

# QCOSS

Queensland Council  
of Social Service

## *Human Rights Act for Queensland*

*QCOSS submission*



*18 April 2016*

## *About QCOSS*

The Queensland Council of Social Service (QCOSS) is the state-wide peak body for individuals and organisations working in the social and community service sector.

For more than 50 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all. With members from throughout Queensland, QCOSS undertakes informed advocacy and supports a strong community service sector.

QCOSS' key activities focus on providing effective policy advice, working to strengthen responsive community services and having productive partnerships with the community sector, government, private sector, academia, media and the broader community. This work is done with a Queensland free of poverty and disadvantage front of mind.

QCOSS, together with our members, provides a crucial advocacy role in a broad number of areas including:

- service practice and reform
- homelessness and housing
- early intervention and prevention
- cost of living pressures including low income energy concessions and improved consumer protections in essential services, and
- early childhood support for Aboriginal and Torres Strait Islander and culturally and linguistically diverse peoples.

QCOSS is part of the national network of Councils of Social Service lending support and gaining essential insight to national and other state issues.

QCOSS is supported by the vice-regal patronage of His Excellency the Honourable Paul de Jersey AC, Governor of Queensland.

## Introduction: why a human rights act for Queensland?

The Queensland Council of Social Service (QCOSS) welcomes the introduction of a Human Rights Act for Queensland. We understand the potential of such an act, properly crafted and implemented, to address poverty and disadvantage by fostering a culture throughout the Queensland Government and wider community that seeks to respect, promote, and protect the human rights of all in our State. The values which underpin human rights legislation - participation, inclusion, respect, dignity, fairness, equality, non-discrimination, and social justice - are widely supported and practiced by community organisations in Queensland and are integral to the reduction of poverty and disadvantage in our state.

Importantly, it is those who experience disadvantage who are most at risk of having their human rights violated, and while Queensland is prosperous, there are nonetheless a number of human rights concerns in the state. These include, but are in no way limited to, protection of the rights of people with disability, protection of the rights of LGBTI; protection of the rights of Aboriginal and Torres Strait Islander peoples<sup>1</sup>, protection of the rights of migrants<sup>2</sup>, protection of the rights of women and children<sup>3</sup>, protection of the rights of young people, availability of adequate public housing, access to rural mental health facilities, and recognition and respect for one's ethnic, religious, cultural, and linguistic background. Indeed, the evident broad community support for a Human Rights Act for Queensland should be understood in light of on-going experiences of discrimination for some and changing expectations regarding the treatment of vulnerable and marginalised populations in our communities.

By enacting legislation that seeks to respect, protect and promote fundamental human rights, the Queensland Parliament can make a strong statement in favour of creating a culture which privileges human dignity for all in our State. This brief submission seeks to draw out key considerations for both the crafting and implementation of any Queensland Human Rights Act.

These considerations are presented in two sections:

- 1 Which human rights? and
- 2 Implementing a human rights act.

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1 Price, Kaye. 2015. *Knowledge of Life: Aboriginal and Torres Strait Islander Australia*. Melbourne: Cambridge University Press; Chapell, L, Chesterman, J, and Hill, L. 2009. *The Politics of Human Rights in Australia*. Melbourne: Cambridge University Press.

2 Reilly, Alexander. 2012. "Protecting vulnerable migrant workers: The case of International Students," *Australian Journal of Labour Law* 25: 181-208; Underhill, E and Rimmer, Malcolm. "Layered vulnerability: Temporary migrants in Australian horticulture." *Journal of Industrial Relations* 0(0): p1-19.

3 Special Taskforce on Domestic and Family Violence in Queensland. 2015. *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*. Brisbane: Queensland Government.

## Which human rights?

### Key points

- QCROSS supports the inclusion of both civil and political rights, and economic, social and cultural rights.
- The drafting of a human rights act must be responsive to the collective and cultural aspects of Aboriginal and Torres Strait Islander people.
- QCROSS supports the inclusion of an explicit right to self-determination for Aboriginal and Torres Strait Islander people in Queensland.
- The inclusion of economic, social, and cultural rights is of specific importance to those who suffer from disadvantage, and for whom these rights are at greatest risk.
- The inclusion of economic, social, and cultural rights is particularly applicable to state governments, whose primary role is in delivery, commissioning or facilitation of service delivery.

The question of which human rights are to be enshrined is of course fundamental to understanding the potential impact of a human rights act for individuals, families, and communities in Queensland. While Australia has ratified a broad range of international human rights instruments, human rights legislation in Victoria (*the Charter of Human Rights and Responsibilities Act 2006*<sup>4</sup>) and the Australian Capital Territory (*the Human Rights Act 2004*<sup>5</sup>) draw exclusively on the 1st generation rights articulated in the International Covenant on Civil and Political Rights (ICCPR). QCROSS regards the respect, protection, and promotion of civil and political rights as fundamental to a Human Rights Act for Queensland. However, QCROSS also emphasises the importance of a broader range of rights - in particular, the rights enshrined in the International Covenant on Economic, Social, and Cultural Rights - for taking positive action to ensure the enjoyment of basic human rights by vulnerable and marginalised people in Queensland.

Civil and political rights articulated in the ICCPR and central to both the *Charter* and the *HRA* pertain to freedoms associated with security rights, due process rights, liberty rights, political rights, and equality rights.<sup>6</sup> These rights are understood to be universal, and are underpinned by the principle of non-discrimination.

*Respect, protection, and promotion* of such rights have the potential to positively impact on the lives of people in Queensland, especially those for whom existing arrangements with regard to civil and political rights have entailed continued disadvantage. It should provide all people in Queensland with a tool to ensure their rights are upheld, while also providing bedrock principles for public authorities' engagement with the people of Queensland. Not

4 Charter of Human Rights and Responsibilities Act 2006 (Victoria).

5 Human Rights Act 2004 (ACT)

6. Chapell, L, Chesterman, J, and Hill, L. 2009. *The Politics of Human Rights in Australia*. Melbourne: Cambridge University Press.

only would legislators need to wear ‘rights-respecting lenses’ in the drafting and deliberation of legislation, a human rights act in line with international best practice should also compel Parliament to consider the most effective policies and legislation so as to also protect individuals from having their rights abused by public authorities or third parties. Moreover, promotion entails an obligation to provide for an environment conducive to the realisation of rights named in the act.<sup>7</sup> So, for example, a Human Rights Act for Queensland could potentially help to protect rights with regard to marriage equality; it could support positive actions to address continued gender inequities that restrict women’s full participation in economic and political life of the State; and it might imply the deployment of sufficient resources for developing adequate legal aid and qualified interpreters to ensure that those in need can realise their due process rights.

QCROSS emphasises the importance of making sure these rights are comprehensively applied to *all* in Queensland, including, for example, temporary migrants. The temporary migration program is of particular concern for public policy and is implicated in the production of precariousness and enabling conditions for exploitation. Restrictions on work (based on visa status) faced by migrants on some protection visas, or even international student visas, can leave people particularly susceptible to relations of domination, whether in the home or in the workplace. In particular, women without an income, who also often lack secure residence, are particularly vulnerable to sexual exploitation and family violence. This is an issue that has also been noted to play out in the context of some ‘permanent temporaries’, who are New Zealand citizens resident in Australia under the ‘non-protected’ special category visa associated with the trans-Tasman travel arrangements<sup>8</sup>. Even as visa restrictions are an outcome of Commonwealth policy, QCROSS wishes to draw attention to the need for the human rights of temporary migrants to nonetheless be respected, protected, and promoted in Queensland.

However, QCROSS also cautions that the articulation of general, universal civil and political rights should not entail exclusion of the collective and cultural rights of Aboriginal people through exclusive focus on individual rights. As those who have historically suffered the greatest deprivation of rights in Australia, it is imperative that any Human Rights Act for Queensland must be responsive to the collective aspects of the rights of Aboriginal people, and encompass recognition of Indigenous difference. This would be in line with developments in international law that have sought to bridge the ‘protection gap’ between the individualistic scope of human rights regimes and their application to indigenous peoples.<sup>9</sup>

Article 1 of the UN *Declaration on the Rights of Indigenous Peoples*<sup>10</sup> (*‘Declaration’*) states, “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.”<sup>11</sup> Such rights as described in the *Declaration* ‘constitute the minimum

7 Office of the High Commissioner Human Rights. “Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15”: <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>

8 Queensland Council of Social Service. 2016. “Permanent Temporaries: Scoping the impact of Trans-Tasman Travel Arrangements (TTTA) on communities in Queensland.

9 Hartley, Jackie. 2007. “Indigenous Rights under the Human Rights Act 2004 (ACT) and the Charter of Human Rights and Responsibilities Act 2006 (Victoria). *Australian Indigenous Law Review* 11(6): 9.

10 United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GOAR, 61st sess, 107th plen mtg, UN Doc A/RES/61/295, Annex” (2007) art 1.

11 Ibid.



standards for the survival, dignity, and well-being of the indigenous peoples of the world.<sup>12</sup> Importantly, recognition of the collective aspects of Indigenous peoples' rights are understood in international law as fundamental to realising the norms and principles of equality and non-discrimination which underpin all human rights instruments.

QCROSS also supports the explicit inclusion of a right to self-determination for Aboriginal and Torres Strait Islander people in a Human Rights Act for Queensland. Self-determination encompasses the notion that people must be equal participants in the construction and ongoing functioning of the governing institutions under which they live. This right holds specific importance to Aboriginal and Torres Strait Islander people given their historical and continued experience of dispossession and marginalisation. Importantly, inclusion of a right to self-determination could offer an important tool for promoting dialogue and relationship building.

QCROSS also supports the inclusion of rights articulated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR) as they are essential to the protection of vulnerable and marginalised populations. As an organisation focused on the elimination of poverty and disadvantage in our communities, QCROSS is well aware that for too many people in our communities securing the basic necessities of life - an adequate standard of living, education, healthcare, income, employment, and social ties, is of primary concern and is a pre-requisite to the enjoyment of any other human rights. This was also the view of the 2009 Human Rights Consultation which found ESC rights to be the primary concern for those suffering from disadvantage and for whom basic rights such as access to health, education, and housing were "most at risk".<sup>13</sup>

Experiences in Victoria and ACT with human rights legislation allows Queensland the opportunity take lessons learned on board in the formulation of its own human rights act. In its submission to the *2015 Review of the Charter of Human Rights*, the Victoria Council of Social Service (VCOSS) argued for the expansion of rights to encompass ESC rights, arguing that inclusion of "economic, social, and cultural rights makes particular sense for state governments, whose primary role is in service delivery."<sup>14</sup> VCOSS pointed to the contradiction in excluding ESC rights from the *Charter*, even as the majority of the State's budget was devoted to health and education.<sup>15</sup>

In its submission to the *Review of the Charter*, VCOSS also noted that the *Charter* was nonetheless most often applied in areas related to housing and health. Moreover, community organisations reported drawing on the *Charter* to inform their decision making, provision of assistance, and advocacy for people, "including people with disability, women and children who are victims of family violence, and people accessing social housing and health services."<sup>16</sup>

QCROSS agrees that it makes sense to explicitly include economic, social, and cultural rights in any Human Rights Act for Queensland given that experience shows that these will be the key areas in which human rights are invoked.

<sup>12</sup> Ibid.

<sup>13</sup> Commonwealth Attorney General's Department, National Human Rights Consultation: Report, Canberra, 2009, p. 365 & 344.

<sup>14</sup> Victoria Council of Social Service. 2015. *Review of the Charter of Human Rights*.

<sup>15</sup> Ibid, p13.

<sup>16</sup> Ibid, p13.

# Implementing a human rights act in Queensland

## Key points

- A Human Rights Act for Queensland has the potential to encourage the building of a strong culture of rights within government bodies, community service organisations, and the wider community.
- Fostering a culture of rights and a respect for human dignity throughout the community - a core objective of any human rights act - requires, at the very least, significant investment in education, training, planning, and reporting.
- Increased understanding and awareness of human rights and of the implications of the legislation within government and public authorities is central to its meaningful implementation.
- It is of vital importance to the potential success of a human rights act, that the general public is informed and educated in their rights and the enforcement mechanisms available.
- Community sector organisations must be clear on their obligations under the legislation, and staff must receive targeted training to enable an embedding of human rights principles in organisational planning and practice.

The significance of a Human Rights Act for Queensland lays not only in the possibility of securing redress for breaches of one's rights, or in ensuring that legislation and policy development take account of human rights implications. Rather, its greatest significance may very well be the potential to foster a widespread culture of rights and respect for the dignity of all people within government, community service organisations, and the wider community. In this manner, a Human Rights Act for Queensland, like its predecessors in Victoria and ACT, might be conceived as a powerful tool for embedding core human rights values - participation, inclusion, respect, dignity, fairness, equality, non-discrimination, and social justice - throughout the Queensland community.

Pursuing this latter objective, namely the embedding throughout government, community service organisations, and the general public these core human rights values will require, at the very least, significant investment in education, training, planning, and reporting. To start, raising awareness and understanding of human rights, and the implications and applications of the legislation, with staff of government and public authorities is integral to its meaningful implementation. Government agencies and public authorities must also work to build human rights frameworks and considerations into all of their key documents and strategic plans. Moreover, reporting on human rights and the progress made in embedding human rights throughout organisational structures should become standard practice. This should also include periodic review (especially with regards to key portfolios - Justice, Police, Indigenous, Housing, CALD, Disability, Mental Health) of whether contemporary policy and program design reflect the principles underpinning human rights legislation. Without appropriate education and training, and timely and effective reporting, the legislation is likely to be unevenly implemented, and dialogue both within government

and between government and the community about human rights and the implications of policy for people in Queensland, will be minimised.

Similarly, successful operationalisation of a Human Rights Act for Queensland necessarily requires that the public is informed and educated in their rights and the enforcement mechanisms available. Indeed, in both the *Charter* and the *HRA*, an informed public serves as an implied check on the power of Parliament to override or place limits on human rights legislation. This is a key element of a dialogue model of human rights protection. Important to this, resources and training should be devoted specifically to ensuring that vulnerable groups understand their rights and the mechanisms available to ensure those rights are protected.

Implementation of a human rights act will also require embedding awareness of the legislation and its implications throughout the community service sector in Queensland. Community organisations would expect to receive resources and training on a consistent basis (and not just as a one-off) so that knowledge of human rights can be disseminated throughout the sector and so organisations can successfully embed associated values and practices throughout their planning and operations. At the same time, it would be expected that Key Performance Indicators (KPIs) would be articulated in line with human rights legislation.

A Human Rights Act for Queensland effectively implemented could help engender a shift to rights based practices for service organisations. This would entail significant investment in participatory processes and bottom-up solutions in order to respect, protect, and promote human rights in the community. The expectation would be that this shift would be substantively supported and reflected in KPIs, access to data, and resources.

QCROSS would also like to highlight an issue with regards to the community service sector noted by VCOSS in its *2015 Review of the Charter of Human Rights*. VCOSS pointed to numerous consequences stemming from a lack of clarity of coverage of the definition of 'public authority'. Community service organisations often grow organically 'joining up' whatever resources are at hand to respond to the particular needs of community at a particular time. As a result, it is quite often very difficult, if not impossible, to categorise services provided by community organisations as 'public' or 'private'. One consequence of this is that community organisations in Victoria reported often being uncertain about the extent of their coverage and obligations under the *Charter*. As VCOSS noted, this lack of clarity has real consequences. For people who consider their rights to have been infringed, this uncertainty of coverage makes it difficult to determine if they have recourse to the *Charter* to support a complaint or other action for redress. For service organisations, the uncertainty can pose an obstacle to attracting funding in order to align service design and practices with human rights.<sup>17</sup>

## Conclusion

QCROSS strongly supports the introduction of a Human Rights Act for Queensland. Properly crafted and implemented, it could have a significant positive impact on the lives and life opportunities of people in Queensland.

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<sup>17</sup> Ibid, p19.