



Queensland Association of Independent Legal Services Inc

15 October 2013

Mr Brook Hastie  
Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Mr Hastie,

***Police Powers and Responsibilities and Other Legislation Amendment Bill 2013***

The Queensland Association of Independent Legal Services Inc. (**QAILS**) thanks the Legal Affairs and Community Safety Committee for the opportunity to comment on this legislative proposal.

This submission focuses on one aspect of the proposed legislative changes namely, out-of-control events (Clause 4).

In preparing this submission, QAILS has paid particular regard to the human rights of young people and individuals in the context of their dealings with police. The *QAILS Human Rights and Social Justice Policy* (**attached**) outlines our policy position with respect to, *inter alia*, children and young people, civil liberties and policing. This policy document guides the work that QAILS and its member Community Legal Centres undertake in advocating for increased human rights protections and laws and practices that are both socially just and human rights compliant.

**About QAILS**

QAILS is the independent peak body for Queensland's funded and unfunded member community legal centres (**CLCs**) operating across the State.

CLCs are not-for-profit, community-based organisations that provide legal advice, casework, information and a range of community development services to their local or special interest communities. CLCs' work is targeted at disadvantaged members of society and those with special needs, and in undertaking matters in the public interest. CLCs have been advocating for a rights based approach to equitable access to the justice system for over 30 years. CLCs are often the first point of contact for people seeking assistance and/or the contact of last resort when all other attempts to seek legal assistance have failed.

## **Lack of evidence to support legislative proposals**

An overarching concern that we have is the lack of evidentiary basis for the proposed legislative changes. Specifically, we query the evidentiary basis for the following claims made in the Bill's Explanatory Notes:

- The assertion that organised events that become out-of-control are 'frequently undertaken for financial gain.' (p1, Explanatory Notes)
- The assertion of a causal connection between out-of-control events and the re-congregation of attendees continuing to offend and display anti-social behaviour, commonly resulting in 'excessive noise... fighting in the street, smashing bottles and screaming abuse at local residents.' (p2, Explanatory Notes)
- The assertion that out-of-control events have, in recent times, become 'ever increasing in size and frequency.' (p2, Explanatory Notes)

In our view it is poor law-making when a Bill that seeks to infringe upon the rights and liberties of ordinary citizens fails to provide any sound evidentiary basis to justify its curtailment of those rights and liberties. We submit that Legal Affairs and Community Safety Committee should require that the Minister produce actual data and evidentiary particulars to justify the claim that the Bill achieves an 'appropriate balance between the rights and liberties of individuals and the safety of the broader community' (p5). In our view, it does not.

## **Discriminatory**

The proposed legislation explicitly targets young people and as such, is inherently discriminatory. Parties and gatherings are an essential and legitimate form of socialisation for young people, particularly those still in high school who do not meet the age requirements to attend licenced bars and clubs. Private gatherings at individuals' houses naturally serve as the primary site for socialising for this particular demographic in our community. Parties help us to celebrate important milestones (18<sup>th</sup> birthdays, graduations, school formals) and are a fundamentally ingrained form of cultural expression.

The introduction of Clause 4 will result in increased interactions between police and young people which will be likely to result in greater charges being laid against young people (or their parents). While this fits with the government's 'tough on crime' approach to youth justice, we suggest that it is neither sound policy nor a strategic use of government resources. This approach is likely to 'net-widen' the entry points to young people's interaction with the criminal justice system and will lead to greater strains on the judiciary as it responds to greater charges being heard.

## **Unnecessary**

Police already have sufficient powers to respond to the types of behaviour or events that the proposed legislation anticipates. For example, section 577 requires police to investigate a complaint about noise as soon as practicable. This is a routinely used section within the PPRA which alerts police to the existence of excessively loud parties or gatherings. In our view section 577 is a sufficient trigger for police to investigate complaints about a so-called 'out-of-control event', and one which would open the door to further police action in accordance with their usual policing powers, should further action be necessary.

## **Punitive**

The proposed out-of-control event powers may be triggered simply because a police officer seeks to prevent an ordinary, 'controlled' gathering from becoming out-of-control (proposed section 53BG(1)(a)). This is a startling incursion on the rights of ordinary Queenslanders to, put simply, have fun. This is a punitive approach that seeks to curtail ordinary, basic freedoms in our community. The proposed legislation defines a gathering of at least 12 people as having the capacity to become an out-of-control event. A gathering of at least 12 people is akin to the size of a generous dinner party – it is hardly the composition of an 'open house party' or 'Facebook party' (p2 Explanatory Notes). If the Legal Affairs and Community Safety Committee deems the proposed legislative changes acceptable, we submit that the lower limit for an out-of-control event be at least raised from 12 to 40 people as a minimum.

## **Available alternatives**

Rather than introducing excessive and unnecessary new powers via Clause 4, the government could instead deliver innovative community awareness campaigns that focus on the risks and responsibilities of hosting parties associated with the use of social media platforms such as Facebook.

Yours sincerely,



**James Farrell**  
QAILS Director



# **Human Rights and Social Justice Policy**

Adopted by QAILS on 25 November 2012



Queensland Association of Independent Legal Services Inc



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## About QAILS

The Queensland Association of Independent Legal Services (**QAILS**) is the state based peak body representing funded and unfunded Community Legal Centres (**CLCs**) operating throughout Queensland. There are 33 independent community legal centres in Queensland and over 200 throughout Australia. QAILS:

- ◆ promotes the development of community legal centres.
- ◆ enhances communication and cooperation between community legal centres.
- ◆ secures and develop funding for community legal centres
- ◆ represents the interests and opinions of members

QAILS does not provide legal advice but may make referrals to member services.

**Donations to QAILS are tax deductible  
and gratefully received**

## ABORIGINAL & TORRES STRAIT ISLANDER JUSTICE

QAILS believes that Aboriginal and Torres Strait Islander people are entitled to the same legal rights as the non-Indigenous population of Australia and to equality before the law at all stages of the legal process.

QAILS supports

- Convention 169 of the International Labour Organization;
- The *United Nations Declaration on the Rights of Indigenous Peoples* and welcomes Australia's endorsement of this instrument.

QAILS advocates

- genuine, respectful discussion with Aboriginal and Torres Strait Islander Peoples concerning the reduction of Indigenous overrepresentation in the criminal justice system;
- Improvement in service provision to facilitate access to justice for Indigenous people, wherever they live.

## ACCESS TO JUSTICE & COURTS

QAILS believes that

- all people, regardless of their background or present circumstances, should be able to access sufficient assistance (legal or non-legal) to enable them to know, understand and stand up for their rights in the public domain.
- individuals should be able to seek and achieve justice through the system of courts established to achieve this end

QAILS supports

- Article 9 of the International Covenant on Civil and Political Rights, the right to liberty and security of the person (particularly, with respect to arrest and detention)
- Article 14, that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against her or him, or of her or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

QAILS advocates

- the strengthening and modernisation of community legal centre infrastructure as a resource for building stronger communities;
- greater provision of legal aid resources across all areas of law;
- the amendment or introduction of various mechanisms to enhance the ability for individuals of diverse circumstances to be represented in court by themselves or another;
- greater financial assistance for services which assist vulnerable, disadvantaged or remote individuals in accessing the court system, particularly in the areas of employment law; child protection; consumer credit, debt and insurance; coronial inquiries; discrimination;
- increased resourcing of alternative dispute resolution processes;
- the introduction of a 'Legalcare' scheme;
- adherence to the principle of non-discrimination in dealings with all persons who come into contact with the legal process, including Aboriginal and Torres Strait Islander persons, persons with a disability, and persons of cultural and linguistic diversity
- increased education of the police force, judicial officers, and court and tribunal staff and legal practitioners regarding the early identification of persons with a disability entering the criminal justice system to ensure that appropriate and tailored services can be provided, including clear pathways for referrals to community support services which have time limits and strong accountability mechanisms regarding active responses
- a new legal policy framework to modernise Queensland's approach to dealing with persons with disability in contact with the youth and criminal justice systems; and
- preventative approaches to ensure that children and young people at risk do not enter the criminal justice system or suffer abuse; including time limits with strong accountability mechanisms for active responses to requests for inter and intra departmental collaborations, referrals and handovers.

## CHILD PROTECTION

QAILS believes that all children deserve protection from all forms of violence, wherever it may occur, and that the best interests of the child are paramount.

QAILS supports the Convention on the Rights of the Child, on which all decisions regarding children should be based.

QAILS promotes

- services aimed at preventing the entry of children into the child protection system, including through provision of advocacy and legal advice services;
- strict adherence to the law, principle and policy in relation to child protection interventions and placements of Aboriginal and Torres Strait Islander children;
- strong accountability mechanisms in the child protection system;
- high standards of professional qualification and experience in selection of child protection employees and carers;
- support for carers;
- the implementation of a robust, independent, readily accessible complaints and advocacy mechanism for young people in care;
- Improved transition-from-care planning and arrangements, and support after exiting the child protection system.

## CHILDREN & YOUNG PEOPLE

QAILS believes that children and young people are fully entitled to respect for their human rights.

QAILS supports the *United Nations Convention on the Rights of the Child*, on which all decisions regarding persons under the age of 18 years should be based.

QAILS advocates

- Increased adherence to the fundamental rights and freedoms contained in United Nations Convention on the Rights of the Child, including that all services, supports and interventions in relation to children are culturally appropriate.
- independent representation of children and young people in all legal proceedings which affect them in a manner consistent with the evolving capacity of the child or young person, to ensure that their opinion is taken into account by courts, tribunals, etc.
- the meaningful participation of young people in decision-making across all levels of government and in the non-government sector both individually in matters specific to them and more broadly in community issues of relevance or interest to them.

- an emphasis on early intervention and prevention to support and assist those young people and their families who may be at risk of involvement in child protection or youth justice systems, homelessness, involvement in alcohol or drug issues.
- An emphasis on early diagnosis and support for children and young people with mental health issues or disability.
- The entitlement of young people to engage in society on equal standing with any other age group.

## CIVIL LIBERTIES

QAILS believes that civil liberties are essential to protect and enrich democratic societies.

QAILS supports the *United Nations Universal Declaration on Human Rights* and the *International Covenant on Civil and Political Rights*.

QAILS advocates

- the promotion of awareness about potential and existing degradation of civil liberties;
- restraint of government action which impinges on existing civil liberties;
- law reform activities in favour of improving the observance of civil liberties in Queensland and Australia;
- unrestricted media access to state Parliamentary proceedings

## CONSUMER CREDIT, DEBT & INSURANCE

QAILS believes that there is a need for transparency in dealings with consumers in the areas of credit and insurance in order that they are not put at risk of falling into debt or lacking appropriate cover.

QAILS supports the *Competition and Consumer Act 2010 (Commonwealth)* and the *Fair Trading Act 1989 (Queensland)* to the extent that these acts support consumer rights in dealings with credit, debt and insurance.

QAILS advocates

- measures that will reduce exploitative or irresponsible practices on the part of lenders and insurers;
- a robust system to monitor industry compliance;
- Mechanisms to support consumers to obtain a just outcome where they have been dealt with unfairly.

## CORONIAL INQUIRIES

QAILS believes that transparency is essential in ascertaining the details of an individual's death, both for the individual's family and for public awareness.

QAILS advocates

- actions to increase transparency in the processes of coronial inquiries and the implementation of their recommendations;
- The involvement of families and other interested parties in the coronial inquiry process.

QAILS recommends that:

1. The Queensland Government act to adopt core best practice and guarantee that the preservation of life is central to our coronial system, by introducing, prevention and reporting amendments to our coronial legislation.

These amendments should include or have the effect of:

- a preamble that expresses the role of the coronial system as including independent investigation of deaths for the purpose of finding the causes of those deaths and to contribute to the prevention of avoidable deaths, together with the promotion of public health and safety and the administration of justice;
- 2. The Queensland Government should work with the Commonwealth Government to achieve a uniform national coronial public reporting and review scheme for coronial findings and recommendations which:
  - guarantees that all coronial recommendations will be considered and meaningfully responded to by the government agencies or entities to whom they are directed (updates on progress towards implementation should be provided by the relevant agency or entity where the initial response was only a holding response);
  - provides ready public access to all coronial findings, recommendations, responses and updates;
  - records and makes publicly available (including via a Coroners Annual Report to the Queensland Parliament and on the Internet) whether or not coronial recommendations have been implemented by responsible government agencies or entities;
  - enables evaluation of the impact of coronial recommendations upon the prevention of deaths;
  - adheres to timeliness at every step of the recommendations process; and

- Provides feedback to families (including a copy of recommendations and responses to families, other parties and legal representatives) at every step of the recommendations process.

3. As an important element of Recommendation 2, the Queensland Government should:

- appoint coronial liaison officers to enable public sector agencies to respond to coronial recommendations in a timely and appropriate manner; and
- Allocate the responsibility for monitoring the implementation of coronial recommendations to an independent statutory body adequately resourced for the task and with powers to alert the Government and public about any key implementation issues.

4. The Queensland Government should work with the Commonwealth Government to enable Queensland to effectively recognise the international human rights obligation to respect, protect and fulfil the right to life by introducing, as appropriate, amendments to their coronial legislation so that coronial investigation is independent, appropriately and adequately resourced, and considers systemic issues.

In particular, in investigations into deaths in police custody or in the course of police operations, the agency conducting the primary investigation at the direction of the Coroner must have practical, institutional and hierarchical independence from the police.

5. Primary and secondary coronial legislation in the various jurisdictions should be amended or introduced in recognition of the principle that participation of families in the inquest process is a fundamental component of Australia's international human rights obligations.

Specifically, reforms must enable families and friends of the deceased to experience the coronial process in as sensitive, timely and fully informed a manner as possible, regardless of the circumstances of the death.

These reforms must include:

- Provision of proper and timely notification of family members and proactive provision of accessible, timely and explanatory information, at every stage of investigation and inquest processes. This should include as comprehensive as possible access to police and coronial documents, and accessible material on families' legal rights;
- no unreasonable delays in investigations and inquests;



- resolution of any cultural or spiritual conflicts raised by the coronial process;
- recognition of the need to have Aboriginal and Torres Strait Islander legal and health services and communities involved in the coronial process; and
- Provision of quality, accessible, and culturally and spiritually appropriate support and counselling services for families.

6. The Queensland Government should establish or continue funding for their own Coroners Prevention Unit similar to the current Victorian model and funded to facilitate an effective role for the Unit in the reforms in Recommendations 1-5.

7. The Queensland Government should adequately fund their coroner's courts with the aim of reducing delays in inquests, investigations and the delivery of findings, in order to at least conform to current national standards.

8. The remaining recommendations of the National Report of the Royal Commission into Aboriginal Deaths in Custody (1991) must be implemented.

## DISCRIMINATION

QAILS believes that all unfair forms of discrimination are unacceptable and that all individuals are entitled to equal rights and treatment.

QAILS supports such international anti-discrimination instruments as the *United Nations Convention on the Elimination of All Forms Racial Discrimination*, the *United Nations Convention on the Elimination of All Forms of Discrimination against Women*, as well as other documents which endorse equality of rights and outcomes.

QAILS advocates

- the implementation and enforcement of strong and explicit human rights standards, ultimately through a Charter of Rights;
- Community education supported by the State Government aimed at reducing the occurrence of discrimination.
- The endorsement of a perspective of anti-discrimination, of striving for equal protection and equal rights, respecting the dignity and worth of all our citizens.
- Support of the consolidation and expansion of the existing Federal anti-discrimination legislation into a single Equality Act.

- for adequate funding so that aggrieved persons can obtain legal advice and representation to seek redress through existing Complaints systems
- support for a strong law reform agenda to increase protection of human rights

## DOMESTIC AND FAMILY VIOLENCE

QAILS believes that domestic and family violence are not acceptable and must be prevented.

QAILS supports the *United Nations Declaration on the Elimination of Violence against Women* and Article 19 of the *Convention on the Rights of the Child*.

QAILS advocates

- the recognition that the right of women and children to be free from violence takes priority over the children having a meaningful relationship with each parent;
- robust processes that met international best practice for the review of deaths due to domestic or family violence;
- acknowledgement that people sometimes stay in abusive relationships and the implementation of assistance mechanisms to deal with this reality;
- integrated community responses to domestic and family violence;
- improvement of police, judicial and legislative responses to family violence;
- Early intervention and prevention approaches.

## EMPLOYMENT LAW

QAILS believes that workers should be treated fairly and equally, particularly in the areas of pay, dismissal and working conditions.

QAILS supports Article 7 of the *International Covenant on Economic, Social and Cultural Rights*.

QAILS advocates

- reflection in employment law of the principle of non-discrimination;
- Evidence-based development of law and policy with respect to the incidence of unemployment among particular groups within society.

## ENVIRONMENT

QAILS believes that environmental protection and social justice are interconnected, a healthy environment being essential to life and its quality.

## QAILS supports

- full disclosure, transparency and meaningful community consultation in the assessment and approval of major developments and major projects;
- clear application of the best available science, principles of ecologically sustainable development and the precautionary principle in all decision-making, policy development and legislation;
- measures to protect biodiversity and natural resources, such as the land and waters, from overuse and degradation;
- greater emphasis on climate change mitigation and adaptation in policy and in the assessment and approval of development and major projects;
- support for remediation and rehabilitation when environmental harm has occurred;
- Genuine access to justice for individuals to advocate in the public interest with respect to the environment; and
- active compliance with Australia's international environmental treaty obligations.

## FAMILY LAW & CHILD SUPPORT

QAILS believes that family law and child support systems should exist to assist equally all members of the family group and refrains from alienating individuals.

QAILS supports the *United Nations Convention of the Rights of the Child*, specifically that the best interests of the child are paramount and that both parents and extended family have a right to contact with the child

QAILS promotes

- the view that the best interests of the child are paramount, including a child's right to safety and should not be derogated by reference to parenting arrangements;
- voluntary, non-litigious dispute resolution mechanisms, but only where power imbalances are not compounded and are appropriately acknowledged and dealt with in the process;
- a process of litigation, if a case must come to court, in which individuals feel safe and are not made vulnerable to physical or mental harm;
- Quality compliance mechanisms to ensure reliable child support payments in Australia and internationally for Australian children.

## HOUSING & TENANCY

QAILS believes that security of housing, as well as being a human right in itself, is fundamental to the achievement of many other basic entitlements. Enjoyment of tenancy rights is central to the security of housing for disadvantaged Queenslanders.

QAILS supports Article 25 of the *Universal Declaration on Human Rights* and Article 11(1) of the *International Convention on Economic, Social and Cultural Rights*.

QAILS advocates

- a legislative right to housing;
- due process in housing and tenancy decisions, regardless of the form of accommodation;
- political and financial support for social housing;
- the availability of review processes for all social housing tenants;
- full and recognised tenancy rights for people in social housing;
- state regulation of minimum housing standards;
- affordable and accessible housing targets in all new developments; and
- interest on tenants' bonds should be used for advocacy of tenancy rights.

## LESBIAN GAY BISEXUAL TRANS INTERSEX (LGBTI)

QAILS believes that all human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of human rights (article 1, *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*). To that end, QAILS believes that every person, irrespective of whether they identify as heterosexual, lesbian, gay, bisexual, trans\* and/or intersex, is entitled to enjoy their inalienable human rights. Specifically, QAILS adopts the stance expressed in the *Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity*. Namely, 'sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse': at 6.

QAILS supports actioning preliminary steps to end human rights violations against LGBTI people, including:

- Criminal sanction for homophobic and transphobic violence;
- Freedom to work without fear of homophobia or transphobia;

- Medical and legal service provision to the same standard as experienced by non-lesbian, gay, bisexual, trans and/or intersex citizens;
- Legal recognition of genders other than male and/or female

#### QAILS advocates

- gender protection and recognition of transgender queer people in Federal discrimination and human rights laws;
- equity of services for lesbian, gay, bisexual, transsexual and intersex people in citizens' institutions;
- Freedom for lesbian, gay, bisexual, transsexual and intersex people from all forms of discrimination and violence.

## MENTAL HEALTH

QAILS believes that all individuals with a mental illness should have access to treatment and should be able to enjoy a meaningful life in which they are able to participate equally in society.

QAILS supports the *United Nations Convention on the Rights of Persons with a Disability* and the *Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care* ("the Principles") and all other human rights instruments applicable to persons with mental illness.

#### QAILS advocates

- increased compliance with human rights obligations which ensure access to the best quality, least aversive treatment and support and the minimal use of involuntary treatment;
- ensuring that potentially injurious or mentally harmful treatments, such as restraint, seclusion and electro-convulsive therapy, are used only as a last resort and then only used with appropriate oversight and approval, with review mechanisms in place;
- access to advice and legal representation and advocacy in all relevant proceedings as required under the Principles;
- appropriate and accountable court and tribunal systems;
- transparent and accountable service delivery for people with a mental illness, as well as an independent complaints investigation body or section of the Health Quality and Complaints Commission, to ensure that any breach of the

*Mental Health Act 2000* (Qld) is properly addressed in a timely manner;

- Improved access to information for persons with a mental illness regarding their diagnosis, treatment and recovery and supporting independent decision-making.
- that appropriate policies and procedures are in place to ensure the safety for persons with a mental illness within places of detention or treatment;
- Recognition of the cultural, social and economic needs of people with a mental illness.

## PEOPLE WITH DISABILITY

QAILS believes that people with a disability are entitled to the fulfilment of the same rights as every other individual.

QAILS supports the *United Nations Convention on the Rights of Persons with Disabilities*.

#### QAILS advocates

- funding for respectful care for all persons;
- accessible public housing;
- the end of 'forced co-tenancy';
- elimination of 'restrictive practices' currently regulated under the *Disability Services Act 2006*;
- that service delivery in the *Disability Services Act 2006* should reflect human rights principles;
- the full funding and implementation of the NDIS and NIIS, including:
  - Early diagnosis and commitment to provision of adequate levels of appropriate support throughout life;
  - Persons with disability have control, to their maximum extent possible, over support services provided
- inclusion of people with disabilities in all areas of public life;
- the expansion of anti-discrimination legislation to enhance human rights of people with disabilities;
- supported decision-making for people with impaired capacity;
- adequate treatment and/or support for people in prison with a disability.

## POLICING

QAILS believes that police, as repositories of state power, have a responsibility to fulfil their role in society with equal respect for the rights of all individuals with whom they come into contact.

QAILS supports, in particular, article 9 of the *International Covenant on Civil and Political Rights*, specifically that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation

QAILS advocates

- increased accountability;
- Increased diversion for vulnerable groups;
- Appropriate screening of people to identify intellectual disability and capacity issues early in the criminal justice process;
- Appropriate data collection relating to people with disability in the criminal justice system.

## PRISONS

QAILS believes that incarcerated persons are in danger of not being fully accorded their human rights, and as such require additional protection.

QAILS supports article 10 of the *International Covenant on Civil and Political Rights*, that

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
  - a. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
  - b. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

QAILS advocates

- a review of prison system outcomes and the implementation of appropriate modifications;
- quality, low-cost educational opportunities for prisoners;
- increasing community awareness regarding sentencing and the reduction of recidivism;
- ratification of and adherence to relevant human rights mechanisms;
- Reduction of the rates of incarceration of groups vulnerable to discrimination.

## PUBLIC SPACE

QAILS believes that public space should be a resource that all people are and feel welcome to use, with respect for the right of others to use it as well.

QAILS supports article 12.1 of the *International Covenant on Civil and Political Rights*, that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his or her residence.

QAILS promotes

- reduction of the number of instances and means by which individuals can be sanctioned for creating a public nuisance;
- training and education of stakeholders regarding the acceptable uses of public space and

- appropriate methods of dealing with unacceptable behaviour in a non-discriminatory way;
- tolerance of various behaviours in, and limitation of local government authorities' power to restrict the use of, public spaces;
- Respect for rights to peaceful assembly for democratic free expression.

## REFUGEE, CITIZENSHIP & IMMIGRATION LAW

QAILS believes that Australia has a responsibility to facilitate the right to asylum of individuals with a well-founded fear of persecution or similarly serious threats to their life or safety.

QAILS supports the *United Nations Convention Relating to the Status of Refugees* and the *1967 Protocol Relating to the Status of Refugees*.

QAILS advocates

- ending mandatory detention of asylum seekers, in accordance with Article 9 of the International Covenant on Civil and Political Rights;
- full and equal respect for the human rights of asylum seekers on arrival in Australia, regardless of their method of travel;
- increased accountability and availability of registered migration agents **to assist asylum seekers with protection visa applications;**
- support for family reunification **for protection visa holders, irrespective of their mode of arrival to Australia;**
- Ratification of and adherence to relevant human rights mechanisms;
- less restrictive immigration policies, including recognition of the exigency of relocation due to climate change
- Removal of current disability-related discrimination that occurs through the *Migration Act 1958*.

## SENIORS

QAILS believes that an individual's entitlement to human rights does not deteriorate with age but rather that these rights require protection at all stages of life. QAILS draws support from this from article 2.1 of the *International Covenant on Civil and Political Rights*.

QAILS supports human rights advocacy for older adults and recognises the impact of age discrimination on the recognition and observance of these rights. QAILS also supports the *Age Discrimination Act 2004* (*Commonwealth*) which helps to ensure that people are

not treated less favourably on the ground of age in various areas of public life including in employment, the provision of goods and services, in education and the administration of Commonwealth laws and programs.

QAILS promotes

- priority being given to the best interests of older persons in any decisions made with respect to them; where there is capacity, best interests to be determined by the older adult; where capacity is impaired, by a focus on assisted rather than substitute decision making wherever possible
- equity of services, including legal advice and representation, for older persons;
- provision of information and facilitation of independent decision-making;
- Funded separate older persons service to promote access to justice and to provide early intervention in matters of financial exploitation
- Access to legal representation at QCAT – s 3 *QCAT Act* – in all proceedings to determine capacity and in forced detention cases.
- Providing information about legal rights and options - however the client chooses solutions if capacity
- Government acknowledgment through policy and funding of importance of CLE in retirement villages, nursing homes, community groups and service providers to older adults to provide information and increase awareness amongst older adults of legal rights

## SOCIAL SECURITY / WELFARE RIGHTS

QAILS believes in the human right of all people in need to an adequate level of income support, protected by law and notes that the right to social security is enshrined in five human rights treaties to which Australia is a signatory.

These Covenants and Conventions include: Article 9 of the *International Convention on Economic, Social and Cultural Rights*. Article 5 of the *Convention on the Elimination of All Forms of Racial Discrimination* Articles 11 and 14 of the *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 26 of the *Convention on the Rights of the Child* and Article 28 of the *Convention on the Rights of People with Disability*.

QAILS supports Article 11(1) of the *International Convention on Economic, Social and Cultural Rights*.

QAILS advocates

- sufficiency of social security payments to provide a decent standard of living above the poverty line, and in accordance with standards generally held as reasonable in Australia;
- provision of clear and simple information about social security rights and entitlements, obligations and responsibilities; treatment of all social security recipients with respect and dignity, remaining receptive to their individual needs and circumstances;
- prompt and appropriate service and social security payments without unreasonable delay;
- participation requirements that are realistic and focussed on increasing *suitable* employment outcomes for the individual;
- a free, independent, informal, efficient and fair appeal system, as well as an independent complaints mechanism; and
- Easy access to free and independent advice, advocacy and representation on social security matters.

## VICTIMS OF CRIME

QAILS believes that victims of crime should be supported, be treated with respect, and play an appropriate role in the criminal justice process.

QAILS fully supports the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and in particular article 4 – 7 which deal with access to justice and fair treatment:

1. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
2. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
3. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
  - a. Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious

crimes are involved and where they have requested such information;

- b. Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- c. Providing proper assistance to victims throughout the legal process;
- d. Taking measures to minimise inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- e. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

4. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

QAILS advocates

- an appropriate, independent mechanism for review of victims of crime compensation payments;
- enforcement mechanisms (other than the State Penalties Enforcement Registry) suitable for government recoupment of compensation payments from perpetrators of crime;
- Equitable and supportive treatment of all persons who are, or who claim to be, victims of crime.

## WOMEN

QAILS believes that women have the right to equality of opportunity and outcome with their male counterparts and that gender-based discrimination against women is profoundly unjust and an affront to human dignity.

QAILS supports the *United Nations Convention on the Elimination of All Forms of Discrimination against Women*.

QAILS advocates

- the elimination of all forms and threats of violence against women, acknowledging that some groups of women (in particular those belonging to minority groups) are particularly at risk;
- ensuring women have access to justice and support services vital to assisting victims of violence and their children to recover from the physical, emotional, psychological and financial impacts of violence, including adequate legal aid;
- community education on the rights of women and the principle of non-discrimination;
- an acknowledgement of the common overlap between violence against women and violence against children;
- The investigation and understanding of cultural dynamics and pressures which may hinder women's access to justice.
- Recognises that women with disability are especially vulnerable to violence and that specific and targeted measures are required to protect their human rights
- Supports the introduction of uniform national legislation dealing with Special Medical Procedures (Sterilisation) to address the sterilisation of women and girls with disabilities.
- Advocates for adequate support for women with disabilities so that their right to found a family is not denied
  - That children born to mothers with disabilities will not be automatically removed at birth into long-term/permanent foster care, when appropriate support would ensure the maintenance of the family unit
- support for young people on youth justice orders;
- a stance against the criminalisation of young people in situations where it is unwarranted and discriminatory;
- That appropriate standards of professional development be met by all persons working with young people in the youth justice system.

## YOUTH JUSTICE

QAILS believes that children and young people are fully entitled to respect for their human rights.

QAILS supports the *United Nations Convention on the Rights of the Child*, on which all decisions regarding persons under the age of 18 years should be based.

QAILS advocates

- increased adherence to the fundamental rights and freedoms contained in United Nations Convention on the Rights of the Child
- a youth justice system which responds to young people in a meaningful way, cognisant of their individual context, developmental status and cultural background;
- the reduction of the levels of young people on remand in detention;



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