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QPILCH's position

In our experience, current legislation, policies and dispute resolution mechanisms in Queensland are inadequate to effectively protect the rights of vulnerable and marginalised people, particularly those people we see through our direct clinics.

We consider that the lived experiences of vulnerable and marginalised individuals are often characterised by intrusive and coercive intervention by public authorities and officials. The same individuals rely, legitimately, on public services for access to essentials such as income, housing, transport and medical care. However, the laws, policies and systems that govern public services are rarely developed with marginalised people in mind.

We submit that the enactment of a Human Rights Act in Queensland would be an important mechanism to protect the rights of vulnerable and marginalised individuals against unfair policies and arbitrary decision-making by public authorities.

Support for other submissions

We are aware that the Queensland Association of Independent Legal Services and other community legal centres will make submissions to the inquiry. Based on our conversations with our colleagues in the sector, we support their submissions and recommendations, particularly in relation to the structure of a Human Rights Act in Queensland.

We have had an opportunity to briefly consider the submissions by Caxton Legal Centre and the Human Rights Law Centre. We support these submissions, and agree that:

- a Human Rights Act would provide a useful framework and common language to consider, identify and address human rights when developing new laws, and interpreting or implementing existing laws and policies;
- a Human Rights Act should provide comprehensive recognition and protection for all rights in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and
- to be most effective, a Human Rights Act should provide for a direct and separate remedy to address human rights infringements.

QPILCH's experience

Housing and homelessness

Right to adequate housing

Provision of adequate housing for vulnerable and marginalised community members is a core function of government. The right to adequate housing is protected and recognised in article 11 of the International Covenant on Economic, Social and Cultural Rights.

In Australia, there is a critical shortage of affordable and appropriate housing, especially for low-income earners and other vulnerable community members.[1]

[1] See generally, Economic References Committee, Parliament of Australia, *Out of reach? The Australian housing affordability challenge* (2015).

Where people have been able to secure a public housing tenancy, in recent years we have observed that the Department of Housing and Public Works (the **Department of Housing**) has taken an increasingly punitive approach towards people with complex needs.

An important example of this approach is the 'Anti-social behaviour management policy' (the **Policy**) and associated legislative amendments, which were introduced in 2013.[2]

We acknowledge that the Policy has recently been reviewed and replaced (but the underpinning legislative provision is still in force).[3] However, the Policy remains an important example of the vulnerability of public housing tenants and the need for broad-based human rights protection in Queensland.

The Policy established a 'three-strikes' process for tenants in public housing who engaged in 'anti-social behaviour'. In practice, we are aware of many instances where the Department of Housing has issued a 'First and Final Strike Notice' together with a Notice to Leave (for serious breach). People evicted under the Policy are barred from public housing for a period of time.

The Policy was supported by a new provision inserted in the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) allowing the Department of Housing to issue Notices to Leave for 'serious breaches'.[4] There is no equivalent policy or legislative provision for tenants in private rental properties.[5]

Additionally, at the time the Policy was introduced, the Minister for Housing and Public Works made it clear that the Queensland government considered public housing was a 'privilege' rather than a right.[6]

In our experience, the Policy has had a detrimental impact on many tenants with complex needs, such as disability, mental illness and substance dependency issues.

Case study

One of the few published decisions about the impact of the Policy is *State of Queensland v Turnbull.*[7]

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[2] We note the Policy and legislative provisions apply to both public and community housing tenants. In our experience, community housing providers have not relied on the three-strikes process.

[3] See Department of Housing and Public Works, 'Fairness review' (2016) and 'Fair expectations of behaviour policy' (effective 1 February 2016). Available at: http://www.hpw.qld.gov.au/Housing/SocialHousing/Pages/fairness-review.aspx. Accessed 18 April 2016.

[4] Section 290A, *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).

[5] Despite this difference in treatment between social housing tenants and other tenants, we consider it would be difficult to make an argument based on anti-discrimination legislation, given the legislative provisions that support the Policy.

[6] Minister for Housing and Public Works, 'Rogue tenants put on notice' (Media statement, 4 April 2013).

[7] *State of Queensland through the Department of Housing and Public Works v Turnbull* [2014] QCAT 442 (28 August 2014).

In that case, the Department of Housing issued a Notice to Leave to Mr Turnbull after the police located and removed dangerous drugs and related equipment believed to be used to manufacture the drugs from his property. Mr Turnbull admitted he knew about the drugs and equipment but said the items did not belong to him. Mr Turnbull suffered from complex trauma and side effects of anxiety, depression and flashbacks, and a secure home was important to manage his symptoms.

At first instance, QCAT found Mr Turnbull's behaviour to be dangerous and severe and that the Department of Housing had taken into consideration his mental health issues. Although QCAT considered that a termination order was likely to make Mr Turnbull homeless, QCAT found that the illegal activity which had taken place at Mr Turnbull's property justified a termination order.

Mr Turnbull appealed the matter.[8] The senior member who heard the appeal considered whether Mr Turnbull had demonstrated obvious and serious disadvantage by the likelihood of his being made homeless by the termination order but agreed with the original decision that the balance of convenience fell with the Department of Housing.

The HPLC has assisted several clients who have been issued with a First and Final Strike Notice and Notice to Leave under the Policy. Through sustained advocacy, we have been able to assist clients to maintain their tenancies with the Department of Housing. A Human Rights Act may have allowed many of these matters to be resolved earlier, without the need for drawn-out proceedings in QCAT.

Case study

Karla[*] is a proud Aboriginal woman, single mother and public housing tenant. Last year, she was charged with production and possession of cannabis. Even though the substances found at her property belonged to a relative, Karla pleaded guilty to the charges because it was the easier option.

The Department of Housing received notice of Karla's conviction, and issued Karla with a First and Final Strike Notice and Notice to Leave (for serious breach). At the time the notices were issued, Karla was eight months pregnant. Karla had no previous incidents at the property and no serious prior criminal history.

Karla contested the eviction in QCAT, as she had no viable housing alternatives. In light of her circumstances, the matter was adjourned twice (for six months in total).

The Department of Housing did not withdraw its application for a termination order, despite Karla's vulnerable circumstances and lack of ongoing issues in the tenancy. Recently, QCAT dismissed the application.

[8] See *Turnbull v State of Queensland through the Department of Housing and Public Works* [2014] QCATA 281 (12 September 2014)

[*] The names of all QPILCH clients in this submission have been changed to protect their privacy.

We consider a Human Rights Act for Queensland would provide valuable protection to ensure the right to adequate housing is realised, particularly by:

- providing a strong legal framework to underpin the provision of public housing in Queensland, recognising the core function of public housing in a fair society; and
- better protecting the rights of vulnerable tenants with complex needs, such as disability, serious mental health concerns and substance dependency issues, particularly in relation to eviction.[9]

Rights in the fines collection process through SPER

People experiencing chronic homelessness and related disadvantage are vulnerable to being criminalised for their presence and behaviour in public spaces.[10]

Additionally, as a result of their personal circumstances, many vulnerable people engage in unlawful behaviour such as fare evasion, drug use or traffic offences, which can result in an accumulation of debt for infringement notices or court-ordered fines and the offender levy.

In our experience, the cycle of criminalisation and debt disproportionately affects Aboriginal and Torres Strait Islander peoples.

Unpaid fines and other amounts are referred to the State Penalties Enforcement Registry (**SPER**) for collection. SPER has a range of coercive powers to enforce collection of fines and other amounts, including powers to suspend a person's driver licence, issue 'Fine Collection Notices' requiring money to be deducted from the person's bank account, and issuing warrants of arrest and imprisonment.[11]

While we acknowledge that the introduction of SPER has significantly reduced the rate of imprisonment for fine defaulters in Queensland, the HPLC regularly assists vulnerable people who have excessive and unmanageable SPER debts.

Although many issues may be said to arise 'upstream' of SPER, in our experience the enforcement of unpaid amounts by SPER is often problematic and unfair for vulnerable people. [12]

Current decision-making practices arguably undermine the right to an adequate standard of living, by depriving people of adequate income and entrenching people in debt and chronic disadvantage.

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[9] See generally, Hon. Justice Kevin Bell, 'Protecting Public Housing Tenants in Australia from Forced Eviction: the Fundamental Importance of the Human Right to Adequate Housing and Home', (2013) 39(1) *Monash University Law Review* 1.

[10] See generally Lucy Adams, *In the public eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness* (Churchill Fellowship, Winston Churchill Memorial Trust of Australia, 2013); Tamara Walsh, 'The Overruled Underclass: The impact of law on Queensland's homeless people' (2005) 28(1) *University of New South Wales Law Journal* 122; Tamara Walsh, 'Ten years of public nuisance in Queensland' (2016) 40 *Criminal Law Journal* 59.

[11] See generally, *State Penalties Enforcement Act 1999* (Qld).

[12] For a summary of the main issues, see QPILCH Homeless Persons' Legal Clinic, *Responding to homelessness and disadvantage in the fines enforcement process in Queensland* (July 2013).

Case study

When we first met Paul through the HPLC, he had recently been released from prison on parole, and was on an ITO. His only source of income was a Newstart Allowance.*

Paul became aware of his debt with SPER when $50 a week began being automatically withdrawn from his bank account. As a result of these withdrawals, Paul was very concerned that he would not be able to comply with his parole and ITO conditions.

The HPLC assisted Paul to contact SPER and enter into a manageable Centrepay arrangement. Paul was very grateful because this allowed him to afford to live on his limited income and avoid further institutionalisation.

Where a person has no capacity to pay their SPER debt, there are very limited options, which are often difficult to access or inappropriate for excessive debts.

Additionally, these options are not consistent across different categories of fines and other amounts owing to SPER. For example, unpaid community service (through a Fine Option Order) is not available for the offender levy or offender debt recovery notices under the *Victims of Crime Assistance Act 2009* (Qld).

This means that even where a person is assessed as not having capacity to pay, they are required to repay amounts which cannot be converted to non-monetary options.

Case study

Jason is a 34-year-old Aboriginal man from north Queensland. He has been chronically homeless for a number of years and mostly sleeping rough. During his adult life, he has struggled with substance misuse issues and not actively engaged with many crisis or support services.*

Jason is well known to police, and was often fined for drinking or being drunk in public, public nuisance, urinating in public and shoplifting.

When Jason met with lawyers from our HPLC at a crisis accommodation centre in Cairns, he had been fined over 100 times and his total SPER debt was over $17,600.

With assistance from the HPLC, Jason applied for, and was granted, a Fine Option Order for most of his debt. However, just over $5,000 of his debt was not eligible to be discharged by the Fine Option Order, and Jason entered into a Centrepay arrangement for $20 per fortnight for that amount.

We consider that the introduction of a Human Rights Act would offer a positive framework to guide review and improvements of the legislation, policies and processes that underpin the SPER system, with vulnerable and marginalised people in mind.

As appropriate, we submit that a Human Rights Act would allow individuals and legal representatives to challenge enforcement action by SPER that has serious consequences for vulnerable and marginalised individuals.

Mental health

Better practices to protect fundamental freedoms

In our experience, people diagnosed with mental illness and placed on ITOs find themselves deprived of fundamental rights and freedoms. As well as the loss of the right to control medical decision-making, people on ITOs are regularly required to seek permission for basic activities, such as travelling interstate. In some cases, people on ITOs are denied the right to contact certain people, including family members.

We consider that once diagnosed with a mental illness, a person's point of view is often seen by service providers or others through a 'mental health lens', allowing grievances to be easily dismissed.

We acknowledge the importance of accessing treatment for mental illness. We consider treatment must be provided in a way that does not encroach on fundamental rights, such as the right to be free from torture or cruel, degrading or inhuman treatment or punishment, and that enjoyment of this right should not be subject to the availability of government resources.

The Mental Health Act 2000 (Qld) provides for the involuntary assessment and treatment, and the protection, of persons who have mental illnesses while at the same time safeguarding their rights and freedoms.[13] We believe a stronger human rights culture could ensure better protection of existing rights.

The MHLP speaks to people who have suffered trauma due to their experiences as involuntary inpatients. These experiences include witnessing assaults or being assaulted, being detained with co-patients in crisis, forced injections, and not receiving sufficient information about why they are being detained.

Case study

Gordon was detained in a locked mental health ward under an ITO. Gordon did not understand why he was being treated in hospital. While on the ward, he was hit in the side of the head, and from behind.*

After the incident, Gordon felt afraid to be on the ward, close to the person who had assaulted him. Gordon felt he was not assisted to make a complaint and when he did make a complaint, did not receive an appropriate response.

Case study

Lydia was taken into hospital by police and medical staff. On arrival, she was held down by three men employed by the hospital and she sustained injuries to her arm and leg.*

[13] s4 *Mental Health Act 2000* (Qld)

Lydia was told she had to take medication or she would be strapped down, however at this stage she did not understand why she had to take medication. An ITO was commenced and Lydia applied to the Mental Health Review Tribunal for an early review of the ITO. It took over a week (and two attempts) for the Application to be received.

Case study

Joseph requested an advocate at an ITO review hearing to represent his wishes to have more community engagement and live a more normal life (he had been living in hospital for around three years).*

The advocate made submissions that due to Joseph's physical disability the amount of time allowed for him to have unescorted leave was only just enough time for him to walk to the shops and then return.

The treating team's response was that Joseph should not be allowed to just sit at the shops "for hours on end" and that there were no resources for more escorted leave. Joseph is still in hospital.

Right to a fair hearing

People receiving involuntary treatment have a right to a review hearing before the Mental Health Review Tribunal (**MHRT**). The right to a fair hearing requires Tribunal hearings to be competent, independent, impartial and fair. For this to occur, the mental health service engaged with the involuntary patient must also comply with the rules around review hearings.

The MHLP helps people prepare for ITO review hearings. In many cases, the clinical report (which outlines the treating team's opinion as to why a patient should remain on an ITO) is not received within the required timeframe, making it difficult for a person to properly prepare. An adjournment can be sought in these circumstances, however, many people choose to continue with the review to avoid the cost and stress of prolonging the hearing.

Additionally, people who are involuntarily detailed are often unable to access legal representation to assist in challenging treatment orders or understanding their legal rights and how to exercise those rights. Less than 3% of patients in the MHRT have advocates/lawyers assisting them in ITO reviews, compared with other states (NT - 98%, NSW - 60%, VIC - 19%).

Case study

Tracy, an indigenous woman, was preparing for her ITO review hearing. She requested an advocate to help her. The clinical report (a document required by the Mental Health Review Tribunal 7 days prior to the hearing) was only provided a day before the hearing, and Tracy asked for an adjournment which was granted.*

Twenty-seven days later, Tracy had another hearing. She had arranged to attend by telephone because attending in person is cost prohibitive. Tracy waited for the phone call on a jetty (attempting to get good reception) for half an hour. The hearing did not go ahead because the treating team representative did not show up.

Child protection

In our experience through LegalPod, we consider that there are several shortcomings in the decision-making practices and processes of the Department of Communities, Child Safety and Disability Services (**Child Safety**).

As well as trauma from their personal experiences in care, many of our LegalPod clients are deeply affected by the ongoing involvement of Child Safety in their lives as they become parents. In fact, in our experience, Child Safety often relies on information from the young person's records as a child in care as evidence of their 'failings' and inability to parent.

We have also observed that the intergenerational cycle of involvement in the child protection system disproportionately affects Aboriginal and Torres Strait Islander women, along with women who have a disability.

We acknowledge that young parents with complex needs will often require ongoing and intensive support to achieve a stable family life.

However, our experience suggests that Child Safety's current decision-making treat young parents as a 'problem', rather than providing support to address concerns that have deep roots in the young person's personal experience in care.

Case study

Grace was referred to LegalPod in 2014 by a community organisation.*

We worked with Grace to address her presenting legal needs, including payday loans and a number of 'minor' criminal charges. We also assisted Grace and her support worker to access Grace's Child Safety records, allowing them to use relevant information to apply for ongoing disability funding.

With ongoing, intensive support from LegalPod and her support worker, Grace transitioned to stable accommodation.

Last year, Grace learned that she was expecting her first child. A notification was received by Child Safety. Given her significant child protection history and experiences as a child in care, Grace was very concerned that Child Safety would remove her child at birth.

We assisted Grace to meet with Child Safety to discuss their concerns, and outline her support network and strategies she had put in place to effectively care for her child when it was born. As a result of this meeting, Child Safety agreed to provide support to Grace rather than remove her child.

We acknowledge that reforms to the child protection system, including in relation to transition to independence, have been made and more changes are planned.

We consider a Human Rights Act would complement positive changes to the child protection system, and foster the development of a culture of transparency and accountability in Child Safety investigation and decision-making processes.

Contacting us

We would welcome the opportunity to appear before the Committee to discuss the inquiry in more detail.

If you would like to discuss any of the above matters in further detail, please contact me on [redacted]

Yours faithfully

[redacted]

Tony Woodyatt
Director