civil and Political Rights ("ICCPR"), the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") and the Declaration on the Elimination of Violence against Women and the Declaration on the Rights of Indigenous Peoples.

Recommendation 4: Obligations on Queensland Government and Public Authorities

ATSIWLSNQ supports the articulation, and enforcement, of obligations on the Queensland government and public authorities and organisations carrying out public functions to comply with rights articulated under a Queensland Human Rights Act.

ATSIWLSNQ recommends a non-exhaustive definition of “public activity” as provided in the Victorian legislation, relevant to determining the application of the Human Rights Act.

Recommendation 5: A Human Rights Act to phase in application to private areas of activity

ATSIWLSNQ recommends that the Human Rights Act be regularly reviewed and aimed at phasing in its application in private spheres in the interests of consistency and the protection of human rights applicable to services delivered by private corporations and non-government organisations.

Recommendation 6: New Legislation - Compatibility Statements

ATSIWLSNQ supports the requirement that new legislation be scrutinised by a Human Rights Standing committee and include a Statement of Compatibility when introduced into Parliament.

Recommendation 7: A Human Rights Act which provides for a Queensland Human Rights Commission

ATSIWLSNQ supports the implementation of a Queensland Human Rights Commission. The role of the commission, at a minimum, would be to investigate complaints, offer training and conciliation, make referrals to the courts and to promote a culture of human rights.

Recommendation 8: Courts to interpret legislation in a manner consistent with the Human Rights Act

ATSIWLSNQ supports Queensland courts and tribunals interpreting legislation in a manner consistent with a Queensland Human Rights Commission.

ATSIWLSNQ supports the referral to the Queensland Supreme Court in the case of disputed questions of interpretation in relation to the Human Rights Act.

ATSIWLSNQ supports the empowerment of the Attorney-General and the Queensland Human Rights Commissioner to intervene in cases involving a question of interpretation of the Queensland Human Rights Act which have been referred to the Supreme Court.

ATSIWLSNQ is supportive of the Supreme Court being empowered to make a declaration of incompatibility in the case of legislation which is found to be inconsistent with the Queensland Human Rights Act and that the Attorney-General must respond to Parliament within a nominated period.

Recommendation 9: Courts to have the power to award damages and injunctive relief for breaches of human rights legislation

ATSIWLSNQ submits that Queensland courts and tribunals should have a range of remedies for breaches the Human Rights Act and should also be empowered to hear matters involving the proposed breaches of the Queensland Human Rights Act.

ATSIWLSNQ submits that remedies available in Queensland courts and tribunals for breaches should include damages, where the court is satisfied that damages are appropriate and should include injunctive relief, for example in the case of proposed breaches.

Recommendation 10: Rights of Aboriginal and Torres Strait Islander peoples

ATSIWLSNQ supports the adoption of key rights articulated within the United Nations Declaration on the Rights of Indigenous Peoples within a Human Rights Act in a Human Rights Act for Queensland, in particular the right to self-determination and consultation in decision making affecting Aboriginal and Torres Strait Islander peoples.

ATSIWLSNQ recommends that self-determination protect cultural rights and protocols at all stages of consultation and that consultation and decision making include Aboriginal and Torres Strait Islander women and men equally.