

PeakCare Queensland Inc.

Submission to the

Legal Affairs and Community Safety Committee

INQUIRY INTO LEGISLATING FOR A
HUMAN RIGHTS ACT IN QUEENSLAND

18th April 2016

Part One:

INTRODUCTION

In December 2015, the Queensland Legislative Assembly directed the Legal Affairs and Community Safety Committee to inquire into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.

PeakCare welcomes the opportunity to make a submission in response to the terms of reference for the Committee's inquiry.

Part Two:

ABOUT PEAKCARE AND THIS SUBMISSION

PeakCare Qld Inc. (PeakCare) is a peak body for child and family services in Queensland. Across Queensland, PeakCare has 61 members that are a mix of small, medium and large, local and statewide, mainstream and Aboriginal and Torres Strait Islander non-government organisations that provide services to vulnerable and in care children and young people, their families and communities. In addition, PeakCare's membership includes a network of 26 individual members and other entities supportive of PeakCare's policy platform about the safety and wellbeing of children and young people, and the support of their families.

PeakCare members undertake a wide range of functions with children, young people, family members, foster and kinship carers, and the broader community. Member agencies offer services and programs that are universal, preventative, targeted and / or intensive in nature predominantly in the pursuit of parents, families and communities being able to safely care for their children and support their children to a productive and happy adulthood. Staff and volunteers of many PeakCare members provide day-to-day care and support, either directly or indirectly, to children and young people who have been removed from their parent's care on an emergency, short or long term basis and are residing in out-of-home care (i.e. foster or kinship care or residential services).

Clients accessing services are often impacted by one or more challenges such as poverty, parental or child mental health concerns, substance use, cognitive and other disabilities, racism and ethno-centrism, and / or domestic and family violence. The rights of clients from Aboriginal and Torres Strait Islander backgrounds or from culturally and linguistically diverse backgrounds, particularly refugees and migrants, are especially at risk as the interplay of individual, system and structural factors has a compounding, adverse effect on access to justice and rights. Rights violations are undoubtedly a commonplace experience for these groups. They are especially vulnerable and at risk of rights violations because they generally do not have consistent, adequate or equitable access to support services, stable housing, education about their rights, or legal assistance to remedy basic legal issues. While a Human Rights Act would benefit all Queenslanders, PeakCare's submission focuses on human rights legislation as it would address the needs of these groups and encourage equality for all citizens.



PeakCare
Queensland Inc.

This submission outlines the inadequacies of current legislation to protect individual human rights in Queensland, and the importance of developing a single Human Rights Act to promote a culture that values freedom, respect and equality. A Human Rights Act would achieve this by ensuring that the government consider individual right values in their decision making, thereby benefiting all Queenslanders.

Part Three:

RESPONSE TO THE FULL TERMS OF REFERENCE AS OUTLINED BY THE LEGISLATIVE ASSEMBLY

Inquiry Reference 2(a) the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms

More than most other human service systems, the child protection system has historically afforded high levels of authority to intrude and make judgements about the personal lives of individuals and families. This has made certain cohorts of individuals and families extremely vulnerable to the imposition of moral and cultural constructs about the safety, well-being and best interests of children and a subsequent lessening or, in many instances, violation of their human rights. The damage caused by the imposition of these constructs is mostly starkly evident when consideration is given to the devastating impact of the forced removal of Aboriginal and Torres Strait Islander children from their families during the period in Australia's history now commonly referred to as the era of 'The Stolen Generations'. Government policy of the day allowed for Aboriginal and Torres Strait Islander children, unlike all other children, to be legally regarded as 'neglected and destitute' based solely on their race. This justified the forced removal of these children with no legal rights held by their families to argue or appeal these decisions.

The ongoing legacy of this era on Aboriginal and Torres Strait Islander families and communities serves as a vivid reminder of the dangers of a cultural bias being applied to the judgements about what constitutes sound child-rearing practices and the grounds that may warrant the initiation of child protection interventions. It may be argued that these are dangers that continue to exist today – not only in relation to Aboriginal and Torres Strait Islander children, but also those whose families have other cultural backgrounds or who may be discriminated against for other reasons.

History has also demonstrated, for example, the harm caused to many individuals and families in the past when for reasons of morality and conformance with prevailing social norms, economic hardship, or the possession of a physical or intellectual disability by a child or parent, undue pressure was routinely placed on parents - single mothers especially – to relinquish the care of their children and consent to their adoption, their placement in foster or institutional care, or being raised by a relative 'pretending' to be their mother.



Various inquiries have tested assumptions that children, when removed from their parents' care would be safely cared of by others. These assumptions have been discovered to be ill-founded. For example, the vulnerability of children who have lived outside of their family's care has been highlighted within:

- The *Bringing The Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* released in 1997
- *Lost innocents: Righting the record. Report on child migration* produced by the Senate Community Affairs References Committee in 2001
- *Forgotten Australians: A report on Australians who have experienced institutional or out-of-home care as children* produced by the Senate Community Affairs References Committee in 2004
- *Report of the Commission of Inquiry into the Abuse of Children in Queensland Institutions* released in 1999
- *Commonwealth Contribution to Forced Adoption Policies and Practices* produced by the Senate Community Affairs References Committee in 2012

As a result of these and other inquiries, the child protection system has increasingly incorporated safeguards to protect the rights of all parties throughout the processes used to determine the level of intervention needed to secure the protection of children from harm. Despite these safeguards however, inherent with the struggle to re-shape the child protection system is a failure to fully appreciate that the children and families the system is intended to serve are not an homogenous group. The reasons for their contact with the child protection system vary widely as do their responses to the range of interventions and services they may receive and the pathways made available to them in accessing these services.

While some children and families may be regarded as having a profile that characterises them as 'vulnerable' or 'at risk', exceptions can always be found. Child abuse and neglect is not confined to any particular socio-economic group, nor is it the inevitable consequence for children of single parents or parents who were themselves abused or neglected or who have an intellectual disability or who have formerly spent time 'in care' or who are Aboriginal or Torres Strait Islander.

While services that are targeted towards particular cohorts of children and families may benefit many, there are continuing dangers of value-laden constructs being applied in the name of 'protecting children' that unfairly and unjustly draw attention to and discriminate against some groups – both in relation to who is reported to child protection authorities, the pathways made available to them in accessing services, and the nature and intensity of the response they receive.

PeakCare views the possible introduction of a Human Rights Act as providing a means of further reducing the potential imposition of a moral and cultural construct on the protection of children and ways in which families are judged and replacing this with a values-driven construct being placed on the system's decision-makers and the ways in which they exercise their authorities – ways that are informed by commonly accepted human rights values, principles and standards.



Currently Human Rights in Queensland only exist within provisions of individual pieces of legislation, however, this approach:

- fails to establish specific individual rights for Queenslanders
- does not address the responsibilities of agencies and service providers in relation to human rights, or
- provide avenues of recourse where these rights may have been violated.

Existing Queensland laws have been unsuccessful in affording and / or protecting the rights of particular cohorts such as Aboriginal and Torres Strait Islander peoples; children; young people; people with cognitive and disabilities; people from culturally and linguistically diverse backgrounds; single parents; the elderly; lesbian, gay, bisexual, transgender and intersex people; and homeless people.

An Act which specifically addresses Human Rights would move Government past an apologetic era, and display real development and commitment to the protection of individual human rights.

A single, unified Human Rights Act in Queensland would:

- create a value laden construct which aligns Queensland with the characteristics of a modern democracy
- protect basic rights such as freedom of association, right to privacy of personal information, freedom of speech, and freedom from discrimination which are not adequately protected under existing Queensland law
- incorporate the universally developed principles of the United Nations *Declaration on the Rights of Indigenous Peoples*, *Convention on the Rights of the Child*, and the *International Covenant on Civil and Political Rights* into Queensland law
- ensure that this and future Queensland governments consider individual human rights when developing and reviewing legislation, policies, review rights and other decisions
- provide access to the justice system for individuals when a decision has impeded their rights
- educate Queenslanders about their rights and responsibilities with regards to human rights
- contribute to aligning Australia with international expectations and increase its standing amongst other nations

A Human Rights Act must address and protect the individual rights of people who, for various reasons, may be regarded as vulnerable or who may be exposed to periodic vulnerability due to changing circumstances of their lives. PeakCare is specifically concerned about:

- the need to 'close the gap' between Aboriginal and Torres Strait Islander and non-indigenous Australians
- the need for increased investment in health, education and employment services in regional, rural and remote Queensland



- the increasingly disproportionate representation of Aboriginal and Torres Strait Islander children and families in the child protection system and the failure to adequately and appropriately support those children, young people, their families and communities
- providing support and services to those who are adversely impacted by domestic and family violence (generally women and children) and those who use violence. PeakCare supports imposing a requirement on governments to protect those who experience or are exposed to domestic and family violence as contained in *The United Nations Convention on the Elimination of All Forms of Discrimination against Women*
- the rights of young people and the responsibility on the Queensland Government to address the current Queensland practice of treating 17 year olds as adults in the legal system. This is despite the *United Nations Convention on the Rights of the Child* stating that a child should not be treated cruelly and should not be put in prison with adults
- affording people who have a disability the right to be treated with dignity, equality and respect

Inquiry Reference 2(b) the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally

The enactment of Human Rights Acts in both the Australian Capital Territory (ACT) and Victoria has been successful in developing a Human Rights rich culture which promotes scrutinised decision making and accessibility of recourse when breaches have occurred. In both jurisdictions, the Acts have:

- shaped the decision making of Parliament so that human rights are considered when making decisions
- created greater awareness of human rights within the population and public authorities
- provided recourse to individuals when their rights have been breached
- directed courts to interpret legislation compatibly with human rights

The *Victorian Charter of Human Rights and Responsibilities Act 2006* has:

- been used as a tool by a woman suffering from domestic violence to extend a legislative limitation period
- protected the rights of an Aboriginal woman by allowing a challenge to a housing decision made by a community organisation
- acted as a framework in the creation of community services which provide free legal advice to individuals regarding their human rights
- enabled a child with a disability to successfully challenge his expulsion from school



The *Human Rights Act 2004* (ACT) has:

- been used as a tool to reduce the sentence of a young Aboriginal woman on the basis that it was excessive, and that the decision maker had not adequately considered her personal and cultural circumstances
- provides all individuals with a right to a fair hearing
- prohibits young people who are detained without charge from being held with adults.

While not an exhaustive list, the above uses of provisions in other jurisdictions highlight the success of Human Rights Acts, and provide qualitative evidence of the desirability of a similar instrument in Queensland law.

Inquiry reference 3(a) the objectives of the legislation and rights to be protected

The majority of rights contained in both the Victorian and ACT models stem from United Nations treaties. PeakCare is of the view that marginalisation and increased vulnerability for certain cohorts does not have to be continuous. With the right supports when they are needed and for as long as they are needed from the right service provider/s, children, young people and families can be assisted to move through periods of substance use, housing instability and homelessness, domestic and family violence, mental ill-health or poverty. As such, any Human Rights legislation developed in Queensland should be guided by the following principles:

- freedom from discrimination
- accessible review processes and justice system, and the right to a fair hearing
- the right to freedom, and equality before the law
- the right to challenge decisions made by government and non-government agencies and service providers
- the right to participate in decision making processes and to be informed when individual rights will be impeded
- a person's right to be cared for in their family, and to live free from violence and abuse
- detention truly as a last resort for children and 17 year olds to not be treated as adults

Of major advantage to all Queenslanders, a Human Rights Act would bind all government and non-government agencies, service providers and decision makers to a higher standard, and provide recourse to citizens when their rights have been violated by one of these bodies.

Two particular areas of concern are children and young people who have been or are at risk of significant harm relating to parental abuse or neglect, and access to justice. In respect to at risk and in care children and young people, the Queensland Child Protection Commission of Inquiry found that accessibility of services and lack of resourcing were major contributors to children, young

people and families being at risk. While *The Child Protection Act 1999* provides for a number of children's and young person's rights, these rights are not always clear and do not provide for specific responsibilities of service providers to protect the human rights of children. In order to fully protect the rights of children and young people in Queensland, a Human Rights Act should be established and incorporate the provisions set out in the *United Nations Convention on the Rights of the Child*.

Access to justice is fundamental to protecting individual rights. Vulnerable people who do not have access to the legal system are far more likely to experience further disadvantage. Any Human Rights Act should include the right of individuals to bring an affordable and easily accessible free standing cause of action against a violation. This practice exists in the ACT, and was recommended in a recent independent review of the Victorian model. In Queensland, the already established Anti-Discrimination Commission or Queensland Civil and Administrative Tribunal could fulfil the role of hearing complaints with regard to human right violations.

Part Four:

CONCLUSION

This submission has outlined inadequacies of current legislation to protect individual human rights in Queensland, and the importance of developing a single Human Rights Act to promote a culture that values freedom, respect and equality. When the human rights of vulnerable and marginalised people are protected, all Queenslanders benefit.

PeakCare urges the Legal Affairs and Community Safety Committee to conclude that it is appropriate and desirable to legislate for a Human Rights Act in Queensland and looks forward to working with the Queensland Government to develop such legislation.

