



This Centre is accredited by



YFS Ltd | ACN 167 122 527 | AS/NZS ISO 9001:2008

2-4 Rowan Street, Slacks Creek | PO Box 727 Woodridge Qld 4114
Phone: 07 3826 1500 | Fax: 07 3208 9206 | Email: legal@yfs.org.au
f yfslogan | www.legal.yfs.org.au

Our ref: NR:NC:HumanRightsInquiry

18 April 2016

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000
lacsc@parliament.qld.gov.au

YFS Legal
2-4 Rowan Street
SLACKS CREEK QLD 4127
PO Box 727
WOODRIDGE QLD 4114
P: 38261500
F: 32089206
E: legal@yfs.org.au

RE: Human Rights Inquiry Submission

Dear Research Director,

We write in order to make submissions to the Legal Affairs and Community Safety Committee in relation to the aforementioned inquiry. As a Community Legal Centre, YFS welcomes the proposed legislation.

About Us

YFS is a not-for-profit organisation that delivers a range of services to the people of Logan and surrounds. We cater to people who are disadvantaged, vulnerable or want to improve their circumstances. YFS also champions social enterprise, with four of varying size and purpose. Our vision is building independence and participation. Our purpose is to deliver services designed to promote independence and citizenship. We champion rights and responsibilities and clients taking up social, cultural and economic opportunities.

YFS also operates a Community Legal Centre in the Logan community. Although we are for all ages we do specialise in providing information, advice, and representation for clients 10 – 25 years of age who find themselves needing help with criminal law matters. As part of our service we provide a fortnightly duty lawyer tender at the Beenleigh Children's Court. YFS Legal also provides one-off free legal advice appointments on family, civil, tenancy and criminal law matters.

Our organisation has a program known as #R4Respect; an education and prevention strategy led by young people in Logan and surrounds to prevent anti-social behaviour and violence. Thirteen #R4Respect Youth Ambassadors have signed up to create and share messages that promote the values, skills and knowledge needed for respectful relationships.

Through #R4Respect, young people will create messages and share them through digital media like Instagram and Facebook to reach other young people. Messages will be consistent with national anti-violence campaigns, and will focus on four themes:

1. We all have the right to be free of abuse and violence.
2. Respect means being fair and valuing others as equals.
3. Value diversity. Value culture. Celebrate difference.
4. Negotiate through disagreements. Don't hit out.

Submissions

YFS would like to raise the following points in favour of a Human Rights Act in Queensland.

Queensland Criminal Justice and preservation of rights

1. The types of Human Rights that we would hope would form part of a Queensland Human Rights Act include rights relating to the Criminal Justice System. Criminal justice is an important governmental institution that relies on authority and intimidation in order to operate. The ability for government to declare a person a criminal or deprive them of life, liberty or property is an important process that should be safeguarded by numerous rights and responsibilities.
2. Over the last three decades, the Queensland Criminal Justice System has been subject to significant reform. From the Pre-Fitzgerald Inquiry to the reforms enacted by the former LNP Government, the 'Law and Order' platform – the 'tough on crime' mentality; has been a controversial approach by the Queensland Government when enacting criminal laws. Queensland unicameral system of government also highlights the need for greater checks and balances in a state that is well known for its controversial criminal justice history.
3. Criminal laws in Queensland have often come at the expense of limiting the scope and opportunity for accused persons to exercise fundamental Human Rights. Such laws and approaches include:
 - The reversal of the onus of proof in relation to the VLAD laws is on the defendant.¹ The golden rule of the criminal law has always been on the prosecution; given the abundance of resources at their disposal to prove beyond a reasonable doubt the offence a defendant is charged with.²
 - Mass incarceration is slowing becoming an issue in Queensland.³ Prisoner overcrowding can also result in safety concerns to other prisons.
 - Given our work with young people aged from 10 – 25 we constantly see the vulnerability and difficulties these persons face with the criminal justice system.

¹ *Vicious Lawless Association Disestablishment Act 2013* (Qld) s 5(2).

² *Woolmington v DPP* [1935] UKHL 1; *R v Mullen* (1938) 59 CLR 124.

³ Worthington, Elise, "Queensland Prisons Are Grossly Overcrowded, Corrective Services Figures Show" *Australian Broadcasting Corporation*, 2015.

4. A majority of these rights under the criminal law have traditionally been drawn from the common law such as the right not to self-incriminate,⁴ the right to legal representation,⁵ the right to a fair trial; absent of any abuse of process,⁶ as well as rights relating to natural justice and appearing before an unbiased decision maker.⁷ But as Queenslanders have seen with the VLAD laws, common law rights can be altered by parliament.
5. A Queensland Human Rights Act ensures that these fundamental common law rights are promoted and safeguarded. Queenslanders should be able to point to and know of their rights in relation to the criminal justice system.
6. Part of our commitment to the community includes free legal education, such as writing regular news articles for the Logan Reporter and visiting community libraries, schools and centers and providing free legal education sessions. The creation of a Human Rights Act in Queensland can contribute to this legal education; as a source where all people's rights can be easily accessible and studied by persons who are not trained in the law.

The vulnerability of young people in the justice system

1. Young people are among many minority groups that have frequent contact with the criminal justice. The authoritative and sometimes intimidating nature of the police as well as appearing before the courts can result in instances where the rights of the young person are absent.
2. Queensland is unique in that we deem a young person to be an adult at the age of 17.⁸ As Australia's has ratified the United Nations Convention on the Rights of the Child, Queensland 17 year-old adult classification is a contravention of this commitment.⁹ Queensland courts have recognised this anomaly.¹⁰
3. This point is further discussed in the case of *R v Loveridge*¹¹

"Under the Convention, the best interests of the child must be a primary consideration in all actions taken concerning the child, including when dealing with a child for criminal offences. Further, every child deprived of liberty is to be separated from adults unless it is considered in the child's best interests not to do so."

4. The case of *R v Gam*¹² highlights that had the young person been treated as a child pursuant to the Convention, the young person would not have been required to interview with the police. The court recognised that had he not made the unreliable admission during

⁴ *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328.

⁵ *Dietrich v R* (1992) 177 CLR 292.

⁶ *Jago v District Court* (1989) 168 CLR 23.

⁷ *Kioa v West* (1985) 159 CLR 550.

⁸ *Youth Justice Act 1992* (Qld) Sch 4.

⁹ *R v Gordon* [2011] QCA 326 (29 September 2011).

¹⁰ Jodie O'Leary, "Out Of Step And Out Of Touch: Queensland's 2014 Youth Justice Amendments" (2014) 26 *Current issues in Criminal Justice*.

¹¹ [2011] QCA 32 (10 February 2011) [5].

¹² [2011] QCA 288 (12 July 2011), [50].

the interview, the unfortunate results that followed (the trial and eventual appeal) could have been avoided.¹³

5. Despite the recent repealing of the Newman Governments Youth Justice amendments the age of adult criminal responsibility for young persons aged 17 stills exists.¹⁴ We would highlight these aforementioned issues to Legal Affairs and Community Safety Committee. Young people in Queensland need to have human rights assurances. The Committee should consider providing for these assurances if a Human Rights Act were to be implemented in Queensland.

The success in other jurisdictions – Victoria

1. The volatile nature of the criminal justice system has been recognised by the Victorian Court of Appeal:

*“Courts of this country have, over a number of years, become increasingly conscious of the need to ensure that the integrity of the criminal justice system and which, more broadly, is inherent in the concept of the rule of law, is not compromised by the unlawful or improper conduct of the investigative authorities upon which its operations depend. It is well understood that adherence to these notions sometimes enables guilty persons to avoid the processes of justice, but accepted that departure from them creates the potential for even greater injustice”.*¹⁵

2. Victoria has adopted the *Charter of Human Rights and Responsibilities Act 2006*. The Charter ensures that the Victorian Government is legally obliged to comply with the fundamental human rights the listed in the Charter.¹⁶
3. In the context of criminal justice, the Charters application was well known for upholding the presumption of innocence in the case of *Momcilovic v The Queen*.¹⁷ The reading of the statute alongside the human rights charter ensured that laws are subject to constant scrutiny. In the interest of a person’s civil liberties, such measures are necessary.

Conclusions

The protection of Human Rights severe to ensure that government is held accountable when exercising their power on an individual citizen. On behalf of YFS Legal I would like to thank you for the opportunity to provide a submission on the Human Rights inquiry currently conducted by the Legal Affairs and Community Safety Committee. It is important that all views are

¹³ Ibid.

¹⁴ Queensland Government, "Palaszczuk Government Announces Youth Justice Reforms" (2015) <<http://statements.qld.gov.au/Statement/2015/12/1/palaszczuk-government-announces-youth-justice-reforms>>.


¹⁵ *R v Tofilau* (2006) 13 VR 28.

¹⁶ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 1(2).

¹⁷ (2011) 245 CLR1.

considered given that the Human Rights Inquiry may eventually apply to all.

Yours faithfully,

A solid black rectangular box redacting the signature of the sender.

Natasha Ristic
Principal Solicitor
YFS Legal

Nathan Condoleon
4th Year Law Student University of Queensland
Volunteer Law Student YFS Legal