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**QUEENSLAND PARLIAMENT**

**LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE**

**INQUIRY INTO THE HUMAN RIGHTS BILL 2018**

**SUBMISSION BY TOWNSVILLE COMMUNITY LEGAL SERVICE INC.**

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Friday, 23 November 2018

To:

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

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## INTRODUCTION

This submission is in three (3) parts:

- Part A: Background issues
- Part B: Older Person's Rights
- Part C: Suggested amendments
- Part D: Other suggested inclusions
- Part E: Conclusions

## PART A: BACKGROUND ISSUES

1. The contact person for this submission is:

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2. Townsville Community Legal Service Inc. (TCLS) is a community-based, non-profit legal centre.
3. TCLS was established in 1991 as a voluntary service. The Commonwealth first provided funding to TCLS in 1992. Queensland and Commonwealth Governments currently provide funding to TCLS.
4. TCLS has a long and proud history of defending and promoting the human rights of North Queenslanders.
5. TCLS is internationally recognised for its expertise on the rights of older persons,<sup>1</sup> including representing the National Association of Community Legal Centres (NACLC) in the United Nations New York Open-ended Working Group on Ageing since 2013. TCLS (on behalf of the NACLC) co-authored expert statements on the rights of older persons on equality and non-discrimination;<sup>2</sup> violence, abuse and neglect;<sup>3</sup> autonomy and independence;<sup>4</sup> and long-term care and palliative care.<sup>5</sup>
6. TCLS has operated a Seniors Legal and Support Service (SLASS) for more than decade. The Queensland Government funds this service to assist older persons at risk of or experiencing elder abuse.<sup>6</sup>
7. TCLS congratulates the Queensland Government on this historic achievement. The Bill provides a contemporary framework for the protection of all Queenslanders' human rights. We are pleased to see many of the issues raised by us are included in the Bill.<sup>7</sup>
8. TCLS actively supports the Bill, and for the sake of continuity, continues to comment on the Bill's likely impact on the rights and interests of older Queenslanders, and the Bill's impact on those who interact with older Queenslanders.<sup>8</sup>

9. We have deliberately structured this submission so that it looks at older Queenslanders' human rights needs and how the Bill will address those needs.
10. In our prior submission to this Committee we noted the societal and rights context and legal needs of older Queenslanders, and suggested a Human Rights Act would fill existing normative gaps in respect of a range of 'elder specificities'.<sup>9</sup>
11. We provided some concrete examples of those elder specificities in our submission. These areas included those also subsequently identified by the Premier as important, including "aged care, palliative care and dying with dignity."<sup>10</sup> While these issues are now subject of a separate Parliamentary Inquiry, they are equally relevant to this Bill's likely impact.<sup>11</sup>
12. In our view the Bill will address many elder specificities but can still be improved and its impact enhanced. These submissions are about how to improve the Bill's ability to provide comprehensive human rights protection for older Queenslanders.
13. Firstly, we address two contextual issues:
  - Human rights complement Queensland's existing age-friendly strategy and policy framework; and
  - The Parliament has the power and the obligation to enhance this complementarity by ensuring the Bill addresses specific contexts for vulnerable older Queenslanders, such as human rights in care.

### **Contextual Issue 1: Age-friendly Community and Human Rights**

14. Queensland is a self-identified 'Age-friendly Community' and has endorsed the World Health Organisation's (WHO) strategic policy approach. The Queensland Government is rightly proud of this approach and its work in implementation.
15. As an age-friendly community, Queensland shares certain characteristics with other like-minded communities:

*An age-friendly community is one that enables people of all ages to actively participate in community life.*

*In particular, an age-friendly community ensures older people are free from age-related barriers that prevent community participation.*

*Age-friendly communities value the contribution of seniors and help ensure their access to all aspects of life.<sup>12</sup>*

16. Achieving these overarching aspirations, and realising the goals of each of the eight age-friendly domains is intrinsically linked to and dependent upon older Queenslanders' enjoyment of human rights.<sup>13</sup>

17. There is strong complementarity between the age-friendly goals and the rights set out in the Bill. The WHO has suggested that active ageing policies “sit within the context of an international legal framework afforded by human rights law.”<sup>14</sup> Given this important interrelationship, we suggest it makes sense to better recognise and enhance this complementarity.

### **Contextual Issue 2: Constitutional Power**

18. State Governments have occasionally been reticent to legislate on ‘ageing’ issues because of a mistaken view that older persons are a Commonwealth responsibility and the Commonwealth has exclusive constitutional power to create laws for their welfare.
19. Professor Lacey sounds a caution about this approach:

*However, it is important that the myth of an all-encompassing Commonwealth legal and policy dominance in the ageing portfolio is revealed, for it has the potential to stifle policy innovation at the state level and to induce complacency by the states and territories, where issues can be ignored or paid mere lip service if they are not part of a federally funded program.<sup>15</sup>*

20. We support Professor’s Lacey’s view and suggest there is no constitutional impediment to Queensland’s legislative power positively engaging ageing and older persons’ rights issues, including the context of their lived experience, for example, their rights in care.
21. TCLS suggests that the joint state/federal responsibility for older persons is evident when one looks at the continuum of services accessed by older persons. Older Queenslanders are assisted by a range of local, state and federal programs, services and entities.

### **Contextual Issue 2: Protection Obligation**

22. As noted above the State not only has power but an obligation to protect older persons from human rights abuses.
23. Furthermore, the experiences of older residents at the Oakden Older Persons Mental Health Service (Oakden) in South Australia present a salutary lesson for state legislators. In the Oakden case, blurring between federal and state responsibility ultimately lead to a failure by all levels of Government to protect older persons from human rights violations of a very serious nature.<sup>16</sup>
24. The various reviews of matters arising out of Oakden all noted that state and federal Governments share responsibility for older persons in long-term care, howsoever that care is defined or described. The *Oakden Report* cited the landmark *Berwick Report* into failures in care in Mid-Staffordshire’s health governance systems:

*Responsibility is diffused and therefore not clearly owned. When so many are in charge, no one is.<sup>17</sup>*

25. The lesson for Queensland is that responsibility for older persons, including those in care, is ours to own, and must be ‘clearly owned’ by application of all relevant processes that protect them from breaches of their human rights. In our view the Bill provides an excellent opportunity to provide enhanced protections for older persons.

## PART B: OLDER PERSON’S RIGHTS

26. TCLS has concerns that older Queenslanders need specific recognition in the same manner as some other groups already mentioned in the Bill.
27. The rights collated by the successive sessions of the Open-ended Working Group on Ageing (OEWGA), the National Association of Community Legal Centres and HelpAge International<sup>18</sup> provide a baseline for considering how the Bill measures up against recognised human rights needs of older persons:

Human Rights	Inclusion in Bill
Access to justice	Clause 32 (Limited impact)
Adequate Housing	No protection
Adequate standard of living	No protection
Ageing in a place of choice	Clause 19 (Free movement only)
Autonomy and independence	Clause 15 (Limited impact)
Education and lifelong learning	Clause 36
Free Association and assembly	Clause 22
Free expression and opinion	Clause 21
Freedom from torture, cruel, degrading or inhumane treatment	Clause 17
Freedom from violence, abuse and neglect	No protection
Health	Clause 37 (Health services only)
Life and dignified death	Clause 16 (Life only)
Mobility and accessibility	Clause 19, 23 (Limited impact)
Non-discrimination and equality	Clause 15
Participation	Clause 23
Personal Liberty	Clause 29
Privacy and family life	Clause 25
Property	Clause 24
Self-fulfilment and leisure	Clause 20 (Limited impact)
Sexual identity	Clause 20 (Limited impact)
Social protections	No protection
Support for independent living	No protection
Thought, conscience, religion and belief	Clause 20
Work and employment	Clause 18 (Forced work only)

28. While it is instructive to see the obvious gaps in rights protection, it is more useful to use an example to show how older Queenslanders experience human rights issues in context and will still experience a normative gap under the Bill current format.

### Example: Older Queenslanders’ Rights in Care

29. The Premier recently noted the special needs of this group of Queenslanders, noting aged care was a “major concern and it’s an issue that touches every single Queenslander.”<sup>19</sup>

30. Queensland's population is ageing because of: sustained low levels of fertility; increased life expectancies; movement of the large baby boomer cohort (those born in 1946 to 1965) into the older age groups. At 30 June 2017, there were proportionally fewer persons in each five-year age group up to 45–49 years of age, and proportionally more in older age groups compared with 20 years earlier. The largest proportional shifts have occurred in the five-year age groups from 55–59 to 65–69.<sup>20</sup>
31. At 30 June 2017 there were 1,034 aged care service providers (residential and home care) in Queensland.<sup>21</sup> This does not include providers that are not approved under the *Aged Care Act 1997 (C'th)*. This only includes services for residential care,<sup>22</sup> home care<sup>23</sup> and restorative care.<sup>24</sup> Beyond these approved providers there are a myriad of informal care and accommodation arrangements in Queensland where older Queenslanders, particularly those with cognitive impairment are vulnerable to exploitation.
32. Recent United Nations debate about the rights of older persons looked at rights in the context of 'long term care'. An informal expert working group<sup>25</sup> of which the author was a member, noted that long term care is a much broader notion than 'aged care' (which in turn is broader than 'residential aged care'). Care encompassed:
- ... the activities undertaken by others to ensure that people with a significant on-going loss of intrinsic capacity can maintain a level of functional ability consistent with their basic rights, fundamental freedoms and human dignity.*<sup>26</sup>
- And:
- ... day-to-day help with activities such as washing and dressing, or help with household activities such as cleaning and cooking. This type of support (along with some types of medical care) is what is called long-term care.*<sup>27</sup>
33. The Office of the High Commissioner for Human Rights (OHCHR) has reinforced that care includes a range of overlapping contexts:
- [T]here is also a great deal of overlap between medical and health care and social care – which also tends to be complicated by the involvement of different government ministries, funding and budget sources, as well as a wide variety of sometimes complicated guidelines and regulations for older persons to access entitlements.*<sup>28</sup>
34. Older Queenslanders' care therefore includes interactions with medical, healthcare, social, cultural, accommodation, residential or institutional care and advanced planning processes. Care includes services delivered to older persons wherever they reside or accessed by older persons within the community. This broad description of care reinforces the role of the State as that of equal partner with the Commonwealth.
35. The WHO's landmark World Report on Health and Ageing clearly asserts the importance of having human rights in the context of care:

*[L]ong-term care must uphold the human rights of care-dependent older people. Care must be provided in a manner that enhances older people's dignity, and enables their self-expression and, where possible, their ability to make choices.<sup>29</sup>*

36. The importance and value of State protection is also already recognised by clause 40 in the Bill whereby the State can consider the human rights compatibility of non-Queensland laws.
37. This function in the Bill is made even more important because no national human rights framework exists.

### How the Bill Shapes Up Against the Example

38. To fully understand how the Bill might operate to protect older Queenslanders in care we need to consider which rights come within this context and whether they are included in the Bill.
39. When we look at older Queenslanders' rights needs in care we can see the Bill requires enhancements:

Aspect of 'Care'	Rights Included	Rights Not Included
<i>Provision of Care Services and Support</i> (social, cultural, independent living, healthcare, medical, accommodation)	<ul style="list-style-type: none"> <li>• Recognition and Equality before the Law (Clause 15)</li> <li>• Freedom of Movement (Clause 19)</li> <li>• Property Rights (Clause 24)</li> <li>• Right to Health Services (Clause 37)</li> </ul>	<ul style="list-style-type: none"> <li>• Autonomy and Independence</li> <li>• Adequate standard of living</li> <li>• Adequate Housing</li> <li>• Social protections</li> <li>• Self-fulfilment and leisure</li> <li>• Support for independent living</li> </ul>
<i>Regulation of Care Services</i> (rights, quality, accountability)	<ul style="list-style-type: none"> <li>• Protection from torture, cruel, inhuman or degrading treatment (Clause 17)</li> <li>• Cultural Rights – generally (Clause 27)</li> <li>• Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples (Clause 28)</li> <li>• Right to Liberty and Security of Person (Clause 29)</li> <li>• Humane Treatment when deprived of Liberty (Clause 30)</li> </ul>	<ul style="list-style-type: none"> <li>• Freedom from Violence, Abuse and Neglect</li> <li>• Autonomy and Independence</li> </ul>
<i>Complaints about Care</i> (remediation, reparation)	<ul style="list-style-type: none"> <li>• Recognition and Equality before the Law (Clause 15)</li> <li>• Fair Hearing (Clause 31)</li> <li>• Making complaints (Clause 64)</li> </ul>	<ul style="list-style-type: none"> <li>• Autonomy and Independence</li> <li>• Access to justice</li> <li>• Independent Cause of Action with enforceable remedies</li> </ul>



40. Given we have argued that older persons have specific human rights needs that are the responsibility of the State and which can be enhanced in the Bill we now provide suggested amendments.

### PART C: SUGGESTED AMENDMENTS

41. Suggested amendments are set out in red underlined or ~~struckthrough~~ text.

#### Clause 3 - Objects

42. In our view, objects clause 3(b) is too narrowly confined. The objects clause might be more appropriately drafted as follows:

##### **3 Main objects of Act**

*The main objects of this Act are—*

- (a) *to protect and promote human rights; and*
- (b) *to help build a culture in ~~the~~ Queensland including the public sector that respects and promotes human rights; and*
- (c) *to help promote a dialogue about the nature, meaning and scope of human rights.*

#### Clause 9 - Meaning of public entity

43. The breadth of application and the effectiveness of the Bill depend on this meaning. TCLS takes the view that clause 9(5) should be amended to include:

*(5) In this section—*

**entity** *means an entity in and for Queensland.*

**registered provider** *means a registered provider of supports or a registered NDIS provider under the National Disability Insurance Scheme Act 2013 (Cwlth) or an approved provider under the Aged Care Act 1997 (Cwlth).*

44. In our view, a clear justification for the amendment is the existing inclusion of NDIS registered providers, who fall under federal legislative regulation. There are many parallels, but crucially, older persons are the largest single cohort of Queenslanders with disability.<sup>30</sup> The ABS report that more than half of those over 65 have a disability (2 in 5 persons with a disability).<sup>31</sup> Given that the NDIS uses age 65 as an age proxy for eligibility, it would be nonsensical to exclude those over that age proxy from the same normative standards.
45. Additional justifications include the obvious vulnerability of older persons in care given that the prevalence of elder abuse within institutional settings is high – a 2018 systematic review and meta analysis by Yon et al for the WHO placed global estimates as follows: psychological abuse (33.4%), followed by physical (14.1%), financial (13.8%), neglect (11.6%), and sexual abuse (1.9%).<sup>32</sup>

#### Clause 10 – Function is of a public nature

46. Similar, and further, consideration should be given to amendment of clause 10(3)(b) as follows:

(3) ...

- (b) *the provision of any of the following—*
- (i) *emergency services;*
  - (ii) *public health services;*
  - (iii) *public disability services;*
  - (iv) *public education, including public tertiary education and public vocational education;*
  - (v) *public transport;*
  - (vi) *a housing service by a funded provider or the State under the Housing Act 2003; and*
  - (vii) *public ageing services.*

47. How might older persons (those ageing) be defined? Without relying on discriminatory and somewhat arbitrary age-proxies, there is no real need to define it beyond that provided for the other functions of a public nature listed at clauses 10(3)(b)(i)-(vi).

### Clause 31 – Fair Hearing

48. We note that clause 31 – Fair hearing might be amended as follows:

***Fair hearing***

- (1) *A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after ~~a~~ an expeditious, fair and public hearing.*
- (2) *However, a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice.*
- (3) *All judgments or decisions made by a court or tribunal in a proceeding must be publicly available.*

49. Justification for this inclusion includes European human rights law and jurisprudence.<sup>33</sup> The Human Rights Law Centre has also suggested the importance of this element.<sup>34</sup>

50. We also note that the right to fair hearing might also include a right to competent counsel. The Law Council said that “the right to a fair trial and effective access to justice is undermined by a failure of successive governments to commit sufficient resources to support legal assistance services, as evidenced by increasingly stringent restrictions on eligibility for legal aid”.<sup>35</sup>

### Clause 37 – Right to Health Services

51. We suggest that clause 37 ought to reflect the broader context of health care. As it stands in the Bill the right provides a Right to Health Services.
52. Health services are not defined in the Bill. It does however seem likely that the right in clause 37 is more constrained than a Right to Health – which is generally understood to be a right to “... the enjoyment of the highest attainable standard of physical and mental health.”<sup>36</sup>

53. The UN's Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that the Right to Health includes accessibility, availability, acceptability, quality, informed consent, non-discrimination, participation and the relevance of addressing the underlying determinants of health.<sup>37</sup>
54. We suggest that the Bill be amended to reflect the broader right to health and access to health services as reflected by General Comment No 14 of 2000.<sup>38</sup>

#### **Clauses 50-52 – Intervention by Others**

55. Clauses 51 to 52 only anticipate intervention by the Attorney General (Clause 50) or the Commission (Clause 51).
56. TCLS submits that intervention by others should be provided for in matters of public interest before Courts, Tribunals or Hearings where either the Attorney General or Commission is intervening. We note that the common law and court rules both allow for intervention by non-parties from formal 'interveners' through to less formal such as amicus curiae.<sup>39</sup> TCLS suggests that a provision could be included to allow intervener to assume a special interest or contradictor role in limited situations.<sup>40</sup>

#### **Clause 59 – Legal proceedings**

57. Clause 59 should be amended to allow an independent cause of action. An independent cause of action is a right to bring proceedings against a public entity in the event of an unlawful breach of human rights.
58. These proceedings are brought by a person with standing (a victim), in an appropriate court, and will provide traditional remedies (including damages) and means of enforcement. Proceedings can be brought as a freestanding right of action and do not require 'piggybacking' with another action or claim.
59. Statutory reviews of human rights schemes across Australian jurisdictions have noted that an independent cause of action is a fundamentally important element of a contemporary human rights framework. Enforcement of human rights is considered to be consistent with, and part of, societal respect for the rule of law.
60. The inclusion of an independent cause of action is supported by existing domestic laws (e.g. *Human Rights Act 2004* ACT) and international laws (*Human Rights Act 1998* UK).

#### **Clause 95 - First Statutory Review Process**

61. In the event that an independent cause of action is not included, consideration of the issue should be part of a first statutory review process.
62. In the event the additional rights suggested by this submission are not included, consideration of those additional proposed rights should be part of the first statutory review process.

**PART D: OTHER SUGGESTED INCLUSIONS**

63. TCLS suggests a number of other inclusions for the Bill.

**Right to Freedom from Violence, Abuse and Neglect**

64. The Bill does not contain a Right to Freedom from Violence, Abuse and Neglect.
65. In our view this should be included as a general right for all person. The normative elements of that right should include:
- Every person has the right to freedom from violence, abuse and neglect.
  - The right includes all forms of violence, abuse and neglect.
  - The right applies to violence, abuse and neglect in private and public settings.
66. Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD) includes a right to freedom from exploitation, violence and abuse. The article 16 right is described broadly as including, “within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.”

**Right to Autonomy and Independence**

67. The Bill does not contain a Right to Autonomy and Independence.
68. Whilst the right to equal recognition before the law and the right to a family and private life are in the Bill, the rights to autonomy and independence and support for independent living are newly emerging in the application of human rights in the context of older age.<sup>41</sup>
69. Concerns have also emerged around the denial of older persons’ free and informed consent in areas such as control of one’s own living arrangements, pension or other income or assets, who to leave one’s property to, medical treatment, restrictive interventions and practices, and end of life treatment.<sup>42</sup>
70. Accordingly, the Right to Autonomy and Independence should affirm the following:

*Persons have the right to freedom of personal autonomy and legal capacity to make decisions, to determine their life plans and to lead autonomous and independent lives in line with their will and preferences and on an equal basis with others. This includes the right to have those decisions respected.*

**Right to Adequate Housing**

71. The Bill does not contain a Right to Adequate Housing.

72. Adequate housing is essential for human survival with dignity. Without a right to housing, many other basic human rights will be compromised including the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development.<sup>43</sup>

73. Former Human Rights Commissioner Chris Sidoti said:

*The right to housing is clearly supported by international law, indeed at the very foundation of the international human rights system in the Universal Declaration of Human Rights. This Declaration, adopted by the United Nations in 1948, establishes an internationally recognised set of standards for all persons without qualification. Article 25 of the Declaration provides, “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including .... housing”.<sup>44</sup>*

74. We suggest that the normative elements of that rights ought to be those set out by the Office of the High Commissioner for Human Rights.<sup>45</sup>

### **Right to an Adequate Standard of Living**

75. The Bill does not contain a Right to an Adequate Standard of Living.

76. The Right to an Adequate Standard of Living is an obvious inclusion.<sup>46</sup> It incorporates human rights that older Queenslanders might experience in care. Recent reports of older person’s poor nutrition while in care realise the importance of this right.<sup>47</sup>

77. The Special Rapporteur on the Right to Food<sup>48</sup> and General Comment No.12 notes the right extends to “[T]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture...”<sup>49</sup>

### **PART E: CONCLUSIONS**

78. Human rights violations often cluster. The example given herein shows that older persons in care are vulnerable to all manner of human rights violations.

79. Older persons often experience multiple, intersectional and cumulative discrimination, and a Bill that can protect against all possible violations truly reflects the interconnected, interrelated and interdependent nature of human rights.

... ..

## REFERENCES

- <sup>1</sup> <https://social.un.org/ageing-working-group/documents/eighth/TowardsConvention.pdf>
- <sup>2</sup> [https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NGOs/Joint\\_Paper\\_Equality.pdf](https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NGOs/Joint_Paper_Equality.pdf); [https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NGOs/Joint\\_Paper\\_Equality.pdf](https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NGOs/Joint_Paper_Equality.pdf); [https://social.un.org/ageing-working-group/documents/ninth/Inputs%20NGOs/Joint\\_submission\\_Violence\\_rev.pdf](https://social.un.org/ageing-working-group/documents/ninth/Inputs%20NGOs/Joint_submission_Violence_rev.pdf)
- <sup>3</sup> [https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NGOs/Joint\\_Paper\\_Violence.pdf](https://social.un.org/ageing-working-group/documents/eighth/Inputs%20NGOs/Joint_Paper_Violence.pdf)
- <sup>4</sup> [https://social.un.org/ageing-working-group/documents/ninth/Joint\\_Discussion\\_paper.pdf](https://social.un.org/ageing-working-group/documents/ninth/Joint_Discussion_paper.pdf); [https://social.un.org/ageing-working-group/documents/ninth/Inputs%20NGOs/Joint\\_submission\\_Autonomy.pdf](https://social.un.org/ageing-working-group/documents/ninth/Inputs%20NGOs/Joint_submission_Autonomy.pdf)
- <sup>5</sup> [https://social.un.org/ageing-working-group/documents/ninth/Joint\\_Discussion\\_paper.pdf](https://social.un.org/ageing-working-group/documents/ninth/Joint_Discussion_paper.pdf)
- <sup>6</sup> <https://www.qld.gov.au/seniors/legal-finance-concessions/legal-support/legal-services>
- <sup>7</sup> See paragraphs 50-60. Our submissions included Right to Life, Freedom from Inhuman Treatment, Freedom from Violence, Abuse and Neglect, Freedom from Arbitrary Detention, Right to a fair and expeditious judicial determination, Right to Family Life, Right to privacy, Right to Autonomy.
- <sup>8</sup> For the purposes of our submissions 'older Queenslanders' means those aged 60 and older, and Aboriginal and Torres Strait Islanders aged 55 or older.
- <sup>9</sup> The list collated by the Chair of the United Nations Open-ended Working Group on Ageing included: - equality and non-discrimination (discrimination on the basis of age); - neglect, violence and abuse (ageism); - autonomy and independence; - accessibility, infrastructure and habitat (transport, housing and access); - right to health and access to health services; - access to justice; - social protection and social security (including social protection floors); - economic security; - right to work and access to the labour market; - education, training, life-long learning and capacity building; - participation in the public life and in decision making processes; - social inclusion; - contribution of older persons to sustainable development; and - long term and palliative care. See <https://social.un.org/ageing-working-group/documents/seventh/ChairsSummaryOEWG7.pdf>
- <sup>10</sup> <http://statements.qld.gov.au/Statement/2018/9/2/aged-care-to-come-under-parliamentary-spotlight>
- <sup>11</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC/inquiries/current-inquiries/AgedCareEOLPC>
- <sup>12</sup> <https://www.communities.qld.gov.au/resources/dcdss/seniors/age-friendly-community/qld-an-age-friendly-community.pdf>
- <sup>13</sup> The eight domains include **Domain 1**: Outdoor Spaces and Buildings, **Domain 2**: Transportation, **Domain 3**: Housing, **Domain 4**: Social Participation, **Domain 5**: Respect and Social Inclusion, **Domain 6**: Civic Participation and Employment, **Domain 7**: Communication and Information, **Domain 8**: Community and Health Services.
- <sup>14</sup> WHO, World Report on Ageing and Health, 2015, page 4.
- <sup>15</sup> Wendy Lacey, 'Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia' (2014) 36(1) *Sydney Law Review* 99.
- <sup>16</sup> See Aaron Groves (Chief Psychiatrist (WA)), *The Oakden Report* (Department for Health and Ageing (SA), 2017); and Kate Carnell and Ron Paterson, 'Review of National Aged Care Quality Regulatory Processes' (Report, Department of Health (Cth), 25 October 2017).
- <sup>17</sup> Ibid, p.70.
- <sup>18</sup> [file:///Users/principal/Downloads/HelpAge%20International%20concrete%20proposal%20on%20a%20new%20convention%20March%202015%20\(2\).pdf](file:///Users/principal/Downloads/HelpAge%20International%20concrete%20proposal%20on%20a%20new%20convention%20March%202015%20(2).pdf)
- <sup>19</sup> <http://statements.qld.gov.au/Statement/2018/9/2/aged-care-to-come-under-parliamentary-spotlight>
- <sup>20</sup> <http://www.qgso.qld.gov.au/products/reports/pop-growth-highlights-trends-qld/pop-growth-highlights-trends-qld-2018-edn.pdf>
- <sup>21</sup> [https://www.gen-agedcaredata.gov.au/www\\_aihngen/media/2017\\_New\\_Service\\_List/QLD\\_Service\\_List\\_2017.pdf](https://www.gen-agedcaredata.gov.au/www_aihngen/media/2017_New_Service_List/QLD_Service_List_2017.pdf)
- <sup>22</sup> <https://www.myagedcare.gov.au/aged-care-homes>
- <sup>23</sup> <https://www.myagedcare.gov.au/help-home/home-care-packages>
- <sup>24</sup> <https://www.myagedcare.gov.au/short-term-restorative-care>
- <sup>25</sup> [https://social.un.org/ageing-working-group/documents/ninth/Joint\\_Discussion\\_paper.pdf](https://social.un.org/ageing-working-group/documents/ninth/Joint_Discussion_paper.pdf)
- <sup>26</sup> WHO, World Report on Ageing and Health, 2015, page 229
- <sup>27</sup> OECD <http://www.oecd.org/els/health-systems/long-term-care.htm>
- <sup>28</sup> [https://social.un.org/ageing-working-group/documents/ninth/OEWGA9\\_Substantive\\_Report\\_LTC\\_Palliative-Care\\_DESA.pdf](https://social.un.org/ageing-working-group/documents/ninth/OEWGA9_Substantive_Report_LTC_Palliative-Care_DESA.pdf)
- <sup>29</sup> WHO, World Report on Ageing and Health, 2015, page 135.
- <sup>30</sup> <https://www.qld.gov.au/disability/community/disability-statistics>.
- <sup>31</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4430.0Main%20Features302015?opendocument&tabname=Summary&prodno=4430.0&issue=2015&num=&view=>

- <sup>32</sup> Yongjie Yon, Maria Ramiro-Gonzalez, Christopher R Mikton, Manfred Huber, Dinesh Sethi; The prevalence of elder abuse in institutional settings: a systematic review and meta-analysis, *European Journal of Public Health*, , cky093, <https://doi.org/10.1093/eurpub/cky093>. See also <http://www.who.int/news-room/fact-sheets/detail/elder-abuse>
- <sup>33</sup> Council of Europe, Committee of Ministers, Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons, ¶155. See cases: including *Süssmann v. Germany* (1998) 25 EHRR 64 and *Jablonská v. Poland* (2003) 36 EHRR 27.
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- <sup>36</sup> <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttohealth.aspx>
- <sup>37</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23891&LangID=E>
- <sup>38</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>
- <sup>39</sup> <https://www.humanrights.gov.au/our-work/legal/submissions/submission-court-intervener-and-amicus-curiae#1>
- <sup>40</sup> See The Hon Justice Susan Kenny, Interveners and Amici Curiae in the High Court, <http://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-kenny>
- <sup>41</sup> [https://social.un.org/ageing-working-group/documents/ninth/Joint\\_Discussion\\_paper.pdf](https://social.un.org/ageing-working-group/documents/ninth/Joint_Discussion_paper.pdf)
- <sup>42</sup> Ibid.
- <sup>43</sup> [https://www.humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/housing.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/human_rights/housing.pdf)
- <sup>44</sup> Ibid.
- <sup>45</sup> <https://www.ohchr.org/en/issues/housing/toolkit/pages/righttoadequatehousingtoolkit.aspx>
- <sup>46</sup> <https://www.humanrights.gov.au/right-adequate-standard-living-including-food-water-and-housing>
- <sup>47</sup> <https://www.abc.net.au/news/2018-09-17/food-in-aged-care/10212880>
- <sup>48</sup> <https://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>
- <sup>49</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?OpenElement>