

A Human Rights Act for Queensland

Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

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

Dear Research Director

Human Rights Inquiry

Thank you for the opportunity to provide this submission to the Human Rights Inquiry.

In order to address the following terms of reference:

1. whether it is appropriate and desirable to legislate for a Human Rights Act for Queensland;
2. the effectiveness of current laws and mechanisms for protecting human rights in Queensland;
3. the rights to be protected;

we will draw your attention to:

1. the level of community support for a Human Rights Act for Queensland;
2. the reasons for this support;
3. stories told by members of the public that highlight the need for a Human Rights Act in Queensland;
4. which rights the community says should be protected.

We have also included resources that we have developed that discuss and demonstrate the benefits of human rights legislation.

In summary it is our submission that:

1. it is appropriate and desirable to introduce a Human Rights Act for Queensland;
2. current laws and mechanisms do not adequately protect the human rights of Queenslanders; and
3. human rights derived from both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights should be protected in a Human Rights Act.

The campaign for a Human Rights Act for Queensland

The campaign for a Human Rights Act for Queensland is a coalition of over 30 organisations working together towards the goal of a Human Rights Act for Queensland.

Organisations supporting the campaign include the Aboriginal and Torres Strait Islander Child Protection Peak, Aboriginal and Torres Strait Islander Legal Service, Amnesty International, AMPARO Advocacy, Australian Earth Laws Alliance, Australian Lawyers Alliance, Australian Lawyers for Human Rights, Bespoke Lifestyles, Cairns Community Legal Centre, Caxton Legal Centre, Centacare Cairns, Children and Young People with Disability Australia, Disability Advocacy Network Australia, Environmental Defenders Office, Human Rights Law Centre, Inclusion Plus, Mamre Association, Micah Projects, National Congress of Australia's First Peoples, Peak Care Queensland, People with Disability, Queensland Advocacy Incorporated, Queensland Association of Independent Legal Services, Queensland Council of Civil Liberties, Queensland Council of Social Services, Queensland Public Interest Law Clearing House, Rights in Action, Sisters Inside, Tardiss, Volunteering Queensland, Women's International League for Peace and Freedom, Women's Legal Service North Queensland and Youth Affairs Network.

Queenslanders support the introduction of a Human Rights Act

We have received an overwhelming response to our call for submissions to the Human Rights Inquiry. We collected these submissions via an online survey and undertook to provide these submissions to you. We understand that you have received these submissions.

The campaign is unfunded and volunteer based. The response that we received is a demonstration of the community support that exists for a Human Rights Act for Queensland.

In the graph below we have summarised the support for a Human Rights Act as expressed in response to our survey.

Should a Human Rights Act be Introduced in Queensland?



Almost 95% of participants are in favour of the introduction of a Human Rights Act for Queensland.

Only 10 out of the approximately 500 people surveyed were directly opposed to the introduction of this legislation and 7 participants were undecided on the issue.

Why the community supports a Human Rights Act for Queensland

Many of the people who support a Human Rights Act for Queensland have expressed the view that a single piece of legislation that provides a statement of rights to be protected would simplify and improve the way that human rights are protected in Queensland.

People also think that legislation is not currently properly scrutinised in Queensland. In part this is because we lack an upper house. People feel that the *Vicious Lawlessness Association Disestablishment Act 2013* provides an example of the inappropriate use of government power and disregard for human rights. The introduction of a Human Rights Act is supported because it would provide protection from future governments seeking to unjustifiably limit the rights of Queenslanders.

People are also concerned about police powers. Responses suggest that the introduction of human rights legislation would limit the excessive use of such powers.

Many Queenslanders are concerned about human rights issues faced by Aboriginal and Torres Strait Islander peoples. People referred to the high rates of incarceration, low life expectancy and related inequality in access to healthcare (especially in rural areas), police brutality and lack of consideration given to cultural rights in the child protection system.

People are also concerned about the protection of property rights, rates of homelessness, high levels of domestic violence, limited rights of people with disability and poor rights protections for LGBTI people. Also mentioned were healthcare rights, rights for the elderly and for women.

Stories that demonstrate the need for a Human Rights Act for Queensland

Poignant examples that demonstrate the lack of human rights protections in Queensland have been provided to the Committee in the community's submissions. Examples include:

- A young Aboriginal person who is under a Forensic Disability Order in the care of Child Safety has been forced to live away from her community. Due to this order this young person is denied the right to be with family and community and to feel connected to culture.
- Numerous medical professionals pointed to the lack of adequate healthcare, specifically in relation to cases of mental illness. One such professional provided an example of a situation where a doctor, who had full knowledge of a patient's condition, released a suicidal patient from the hospital. The patient committed suicide upon release. Another professional, speaking more generally, provides examples of situations where mental health patients are not admitted into hospitals because of a lack of beds or are discharged prematurely.
- Cameron Domadgee, an Aboriginal man, was incarcerated in 2004 under public nuisance charges (for being intoxicated) in Palm Island. He died while in custody as a result of internal injuries including broken ribs, a ruptured spleen and damaged liver. This story provides one example of the high rates of death in custody of indigenous peoples and also issues related to abuses of police power.

- A community member provides an example of her disabled sister being sexually molested as well as physically, emotionally and mentally abused due to housing arrangements imposed upon her. Her sister has been forced to live with people who she did not wish to live with and there was no redress for the harm that she suffered.
- An example was provided of a woman with an intellectual impairment being raped. The police would not take her complaint seriously and she was denied access to justice.
- An observation was made that the Department of Housing houses the majority of Aboriginal people living in public housing in one suburb in regional communities. This means that many Aboriginal people do not have equal access to transport and education.

A wide range of rights should be protected

Queenslanders support protection a range of civil and political and economic, social and cultural rights through a Human Rights Act. The **attached** graph and information provides a summary of the views in response to the question of which rights should be protected.

The 5 highest ranked rights in order of priority are:

1. The right to a fair hearing;
2. The right to education;
3. Protection from torture, inhumane and degrading treatment;
4. Right to adequate health care;
5. Right to recognition and equality before the law.

The views of the community

Queenslanders are keen to share their support for a Human Rights Act.

It is essential that the Committee speak to Queenslanders including people from culturally and linguistically diverse backgrounds, people with disability and also Aboriginal and Torres Strait Islander people from rural, regional and remote locations. We encourage the Committee to actively seek these views.

Thank you again for the opportunity to provide our submission to you. We would welcome the opportunity to provide further information to you at a public hearing.

Yours faithfully



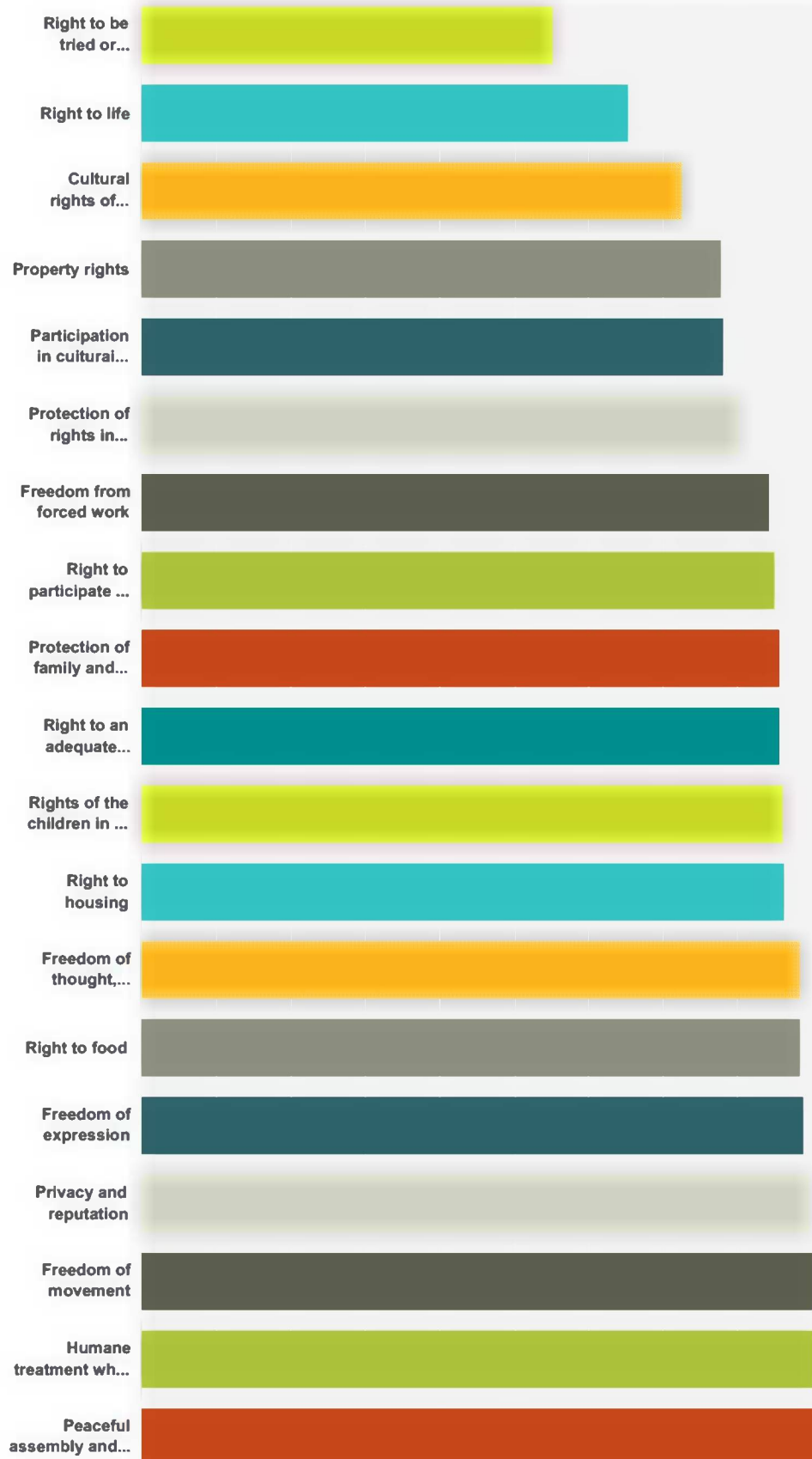
Aimee McVeigh
Campaign Coordinator

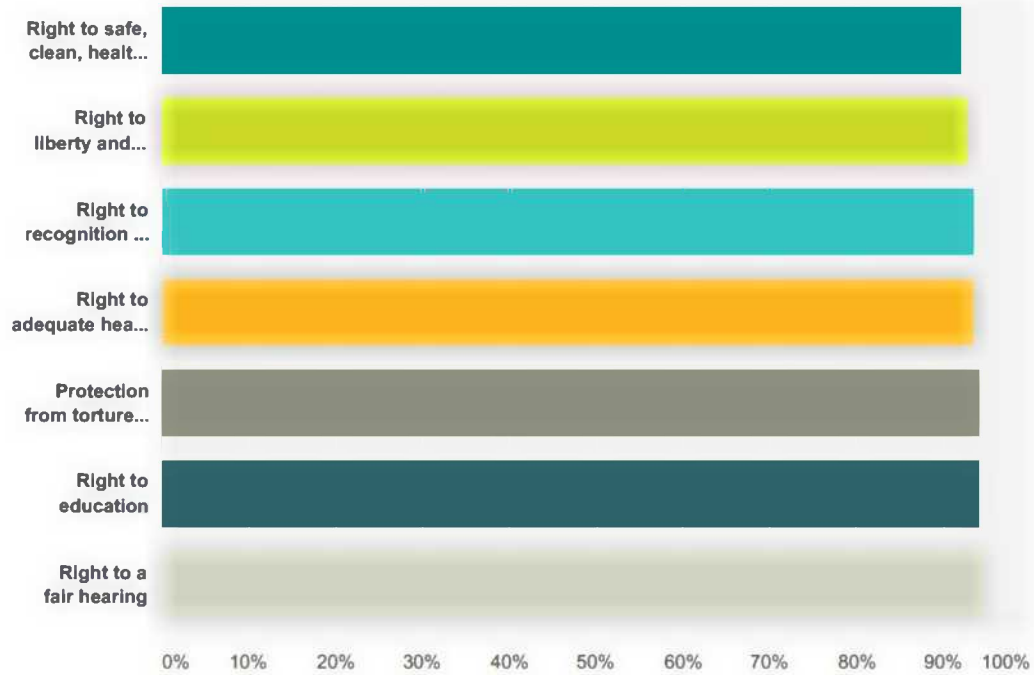
Enclosed:

1. Discussion Paper – A Human Rights Act for Queensland
2. Campaign factsheets
3. “Which rights should be protected?” graph

Q8 Which rights should be protected?

Answered: 327 Skipped: 186





| Answer Choices | Responses | Count |
|---|-----------|-------|
| Right to be tried or punished not more than once | 55.05% | 180 |
| Right to life | 65.44% | 214 |
| Cultural rights of ethnic religious or linguistic minorities | 72.48% | 237 |
| Property rights | 77.68% | 254 |
| Participation in cultural life | 77.98% | 255 |
| Protection of rights in criminal proceedings and against retrospective criminal law | 80.12% | 262 |
| Freedom from forced work | 84.10% | 275 |
| Right to participate in public life | 85.02% | 278 |
| Protection of family and children | 85.63% | 280 |
| Right to an adequate standard of living | 85.63% | 280 |
| Rights of the children in the criminal process | 85.93% | 281 |
| Right to housing | 86.24% | 282 |
| Freedom of thought conscience religion and belief | 88.38% | 289 |
| Right to food | 88.38% | 289 |
| Freedom of expression | 88.69% | 290 |
| Privacy and reputation | 89.60% | 293 |
| Freedom of movement | 89.91% | 294 |
| Humane treatment when deprived on liberty | 90.21% | 295 |
| Peaceful assembly and freedom of association | 91.74% | 300 |

| | | |
|--|--------|-----|
| Right to safe clean healthy and sustainable environment | 92.05% | 301 |
| Right to liberty and security of person | 92.66% | 303 |
| Right to recognition and equality before the law | 93.58% | 306 |
| Right to adequate health care | 93.58% | 306 |
| Protection from torture and cruel inhuman or degrading treatment | 94.19% | 308 |
| Right to education | 94.19% | 308 |
| Right to a fair hearing | 94.80% | 310 |
| Total Respondents: 327 | | |

A Human Rights Act for Queensland

A Human Rights Act could help people to access justice.

A Human Rights Act will help to create a fair, just and equal society for everyone. When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Human rights protection will also help to improve particular systemic issues – for example improving the ability of people to access justice.

This factsheet explains how human rights legislation can improve the ability of people to access justice.

Access to justice

Article 14 of the United Nations International Covenant on Civil and Political Rights protects rights associated with access to justice including:

- The right to a fair hearing
- The right to legal advice and representation
- The right to procedural fairness
- The right to an expeditious hearing.

In order for the rights contained in the International Covenant on Civil and Political Rights to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.

How are these rights protected in other places?

The UK's Human Rights Act incorporates the European Convention on Human Rights into domestic law. The European Convention on Human Rights says:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law.”

The Victorian Charter of Human Rights and Responsibilities and the ACT Human Rights Act provide people with the right to a fair hearing. Extra protections are also provided to children who are in contact with the criminal justice system. Preventing children who are detained without charge from being detained with adults and providing that an accused child must be brought to trial as quickly as possible and that a child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

Human rights in action

The right to support in giving evidence for legal proceedings

A court deemed an assault victim's evidence unreliable because he had schizophrenia – despite the victim identifying his assailants and having physical evidence of the extent of the crime. On appeal, it was found that the lower court had not properly considered the UK's Human Rights Act.

The Judge stated there is “a positive obligation on a state to provide protection through its legal system against a person suffering such ill-treatment at the hands of others.”

This judgement prompted the introduction new policies and guidance for prosecutors on how to support victims and witnesses with experience of mental distress, and how to use psychiatric evidence appropriately to assess the credibility and reliability of a witness.

Source: R (B) v DPP (2009) EWHC 106

Free legal services

The Victorian Department of Innovation, Industry and Regional Development have established the International Student Care Service to provide assistance to international students including legal advice and welfare assistance. The Department used the Charter of Human Rights and Responsibilities as a framework when developing this service.

Source: Victorian Equal Opportunity and Human Rights Commission – Submissions to the Four Year Review of the Charter of Human Rights and Responsibilities Act 2006 (1 July, 2011) http://hrc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 17).



A Human Rights Act for Queensland

A discussion paper



Background Paper – A Human Rights Act for Queensland

Introduction

Queensland Parliament's Legal Affairs and Community Safety Committee (the **Committee**) is currently inquiring into whether it is appropriate and desirable for Queensland to pass a Human Rights Act. The Committee is due to report to the Parliament by 30 June 2016. The Committee is inviting people's views on whether Queensland needs a Human Rights Act. You can make a written submission to the Committee any time before 4pm on 18 April 2016.

This paper explains the features of a Human Rights Act (Part 1) and the key benefits of having human rights protections (Part 2).

The campaign for a Human Rights Act for Queensland has produced a guide to making a submission to the Committee. The campaign has also produced a selection of factsheets that demonstrate how a Human Rights Act would benefit specific groups. These resources are available on the campaign website <http://www.humanrights4qld.com.au/resources>.

Key terms used in this paper are defined in the Glossary on page 16.

This paper was prepared by Allens and the Human Rights Law Centre.

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Part 1: Features of a Human Rights Act

1.1 What is a Human Rights Act?

A Human Rights Act is an ordinary piece of legislation

Human rights are the basic rights that belong to every person, regardless of age, race, sex, social status or any other characteristic. They are derived from, and serve to protect, the dignity and worth of each person.¹ Human rights include the right to a fair trial, freedom of speech and the right to be free from torture or other inhuman or degrading treatment or punishment.

Different countries have taken different approaches to protecting human rights. The United States, Canada and South Africa have constitutional bills of rights. This means the rights are enshrined in the constitution and can only be changed through a complex and challenging amendment process. It also means that parliaments cannot introduce laws that conflict with the rights protected in the constitution of their country.

Traditionally Australia has relied to a large extent on the 'common law' – the law applied by the courts – to protect human rights. A few rights are also protected in the Constitution and in legislation.

In 2004 and 2006, the ACT and Victoria enacted Human Rights legislation. The Australian Capital Territory (**ACT**) has enacted the *Human Rights Act 2004* (ACT) (the **ACT Act**) and Victoria has enacted the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the **Victorian Act**). These are ordinary pieces of legislation that require the government to respect, protect and fulfil the rights listed in the Acts. The United Kingdom (**UK**) and New Zealand have similar laws.²

The Queensland inquiry is limited to considering a model of human rights protections like the ones that exist in the ACT and Victoria – an ordinary piece of legislation. The Committee cannot consider a constitutional model (the models that exist in the US, Canada and South Africa).

1.2 Whose rights should be protected by a Human Rights Act?

A Human Rights Act should protect the rights of all people in Queensland

Human rights protect the dignity and worth of human beings. Therefore, only the rights of human beings should be protected by a Human Rights Act. The rights of corporations and similar entities should not be protected. Indeed, many – if not

¹ See, for example, the Preamble to the *Universal Declaration of Human Rights*, resolution adopted by the UN General Assembly, 10 December 1948, A/RES/3/217A, <<http://www.un-documents.net/a3r217a.htm>>.

² *Human Rights Act 1998* (UK) (the **UK ACT**); *New Zealand Bill of Rights Act 1990* (NZ) (the **NZ Bill of Rights**); *Human Rights Act 1993* (NZ) (the **NZ Human Rights Act**).

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most – human rights would not make sense if applied to such entities. For example, it does not make sense to say that a corporation has the right to life or education.

A Human Rights Act must protect the rights of all people in Queensland – citizens and non-citizens. In general, this protection must be equal, although differentiation between citizens and non-citizens is acceptable in respect of a limited number of rights, such as the right to vote.³

Most human rights are directed towards protecting the individual, but some protect the rights of groups such as the various human rights protecting the family⁴ and the right of indigenous peoples to self-determination.

1.3 What rights could be protected by a Human Rights Act?

A Human Rights Act could protect the human rights contained in the international human rights treaties that Australia has signed up to.

Human rights are recognised and protected under international law. Many are contained in treaties. The two key treaties are the *International Covenant on Civil and Political Rights* (the **ICCPR**)⁵ and *International Covenant on Economic, Social and Cultural Rights* (the **ICESCR**).⁶ Australia has signed and ratified both treaties. It has also signed and ratified five of the six other human rights treaties.⁷

³ ICCPR, Arts 2, 12, 25; Human Rights Commission, *General Comment 15: The position of Aliens under the Covenant* (11 April 1986).

⁴ See, e.g. ICCPR, Art 17(1), 23; ICESCR, Art 10, 11(1).

⁵ Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁶ Opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976).

⁷ Namely, the *International Convention on the Elimination of all Forms of Racial Discrimination* (**CERD**), opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969); *Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981); *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment* (**CAT**), opened for signature 4 February 1985, 1465 UNTS 85 (entered into force 26 June 1987); *Convention on the Rights of the Child* (**CROC**), opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008). Australia is not a party to the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, opened for signature 18 December 1990, 2220 UNTS 93 (entered into force 1 July 2003).

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The key rights protected by the ICCPR and ICESCR are set out in the table below.

| ICCPR | ICESCR |
|--|--|
| <ul style="list-style-type: none"> • right to self determination; • non-discrimination in the enjoyment of ICCPR rights; • right to life; • right to equality before the law and equal protection; • freedom from torture or other cruel, inhuman or degrading treatment or punishment; • freedom from slavery and servitude; • freedom of movement; • right to privacy; • freedom of thought, conscience and religion; • freedom of expression; • freedom of assembly and association; • the right to participate in public life, including the right to vote; and • rights concerning criminal proceedings and punishment, including the right to a fair hearing, the presumption of innocence and the prohibition against double jeopardy. | <ul style="list-style-type: none"> • Right to self-determination • right to work and have fair conditions of work; • right to form trade unions and strike; • the right to a family life, including paid parental leave and the protection of children; • right to an adequate standard of living, including adequate housing; • right to social security; • right to the enjoyment of the highest attainable standard of physical and mental health; and • right to education, including free primary education • the right to participation in cultural life. |

The ACT, Victorian, UK and New Zealand Human Right Acts enshrine a selection of civil and political rights and some economic, social and cultural rights. The right to education is protected in the ACT and UK, and the cultural, religious and language rights of minorities are protected in the ACT, Victoria and New

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Zealand.⁸ The cultural rights of Aboriginal peoples are specifically protected in Victoria.⁹

A Queensland Human Rights Act could protect some or all of rights in the ICCPR and ICESCR.¹⁰

A Human Rights Act would not affect rights that are already protected in Queensland. The ACT and Victorian Acts clearly say that rights are protected in other ways and that human rights legislation does not limit or change the protection of those rights.¹¹

1.4 Can human rights be limited?

Many human rights are subject to 'reasonable limits'. Other rights, such as the right to freedom from torture, cannot be limited.

It is generally accepted that not all human rights are 'absolute'. Their enjoyment can be limited in certain circumstances, for example to protect the enjoyment of other rights or to protect public health and order. The ACT and Victorian Acts allows for all rights to be limited but 'only to such reasonable limits as can be demonstrably justified in a free and democratic society' and taking into account 'all relevant factors', including the nature of the right affected, the purpose of the limitation and its extent.¹²

Some rights, such as the rights to be free from torture and slavery, are absolute, meaning that the state cannot infringe the right in any circumstances. A Queensland Human Rights Act could clarify that these rights should not be limited.

1.5 Who should be required to act compatibly with a Human Rights Act?

A Human Rights Act should bind the Queensland Government and organisations and businesses carrying out the functions of government.

The central aim of a Human Rights Act is to ensure that the government respects, protects and fulfils human rights in accordance with Australia's international human rights obligations. Therefore, a Human Rights Act must bind the three arms of government: the Parliament, Courts and Executive.

⁸ See ACT Act, ss 27 (cultural, religious and language rights of minorities), 27A (right to education); Victorian Act, s 19 (cultural, religious and language rights of persons with particular cultural, religious, racial or linguistic backgrounds and indigenous peoples); Art 2 (right to education); NZ Bill of Rights, s 20 (rights of minorities). See also the Human Rights Amendment Bill 2015 (ACT), which would insert a specific protection for the cultural rights of indigenous peoples.

⁹ ACT Act, s19(2).

¹⁰ See also 'Australian Capital Territory Economic, Social and Cultural Rights Research Project', Australian Research Council (2010), < http://acthra.anu.edu.au/documents/ACTESCR_project_final_report.pdf>.

¹¹ See ACT Act, s7 and Victorian Act, s5.

¹² ACT Act, s 28; Victorian Act, s 7. See also NZ Bill of Rights, s 5. The UK regime is somewhat different, as the Act gives effect to its obligations under the European Convention on Human Rights: see ss 14-17.

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Executive functions are increasingly carried out by statutory authorities (entities established by an Act) and contracted to private businesses and organisations. All persons and entities exercising public functions should be bound to protect and promote human rights while they are exercising such functions. This is the approach typically taken by other statutory Human Rights Acts.¹³ Examples of public functions include public education, aged care, disability services, child protection services, transport, housing and health services, and supply of gas, electricity and water.¹⁴

As a Human Rights Act is directed at governmental action, private actors would not be bound by the Act when they are not exercising public functions.

The ACT Act has a provision allowing private entities to 'opt in' to the obligations of public authorities.¹⁵ A Queensland Human Rights Act could include such a mechanism, as it encourages the development of a human rights culture in Queensland's business sector. However, it is not a complete solution, as the experience in the ACT is that the mechanism was only adopted by the 'usual suspects'.¹⁶ If an opt-in mechanism is created, it must be supported by other laws and initiatives (such as education).

¹³ See ACT Act, s 40; Victorian Act, s 4; UK Act, s 6.

¹⁴ See ACT Act, s 40A(3). See also MB Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006 (Young Review)*, September 2015, recomm 12.

¹⁵ ACT Act, s 40D. The Young Review recommended inserting this mechanism into the Victorian Act: Young Review, recomm 15, 64-65.

¹⁶ This is the case with the seven entities who have opted into the ACT provision: see ACT Legislation Register, Human Rights Act 2004 – Notifiable instruments, <<http://www.legislation.act.gov.au/a/2004-5/ni.asp>>. See further, Human Rights Law Resource Centre, *A Human Rights Act for All Australians*, May 2009, <<http://www.hrlrc.org.au/files/hrlrc-submission-a-human-rights-act-for-australia.pdf>>.

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1.6 What are the roles or functions of Parliament, the Executive and the Courts under a Human Rights Act?

All arms of government should be required to have regard to, and respect for, human rights in making, applying and administering of laws and in their other activities, but failure to do so must not invalidate the law or (generally) the activity.

The human rights legislation in the ACT, Victoria and the UK aim to create awareness of human rights and encourage governmental compliance, whilst also giving some redress to people whose rights have been violated. These pieces of legislation are described as a 'dialogue' model. This means that the three arms of government (Parliament, Executive and Courts) play important parts in a dialogue about human rights, with the aim of building a culture that is respectful of human rights. However, laws that breach human rights are not automatically invalidated under the legislation. The role of each of the arms of government in respect of human rights is considered in turn.

Under the ACT and Victorian Acts, **Parliament** is required to consider the human rights compliance of all laws that it passes. Each new bill is accompanied by a statement of compatibility, stating whether the bill is consistent with human rights and the nature and extent of any inconsistency.¹⁷ The bill is also scrutinised by parliamentary committee to identify any human rights issues.¹⁸ In addition, the Victorian Act enables the Parliament to, in exceptional circumstances, expressly override its Human Rights Act, that is, to declare the relevant law effective despite its incompatibility with human rights.¹⁹

Courts are obliged to interpret legislation in a way that is compatible with human rights and may consider international and comparative human rights jurisprudence while doing so.²⁰ The Supreme Courts of each jurisdiction are empowered to issue a declaration of incompatibility when a law cannot be interpreted consistently with human rights. This does not invalidate the incompatible law, but Parliament is obliged to prepare and table a response to the declaration.²¹ In certain circumstances, Courts may also adjudicate legal proceedings in which a breach of human rights is raised as a ground to invalidate the decision of a public authority.

Public authorities are obliged to act compatibly with human rights, and to give proper consideration to relevant human rights when making a decision.²² As explained above, a public authority is a government agency or an organisation or

¹⁷ ACT Act, s 37; Victorian Act, s 28.

¹⁸ ACT Act, s 38; Victorian Act, s 30.

¹⁹ Victorian Act, s 31.

²⁰ ACT Act, ss 30, 31; Victorian Act, s 32.

²¹ ACT Act, ss 32, 33; Victorian Act, ss 36, 37.

²² ACT Act, ss 30, 40B; Victorian Act, ss 32, 38.

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business performing duties of a public nature on behalf of government. A person affected by an authority's failure to do so can seek relief in certain circumstances.²³

A Human Rights Act in Queensland could empower a body to investigate, report on and conciliate human rights complaints, intervene in relevant legal proceedings, conduct alternative dispute resolution processes, and research and report on compliance and reform of the Act. In Queensland, the Anti-Discrimination Commission could carry out this role. The Commission would need to be appropriately resourced and empowered.²⁴

1.7 What should happen if a person's rights are breached?

When people experience human rights abuses they should be able to bring legal proceedings against the offender for the full range of judicial remedies, including damages. More flexible and accessible remedies, such as mediation and complaints mechanisms, should complement this right.

A Human Rights Act must ensure that people whose rights are violated have access to an effective remedy.²⁵

The Queensland Act could improve on existing Australian laws and allow a freestanding cause of action with a full range of remedies, including damages.

The ACT Act has a freestanding cause of action, although damages are not recoverable.²⁶ The Victorian remedy provision is more complex. In Victoria, claims of unlawfulness under the Human Rights Charter may only be raised in legal proceedings if there is another ground on which to challenge the decision or action. Damages are not recoverable.²⁷

A recent independent review of the Victorian Act has recommended that the Act be simplified by providing a freestanding cause of action like the one that exists in the ACT. However, rather than being required to start court proceedings in the Supreme Court, it is recommended that proceedings be started in the more accessible Victorian Civil and Administrative Tribunal (Victoria's equivalent of Queensland's QCAT). It has also been recommended that the Victorian Equal Opportunity and Human Rights Commission be empowered to receive and conciliate complaints under the Victorian Act.²⁸

²³ Refer to part 1.8 of this paper.

²⁴ See, e.g. Victorian Act, Pt 4; *Human Rights Commission Act 2005* (ACT), see Michael Brett Young 'From Commitment to Culture the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, recommendation 23 in relation to empowering the Victorian Human Rights and Equal Opportunity Commission to conciliate complaints.

²⁵ See, e.g. ICCPR, Art 2.3(a); CERD, Art 6; CAT, At 14; CROC, Art 39.

²⁶ ACT Act, s 40C, inserted by the *Human Rights Amendment Act 2008* (ACT). The Young Review recommended that the Victorian Act be amended in the same way: Young Review, recommendation 27.

²⁷ Victorian Act, s 39.

²⁸ Young Review, recommendations 23 and 27.

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When a person's human rights are breached they should have affordable access to a remedy. To ensure this is the case Queensland's Human Rights Act should include:

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.²⁹

Part 2: Benefits of a Human Rights Act

As well as enshrining human rights in law, a Human Rights Act would also provide important social, economic and cultural benefits. The key benefits are:

- (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.

2.1 Improving law making and government policy.

A Human Rights Act can improve the quality of laws by making the consideration of human rights part of all law-making and policy development processes. Compatibility statements, override statements and declarations of incompatibility will all play a part in encouraging Parliament to act in a manner consistent with human rights. It can be a 'bad look' for Parliament to breach a Human Rights Act (and be required to publicly acknowledge that), thereby encouraging lawmakers to pass laws which are consistent with the human rights enshrined in a Human Rights Act.

This benefit has been observable in the experience of the ACT since the introduction of its Act in 2004. In 2009, the Australian National University

²⁹ See the UK Act, s 8.

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described the improvement to the quality of law making in the ACT as one of the 'clearest effects' of the Act.³⁰ The ACT Government has also acknowledged the positive effects, observing that the Act has had a 'positive impact on political debate and consideration of policy issues by Government',³¹ provides 'an impetus for agencies to properly consider human rights obligations and consult within and across different areas of government on the implications of their bills'³² and has increased 'awareness through Government of human rights issues'.³³

In Victoria, it was clear in the first eight years of operation that the Victorian Act played an important role in ensuring that human rights were appropriately considered by government, including in the development of law and policy.³⁴

2.2 Improving public service delivery.

A Human Rights Act can also encourage the incorporation of human rights standards into public service delivery.

An inquiry in the UK in 2009 found that the UK Act has had a positive effect in a number of public sector areas, including health, local authority services, policing, schools and regulatory authorities.³⁵ The inquiry concluded:

...the human rights framework, backed by the legal underpinning of the Human Rights Act, has had a positive impact in the delivery of public services... Properly understood and applied, it can have a transformative function, transforming the organisation itself, the services delivered, and ultimately the lives of the people receiving these services.³⁶

In the UK the experience of public authorities that have begun to embed human rights into their service provision is that the services are more responsive to the users. This is because stigma and mistrust are eroded, and prejudicial attitudes

³⁰ Australian National University, *The Human Rights Act 2004 (ACT): The First Five Years of Operation* (May 2009) at 6, <https://justice.act.gov.au/resources/attachments/report_HumanRightsAct_5YearReview_ANU_20091.pdf>.

³¹ ACT Justice and Community Safety Directorate, *Government Response: Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation* (March 2012) at 2, <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf>.

³² ACT Justice and Community Safety Directorate, *Economic, social and cultural rights in the Human Rights Act 2004 – Section 43 review* (November 2014) at 26, <http://cdn.justice.act.gov.au/resources/uploads/JACS/ACT_Government_s_43_Review_Report.pdf>.

³³ ACT Justice and Community Safety Directorate, *Government Response: Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation* (March 2012) at 24, <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf>.

³⁴ Human Rights Law Centre, "More Accessible, more Effective and Simpler to Enforce: Strengthening Victoria's Human Rights Charter, HRLC Submission to the 2015 Review of the Victorian Charter of Human Rights" (June 2015), 1.

³⁵ UK Equality and Human Rights Commission, *Human Rights Inquiry: Executive Summary* (June 2009) at 4, <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Human%20rights%20inquiry%20exec%20summary.pdf>.

³⁶ UK Equality and Human Rights Commission, *Human Rights Inquiry: Executive Summary* (June 2009) at 14, <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Human%20rights%20inquiry%20exec%20summary.pdf>.

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are challenged. It improves relationships between public service providers and the users of their services.³⁷

A human rights approach can lead to organisational renewal – that is, employees of public authorities remember the values and motivation which led them to start working in the public service in the first place.³⁸

A human rights framework can be an effective mechanism to challenge existing poor practice in service delivery. Case studies from the UK demonstrate how human rights arguments have been used successfully in the UK to challenge routine practices that infringe the dignity of service users.³⁹

In both New Zealand and the UK, the introduction of a Human Rights Act led to the government publishing handbooks for public authorities, designed to increase awareness of human rights issues and to provide guidance on how to conduct functions consistently with the human rights standards of the respective Acts.⁴⁰

The ACT Attorney-General acknowledged “a marked shift” in how government undertakes its work, saying that “many agencies, particularly those with a service delivery focus, are exploring the opportunities to better serve the community through human rights compliant policies, legislation and operational practices.”⁴¹

The Victorian Act has led to improvements in public service design, delivery and outcomes.⁴² The Victorian Equal Opportunity and Human Rights Commission (the **VEOHRC**) observed that the use of the Victorian Act:

... has matured beyond simple compliance with the law. The Charter is not only part of 'everyday business' for many public authorities, but drives important human rights initiatives to address systemic issues. In this way, it prompts organisations to take a proactive, rather than reactive, approach to their operations and the way they engage with the community.⁴³

³⁷ Alice Donald, et. al., *Human Rights in Britain Since the Human Rights Act 1998: A Critical Review* (UK Equality and Human Rights Commission, April 2008) at 56 and 89

<http://www.equalityhumanrights.com/sites/default/files/documents/human_rights_in_britain_since_the_human_rights_act_1998_-_a_critical_review.pdf>

³⁸ Alice Donald, et. al., *Human Rights in Britain Since the Human Rights Act 1998: A Critical Review* (UK Equality and Human Rights Commission, April 2008) 62-63 and 89.

³⁹ Alice Donald, et. al., *Human Rights in Britain Since the Human Rights Act 1998: A Critical Review* (UK Equality and Human Rights Commission, April 2008), 64-65 and 89.

⁴⁰ UK Ministry of Justice, *Human rights: human lives – A handbook for public authorities* (October 2006),

<<https://www.justice.gov.uk/downloads/human-rights/human-rights-handbook-for-public-authorities.pdf>>; NZ Ministry of Justice, *Guidelines on the New Zealand Bill of Rights Act 1990* (November 2004), <<http://www.justice.govt.nz/publications/publications-archived/2004/guidelines-on-the-new-zealand-bill-of-rights-act>>.

⁴¹ ACT Justice and Community Safety Directorate, *Government Response: Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation* (March 2012) at 1, <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf>.

⁴² Human Rights Law Centre, “More Accessible, more Effective and Simpler to Enforce: Strengthening Victoria’s Human Rights Charter, HRLC Submission to the 2015 Review of the Victorian Charter of Human Rights” (June 2015), 1.

⁴³ Victorian Equal Opportunity and Human Rights Commission, *2014 Report on the Operation of the Charter of Human Rights and Responsibilities* (June 2015) at 1, <<http://humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/1260-2014-report-on-the-operation-of-the-charter-of-human-rights-and-responsibilities>>.

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The VEOHRC also noted that, while there is still much to be done, the Victorian Act has become 'firmly embedded' in the 'work, language and culture' of many public authorities.⁴⁴

2.3 Protecting marginalised Queenslanders by addressing disadvantage.

There is strong evidence a human rights approach can:

- empower marginalised and vulnerable individuals, communities and groups;
- provide a framework for the development of more effective, efficient and holistic public and social policy;
- promote more flexible, responsive, individualised and 'consumer friendly' public and social services;
- challenge 'poor treatment' and thereby improve the quality of life of marginalised and disadvantaged individuals and groups; and
- assist in the development of more effective social inclusion and poverty reduction strategies.⁴⁵

The empowering effect of a Human Rights Act is one of the key benefits of the Victorian Act identified by the VEOHRC, as it gives Victorians the tools to question and challenge matters that have the potential to impact their human rights.⁴⁶ The VEOHRC has also identified this beneficial effect at a group level, with organisations:

... increasingly using the Charter in more sophisticated ways to review, develop and implement policies and practices that aim to protect people from breaches of their human rights or to actively promote the realisation of rights.⁴⁷

The experience in the UK appears to have been similar, with a compilation of case studies (the 'Changing Lives' report) leading the British Institute of Human Rights to conclude:

... groups and people themselves are using not only the letter of the law, but also the language and ideas of human rights to challenge poor treatment and negotiate improvements to services provided by public

⁴⁴ Victorian Equal Opportunity and Human Rights Commission, *2014 Report on the Operation of the Charter of Human Rights and Responsibilities* (June 2015) at 1.

⁴⁵ Human Rights Law Resource Centre, "A Human Rights Consultation Submission on the Protection and Promotion of Human Rights in Australia" (May 2009) at 70-71.

⁴⁶ Victorian Equal Opportunity and Human Rights Commission, *Victoria's Charter of Human Rights and Responsibilities*, <<http://www.humanrightscommission.vic.gov.au/index.php/the-charter#what-are-the-benefits-of-having-the-charter>>.

⁴⁷ Victorian Equal Opportunity and Human Rights Commission, *2014 Report on the Operation of the Charter of Human Rights and Responsibilities* (June 2015) at 1, <<http://humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/1260-2014-report-on-the-operation-of-the-charter-of-human-rights-and-responsibilities>>.

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bodies... Human rights are an important practical tool for people facing discrimination, disadvantage or exclusion.⁴⁸

That report concluded that awareness-raising about human rights empowers people to take action.⁴⁹

There is also some evidence in the UK that a human rights approach can extend existing approaches to addressing inequality and discrimination. In particular, the human rights framework can give a voice to marginalised groups that fall outside the UK's anti-discrimination legislation such as gay partners, family carers, mothers in prison and domestic violence victims. In this way, human rights underpin equality.⁵⁰

2.4 Contributing to the development of a human rights culture.

Not only can a Human Rights Act improve the dialogue within government and public authorities about human rights, it can also play a role in influencing community perception and dialogue about human rights, and thereby contribute to a human rights culture in the wider community.

Creating a culture of respect for human rights is not simply a matter of enacting a law. Education, among other things, is vital.⁵¹

The British Institute for Human Rights noted the cultural importance of human rights laws:

When the Human Rights Act was passed in 1998, the Government explained that its purpose was to support a culture of respect for everyone's human rights – making human rights a feature of everyday life... Thus the Human Rights Act would have its greatest impact not in our courts of law, out of the reach of the public at large, but in the wider community... Through this process, a culture of respect for human rights would take root in the UK.⁵²

Similar sentiment was expressed in the 2015 review of the Victorian Act:

The Charter is a strong statement of the importance of the values of freedom, dignity, equality and respect in our society; it is one mechanism

⁴⁸ British Institute of Human Rights, *The Human Rights Act: Changing Lives* at 5, <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/The%20Human%20Rights%20Act%20-%20Changing%20Lives.pdf>.

⁴⁹ British Institute of Human Rights, *The Human Rights Act: Changing Lives* at 5.

⁵⁰ Alice Donald, et. al., *Human Rights in Britain Since the Human Rights Act 1998: A Critical Review* (UK Equality and Human Rights Commission, April 2008) at 68-69 and 89.

⁵¹ Human Rights Law Resource Centre, "A Human Rights Consultation Submission on the Protection and Promotion of Human Rights in Australia" (May 2009) at 71.

⁵² British Institute of Human Rights, *The Human Rights Act: Changing Lives* at 3, <http://www.equalityhumanrights.com/sites/default/files/publication_pdf/The%20Human%20Rights%20Act%20-%20Changing%20Lives.pdf>.

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by which we set out our expectations of how these values will be recognised and protected.⁵³

The 2015 review report stated that, for the Victorian Act to be effective, the Victorian Government needed to do more to build a human rights culture, particularly in respect of public sector interactions with Victorians. This would be achieved by senior leadership and organisational vision, improving operational capacity, external input and oversight and human rights education. A strong human rights culture facilitates better government decision-making and human rights protection.⁵⁴

It has been the ACT's experience that:

Establishing a human rights culture and developing its underpinning framework is a constructive process of continuous improvement through incremental developments in case law and policy...

However... [there is a] need to promote greater understanding of the [Human Rights Act] by the general community, legal professionals and public authorities by increasing the availability of training programs to address the lack of systemic education about human rights within the ACT public service.⁵⁵

2.5 Creating and adding economic value.

While further research in this area is needed, there is a growing body of academic research that suggests that countries that protect human rights have, overall, stronger economies. Human rights are critical to development, and their absence contributes to poverty.⁵⁶

The Productivity Commission has previously concluded that reducing disability discrimination may yield substantial economic benefits by:

- increasing the productive capacity of the economy by enhancing the participation and employment of people with disabilities; and

⁵³ Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2015), <<https://myviews.justice.vic.gov.au/2015-review-of-the-charter-of-human-rights>>.

⁵⁴ Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report* (September 2015), 5.

⁵⁵ ACT Government, "Government Response, Australian National University Human Rights Research Project Report, the *Human Rights Act 2004* (ACT): The First Five Years of Operation," (March 2012), 1 and 3.

⁵⁶ See, for example, Kirk Herbertson et al, 'A Roadmap for Integrating Human Rights into the World Bank Group' *World Resources Institute* at 12, <http://www.wri.org/sites/default/files/pdf/roadmap_for_integrating_human_rights.pdf> , cited by the Human Rights and Discrimination Commissioner, *Look who's talking: A Snapshot of ten years of dialogue under the Human Rights Act 2004 by the ACT Human Rights and Discrimination Commissioner*, ACT Human Rights Commission (2014) at 26, <<http://hrc.act.gov.au/wp-content/uploads/2015/03/HRA-10-yr-snapshot-HRDC-webversion.pdf>>.

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- this in turn may provide incentives to students with disabilities to improve educational outcomes, making them more productive members of society.⁵⁷

2.6 Assisting 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.

Article 50 of the ICCPR and Article 28 of the ICESCR state that human rights protections extend to all parts of federal states without limitation or exception. Consequently, the State Party must ensure that all government authorities, including at the state level, respect, protect and fulfil the human rights obligations under these treaties.

2.7 'Bringing rights home' by enabling human rights complaints to be heard and determined within the State of Queensland.

Assuming the Human Rights Act passed in Queensland contains a complaint mechanism, this would provide Queenslanders with the opportunity to lodge, and have resolved within the State, a human rights complaint against State authorities. Depending on the legislative model selected by the Parliament, it is possible that separate and direct recourse to the courts may be available for such human rights complaints. This would significantly improve access to justice for Queenslanders.

Part 3: Be part of the Community Consultation

If community organisations or members of the public wish to make a submission to Queensland's Human Rights Inquiry, they may do so before 18 April 2016 by emailing iacsc@parliament.qld.gov.au.

⁵⁷ See, for example, Productivity Commission, Review of the Disability Discrimination Act 1992, *Productivity Commission Inquiry Report* (Volume 1, Report No 30) (30 April 2004) at 134-135, < <http://www.pc.gov.au/inquiries/completed/disability-discrimination/report/disability-discrimination.pdf> >, cited in Human Rights Law Centre, *A Human Rights Act for All Australians*, May 2009, 73 <<http://www.hrlrc.org.au/files/hrlrc-submission-a-human-rights-act-for-australia.pdf>>; Human Rights Law Resource Centre, "A Human Rights Consultation Submission on the Protection and Promotion of Human Rights in Australia" (May 2009) at 72-73.

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Glossary

| | |
|----------------------------|--|
| ACT | Australian Capital Territory |
| ACT Act | <i>Human Rights Act 2004 (ACT)</i> |
| Committee | Legal Affairs and Community Safety Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| NZ Bill of Rights | <i>New Zealand Bill of Rights Act 1990 (NZ)</i> |
| NZ Human Rights Act | <i>Human Rights Act 1993 (NZ)</i> |
| UK | United Kingdom |
| UK Act | <i>Human Rights Act 1998 (UK)</i> |
| Victorian Act | <i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i> |

A Human Rights Act for Queensland

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

A Human Rights Act will help to create a fair, just and equal society for everyone.

When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Protections offered by a Human Rights Act will also have relevance for particular groups of Queenslanders – such as Aboriginal and Torres Strait Islander peoples.

This factsheet provides examples of how human rights protection in other places has improved the lives of indigenous peoples.

Cultural rights

A Victorian Aboriginal woman lived in housing owned and leased by a non-Aboriginal community organisation. A condition of her tenancy was that she was required to engage with community services.

After her nephew died she went back to her country for a couple of weeks of ‘sorry business’. When she returned she started receiving warnings to engage with services, however she wasn’t able to do so because she was overwhelmed with family responsibilities, trauma and grief.

A possession order was made and the police came to her door with a warrant. Her advocates made an application for an urgent review and stay. They argued that the community organisation had failed to engage with her cultural rights and the rights of her grandchild and family members in their eviction process. These rights are protected in the Victorian Charter of Human Rights and Responsibilities Act 2006. As a result the community organisation withdrew their possession application and engaged an Aboriginal support service.

Source: Victorian Aboriginal Legal Service Submission to the 8 year review of the Charter, Submission 98 (Case Study 1).

Delays in the criminal justice system

An Aboriginal girl was serving a sentence in a youth justice centre in the ACT for a number of offences. While incarcerated, she was also charged with two assaults and one charge of obstructing a territory official. She was convicted of these offences and sentenced. She appealed the sentences on the basis that the sentences were excessive and that certain required factors had not been taken into account. The judge found that the sentences were inappropriate, reduced them to shorter periods and ordered that they be served concurrently with her current period of incarceration. The judge took the young person’s personal circumstances into account and found that the significant delay between the offence and the sentencing was unacceptable and in violation of the ACT’s Human Rights Act 2004.

Source: *TM v Karapanos and Bakes* [2011] ACTSC 74

Which rights?

The case studies above show that the rights that protect everyone have been used to protect the rights of indigenous peoples. Many of these rights originally come from the United Nations International Covenant on Civil and Political Rights.

The United Nations Declaration on the Rights of Indigenous Peoples provides a statement of human rights specific to indigenous peoples.

In order for the rights contained in the International Covenant on Civil and Political Rights and the Declaration on the Rights of Indigenous Peoples to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.

The preamble of the ACT's Human Rights Act and the Victorian Charter of Rights and Responsibilities both acknowledge the special relevance that human rights have for Aboriginal people. The Victorian Charter also specifically protects the cultural rights of Aboriginal people. It says:

“Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community to enjoy their identity and culture and to maintain and use their language; and to maintain their kinship ties; and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.”

As a result of the eight year review of the Victorian Charter of Human Rights and Responsibilities the Victorian Government is now considering how to better protect the right of Victorian Aboriginal people to self-determination.



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A Human Rights Act for Queensland

How could a Human Rights Act help people who are homeless or at risk of homelessness?

A Human Rights Act will help to create a fair, just and equal society for everyone. When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Protection of human rights in legislation will also help to address particular issues – such as homelessness.

This factsheet provides examples of how human rights legislation in other places has assisted people who are homeless or at risk of homelessness.

The right to be free from inhuman and degrading treatment

A pregnant woman was living in government housing in the UK. She was issued a notice to leave the property while she was giving birth in hospital. The woman was a single parent and she was giving birth to her second child. A worker at a community organisation that was providing support to the woman helped to prevent the eviction by arguing that evicting the family in these circumstances would breach their right not to be treated in an inhuman and degrading way – a right that is protected in the UK's Human Rights Act.

Source: BIHR, Preventing a Woman and her Newborn Baby Being Made Homeless <https://www.bih.org.uk/Pages/FAQs/Category/case-studies>

Equality before the law

A Victorian woman was served with a notice to immediately vacate her property because of allegations of violence and drug dealing. The landlord had not discussed the allegations with the woman – instead relying on information provided to him by other people. Advocates argued that making these assumptions engaged the right to recognition and equality before the law – a right protected in the Victorian Charter of Human Rights and Responsibilities Act. As a result the notice to vacate was withdrawn due to the lack of evidence relating to the allegations that had been made in the notice.

Source: Council to Homeless Persons Submission to the 8 year review of the Victorian Charter of Human Rights and Responsibilities Act (2006) <<http://chp.org.au/wp-content/uploads/2015/06/150603-Submission-to-the-review-of-the-Victorian-Charter-of-Human-Rights.pdf>> (p 4).



The right to privacy

A Victorian woman was living in housing owned by a community housing provider. The housing provider had obtained a possession order from the Victorian Civil and Administrative Tribunal because of their concerns about the cluttering of personal items at the property. The woman had previously told the housing provider that the cluttering was a symptom of her mental illness – an illness that she was receiving medical treatment for.

The woman's advocate argued that as a provider of low-cost housing to vulnerable tenants on behalf of the Victorian government, the community housing provider was required to act consistently with the Charter of Human Rights and Responsibilities Act and, in particular, they were required to give proper consideration to the woman's right to privacy.

As a result of the negotiations, the woman was allowed to stay at the property.

Source: VEOHRC, 2014 Report on the Operation of the Charter of Human Rights and Responsibilities (p 41) <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/charter-reports/item/download/7862_eec6bf53a3d3b4e27cb8dd785adcc34f>

Which rights?

The case studies above show that many of the rights that protect everyone have been used to prevent homelessness. Many of these rights originally come from the United Nations International Covenant on Civil and Political Rights.

The United Nations International Covenant on Economic, Social and Cultural Rights recognises the right of all people to adequate housing. As a signatory to this Covenant, Australia has agreed to take appropriate steps to ensure that this right becomes a reality for all Australians.

In order for the rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.



A Human Rights Act for Queensland

How could a Human Rights Act assist children and young people?

A Human Rights Act will help to create a fair, just and equal society for everyone. When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Protections offered by a Human Rights Act will also have relevance for particular groups of people – including children and young people.

This factsheet provides examples of how human rights legislation in other places has improved the lives of children and young people.

Young girl protected from giving evidence against her abusers

A young Victorian girl had been abused. Her advocates used the Victorian Charter of Human Rights and Responsibilities Act, and in particular the right to the protection of family and children, to argue that she shouldn't be required to give evidence against the alleged perpetrators. They said that this right should be given proper consideration when determining whether a young person should be required to provide testimony. As a result the girl was not required to give evidence.

Source: Fitzroy Legal Service: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006, in HRLC Charter in Action www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 48).

Non-discrimination

A Victorian student with a learning disability was threatened expulsion by his school due to his behavioural issues. The advocate outlined to both the school itself and to the Department of Education and Early Childhood Development the student's relevant human rights contained in the Victorian Charter of Human Rights and Responsibilities Act. As a result of the communication, the boy was provided with the supports, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.

Source: Youth Affairs, Council of Victoria: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 in HRLC Charter in Action www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 56).

Right to liberty

A warrant for imprisonment was made in relation to a young single mother of two children who was at risk of homelessness. The young mother was facing imprisonment for defaulting on the payment of outstanding fines for infringement notices. The woman's advocates applied for the matter to be relisted before a magistrate and relied on the right not to be arbitrarily deprived of liberty. This right is protected in the Victorian Charter of Human Rights and Responsibilities Act.

Source: Youthlaw's submission to the Eight Year Review of the Victorian Charter of Human Rights and Responsibilities.

Right to housing

Following the death of her father and incarceration of her mother, a 23 year old woman agreed to be the guardian of her three younger siblings. She maintained their public housing tenancy and had rental payments deducted from her Youth Allowance payments. While overseas on a study tour, her Youth Allowance was cancelled due to the discontinuation of her enrolment.

As a result she accrued significant arrears that she didn't receive notice of. The Department of Housing applied for a possession order after having issued a notice to vacate. The woman's advocates argued that the Department had failed to consider the rights of the young woman and her siblings protected in the Charter of Human Rights and Responsibilities Act. Instead of making a possession order, the Victorian Civil and Administrative Tribunal made an order that the young woman pay \$10 per week towards her rental arrears in addition to her rent.

Source: Homeless Persons Legal Clinic: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 in HRLC Charter in Action www.hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf (Case Study 87).

Which rights?

The case studies above show that many of the rights that protect everyone have been used to protect the rights of children and young people. Many of these rights originally come from the United Nations International Covenant on Civil and Political Rights.

The United Nations Convention on the Rights of the Child provides a statement of rights that are particular to children.

Rights to education, health care, housing and work are protected in the United Nations International Covenant on Economic, Social and Cultural Rights.

In order for the rights contained in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.

The human rights legislation that exists in the ACT and Victoria both provide specific protections to children.

Both the Victorian Charter of Human Rights and Responsibilities Act and the ACT Human Rights Act provide every child with the right, without discrimination, to such protection as is in his or her best interests, as needed by him or her by reason of being a child.

Both the Victorian Charter of Human Rights and Responsibilities Act and the ACT Human Rights Act provide protection to children in the criminal justice system. This prevents children who are detained without charge from being detained with adults, provides that an accused child must be brought to trial as quickly as possible and that a child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

The ACT Human Rights Act includes the right of every child to access free school education that is appropriate to his or her needs.

A Human Rights Act for Queensland

How could a Human Rights Act assist people who are Lesbian, Gay, Bisexual or Intersex (LGBTI)?

A Human Rights Act will help to create a fair, just and equal society for everyone.

When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Protections offered by a Human Rights Act will also have relevance for particular groups of people – such as people who are LGBTI.

This factsheet provides examples of how human rights legislation in other places has improved the lives of people who are LGBTI.

Access to superannuation death benefits

Amendments to the law in Victoria allowed same sex couples to access superannuation death benefits from one another. Because the amendments operated prospectively, they discriminated against older people in same sex relationships. An older woman and her advocate wrote to the Human Rights Unit at the Department of Justice advocating for an amendment to the law based on the claim that the amendments should be consistent with the Charter of Human Rights and Responsibilities Act. As a result an amendment to the law was made so that same sex couples could access superannuation death benefits both retrospectively and prospectively.

Source: Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 <http://hric.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf> (Case Study 6).

Non-discrimination

A gay man with physical disabilities living in the UK approached a disability service provider to ask if a support worker could accompany him to a gay pub. His request was denied even though the service regularly supported heterosexual people to attend pubs and clubs of their choice. The man and his advocate successfully used his right not to be discriminated against and the right to respect for his private life, rights protected in the UK's Human Rights Act, to challenge the service provider's decision.

Source: BIHR, The Human Rights Act – Changing Lives, <<https://www.bihr.org.uk/changing-lives>> (Case Study 7 p 9).

Which rights?

The case studies above show that the rights that protect everyone have been used to protect the rights of people who are LGBTI. Many of these rights originally come from the United Nations International Covenant on Civil and Political Rights.

In order for the rights contained in International Covenant on Civil and Political Rights to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.