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Human Rights Bill 2018

**Legal Affairs and Community Safety Committee**

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26 November 2018

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Q 4000

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

### **Submission on *Human Rights Bill 2018* (Qld)**

Thank you for the opportunity to contribute to Legal Affairs and Community Safety Committee's consideration of this important *Human Rights Bill 2018* (Qld).

We would be happy to provide supplementary submissions and to consult further with the Legal Affairs and Community Safety Committee on the above matters and generally with respect to the Bill.

This submission was prepared by Melody Valentine, Solicitor, and Klaire Coles, Coordinating Lawyer, Human Rights and Civil Law Practice and Acting Co-Director. For further information, please contact Ms Coles on [REDACTED] or via email at [REDACTED].

Yours faithfully,



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## 1. Introduction

Established in 1976, Caxton Legal Centre (**Caxton**) is Queensland's oldest community legal centre. Our objects are to provide legal and social welfare services to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness and to educate such people in legal, social welfare and related matters.

We are an independent, non-profit community organisation providing free legal advice, social work services, information and referrals.

Since inception we have dedicated our advice and advocacy resources to matters that will benefit groups of people, including matters that directly concern a person's fundamental human rights. We have long felt that a human rights act was necessary to protect those Queenslanders whose human rights have been infringed by public authorities. We have been integrally involved in advocating for a human rights act for Queensland over the past three years and we commend the Queensland Government for taking this important step towards protect the human rights of Queenslanders.

## 2. Summary

The Queensland Parliament, through the Legal Affairs and Community Safety Committee (**LACSC Committee**) has called for submissions on the *Human Rights Bill 2018 (Qld)* (**the Bill**).

Caxton supports the Bill and we are committed to working with the government to ensure that the Bill provides the best protection of human rights in Australia. Our submission addresses a number of aspects of the Bill that we submit could be improved, including recommendations for inclusion of a standalone cause of action and access to damages, rights for victims, rights for older persons, rights for prisoners, creation of a conciliation register and resourcing the implementation of the *Human Rights Act 2018 (Qld)* (**Human Rights Act**).

### *Recommendations*

- 1.1 The Bill should be amended to include a standalone cause of action allowing an aggrieved person to access remedies, including damages, for any contravention of their statutory human rights under the Bill.
- 1.2 Should the LACSC Committee decline to include a standalone cause of action, we submit that a 12-month statutory review be inserted into the Bill for the purpose of considering a standalone cause of action and remedies or that it be a requirement of the first statutory review that the inclusion of a standalone cause of action and damages be considered.
- 2 The Bill should be amended to include rights for victims drawn from the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power* including access to justice and fair treatment, the provision of redress through informal and formal procedures, access to victim services and training of criminal justice actors and support services about the needs of victims.
- 3 The Bill should amend the *Anti-Discrimination Act 1991 (Qld)* (**Anti-Discrimination Act**) to include being a victim of family /domestic violence as a protected attribute under section 7 of the Anti-Discrimination Act.

- 4 We endorse the submission of Townsville Community Legal Service (**TCLS**), in particular the sections relating to the rights of older persons, including the suggested amendments to sections 9, 10 and 37 of the Bill and the inclusion of a Right to Freedom from Violence, Abuse and Neglect.
- 5.1 In order to avoid the erosion of the rights of prisoners, the amendments to section 5A of the *Corrective Services Act 2006* (Qld) (**Corrective Services Act**) and section 263 of the *Youth Justice Act 1992* (Qld) (**Youth Justice Act**) should be removed from the Bill.
- 5.2 If the LACSC Committee is not minded to remove these provisions, they should be time limited to encourage Corrective Services to work towards becoming human rights compliant.
- 6 Section 90 of the Bill should be amended to require the Commissioner to publish de-identified information about a human rights complaint in a conciliation register.
- 7 We ask that the Government commit to adequate resourcing of the community legal and legal aid services to provide advice, representation and community legal education services following the introduction of the Human Rights Act.

### 3. Recommendations

Caxton is of the view that the Bill should be strengthened to better protect the human rights of Queenslanders in the following ways.

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#### Standalone cause of action and damages

1. Caxton considers it to be of paramount importance, and critical to the success of the Bill, that the Bill be amended to include a standalone cause of action allowing an aggrieved person to access remedies, including compensatory damages, for any contravention of their statutory human rights.
2. Caxton has advocated for the inclusion of a standalone cause of action and damages since the LACSC Committee was directed to inquire into a Human Rights Act for Queensland in 2015 (**LACSC Inquiry**). It is reported in the LACSC Committee report *Inquiry into a possible Human Rights Act for Queensland* (**LACSC Report**) that several submissions advocated for the inclusion of a standalone cause of action.<sup>1</sup> Caxton renews this call in response to the draft Bill, as have LawRight, TCLS and the University of Queensland's TC Beirne School of Law in their submissions to this inquiry.

#### *Enforceable rights in a dialogue model*

3. In her introductory speech, the Attorney-General explains the lack of an enforceable remedy by referring to the dialogue model of the Bill, noting that '[l]itigation is not the focus of the dialogue model of human rights acts like this bill.'<sup>2</sup>
4. We submit that the inclusion of an enforceable right against public entities does not prevent dialogue between the judiciary, executive and legislature nor obstruct the regulatory model of the Bill which 'favours discussion, awareness raising and education about human rights.'<sup>3</sup> A dialogue model 'may also provide for an individual right of action against public authorities for infringements of Charter rights (and vest the courts with remedial discretion by reference to an

inclusive list of remedies including damages).<sup>4</sup> Such is the case under both the *Human Rights Act 1998* (UK) (**UK Act**) and the *Human Rights Act 2004* (ACT) (**HR Act**) which are based on the dialogue model and include enforceable rights and monetary remedies. As in those jurisdictions, the inclusion of enforceable rights would overcome ‘a significant weakness of the dialogue model’ by providing substantive individual redress and clarifying the relationship between the Bill and legal remedies.<sup>5</sup>

#### *The experience in the ACT and Victoria*

5. Being the third jurisdiction in Australia to introduce human rights legislation, Queensland has an opportunity to shape the Bill around aspects of the Victorian and ACT regimes that have been subject to review and amendment.
6. The experiences in the ACT under the HR Act and in Victoria under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Victorian Charter**) are particularly illustrative with respect to the progressive consideration of standalone cause of action and remedies. Both jurisdictions have been criticised for the inaccessibility of remedies<sup>6</sup> and, in subsequent legislative reviews, recommendations have been made for the introduction of a standalone cause of action with access to damages.<sup>7</sup>
7. Initially the *HR Act* did not have an standalone cause of action and it ‘neither included nor excluded remedies – it was silent on the issue’.<sup>8</sup> In 2004 the Tasmanian Law Reform Institute criticised the ACT legislation, as it was then, as being unclear and uncertain and concluded that it ‘did not consider that the ACT approach to the enforcement of Charter rights provides an appropriate model for Tasmania’ but instead recommended that any Victorian human rights legislation ‘should follow the United Kingdom model and make explicit provision for individuals to enforce their rights in the courts and that it should also make express provision for remedies in the event of any breach.’<sup>9</sup>
8. A direct right of action modelled on the UK Act was subsequently inserted into the HR Act in line with the recommendations of a 12-month review which ‘aimed to improve the operation of the Act and its accessibility to members of the ACT community’.<sup>10</sup> His Hon Justice Moshinsky has since described the ACT provision as a ‘model of simplicity and clarity’ in enabling proceedings to be commenced against a public authority where there is an allegation of unlawfulness.<sup>11</sup> While the direct right of action is a welcome addition to the ACT human rights regime, the HR Act has been criticised for limiting proceedings to the Supreme Court. In a speech marking 20 years since the inception of the HR Act, the Executive Director of the ACT Women’s Legal Centre called upon the government to ‘to make clear its intentions as to whether decision makers in ACT Courts and Tribunals — other than in the Supreme Court — can consider, and remedy, would-be breaches of human rights arguments’ observing that:

...whilst this direct right of action sets us apart from our Victorian colleagues, and is a substantial improvement compared to the absence of any right of action, it is a remedy that is out of reach and wholly unavailable to the majority of people in the ACT. Indeed, the associated financial and resource costs and the reality of requiring legal representation (in a under-resourced free legal assistance sector) makes this remedy out of reach for basically all vulnerable clients who may need it most.<sup>12</sup>

9. The Victorian Charter was also introduced without a standalone cause of action or access to remedies. The Tasmanian Law Reform Institute has observed:

The provisions in the Victorian Charter with regard to the enforceability of rights are complex and uncertain. This is inimical to the protection of rights. The aim of a Charter is to clarify people's rights and to foster a culture that encourages individuals to see themselves and all other people as the holders of rights. Arming individuals with the ability to enforce human rights is essential to achieving this outcome. This does not preclude the possibility for people to deal with breaches of human rights by other means than court action. Provision should also be made for people to obtain negotiated outcomes through mediation and conciliation. However, people should not be limited to seeking remediation of human rights breaches in this manner. This too would downgrade the significance of human rights.<sup>13</sup>

10. The 2015 Victorian review of the *Charter of Human Rights and Responsibilities Act 2006* (**the Victorian review**) recommended a standalone cause of action modelled on the right in section 40C of the HR Act enforceable through the Victorian Civil and Administrative Tribunal. The Victorian review observed that the 'confusing and limited availability of remedies under the Charter has held back the development of a human rights culture' and observed that '[p]roviding for human rights without corresponding remedies sends mixed messages to the public sector and the community about the importance of those rights.'<sup>14</sup> The Victorian review also expressed concern that 'the current model leads to contortions in litigation just to get a Charter question before a court or tribunal' which ultimately created complexity for the courts and applicants. The Victorian government is yet to act on these recommendations.
11. Caxton submits that the Bill should be amended to include a standalone cause of action allowing the Queensland Civil and Administrative Tribunal (**QCAT**) to determine whether human rights have been breached if the matter cannot be resolved in conciliation. Whilst the government is to be applauded for introducing the Bill, which will afford Queenslanders greater rights protection than any other Australians, we submit that in the interests of good governance the Bill should improve on the deficiencies in other jurisdictions. The inclusion of a standalone cause of action would truly put Queenslanders first and achieve a clear, accessible and just human rights regime from the outset. Without it, the Bill will almost invariably repeat the history of shortcomings, review and subsequent amendment, at the expense of both the public purse and the rights of individuals.
12. Should the LACSC Committee decline to include a statutory cause of action in the Bill, we submit that a 12-month review should occur with respect to the inclusion of a standalone cause of action and access to damages. This is in line with the review that occurred in the ACT, and gives Queensland the opportunity to consider this important amendment in advance of the five-year statutory review in the Bill. Alternatively, we submit that it should be a requirement of the first statutory review in the Bill. Alternatively, we submit that it should be a requirement of the first statutory review that a standalone cause of action be considered. This is consistent with the submission of TCLS, which we support.

### *Remedies*

Justice and cost cannot be pitted against one another: justice must be considered on its own terms, and the cost must be borne by the state that wishes to call itself just.

13. We note that section 59 of the Bill provides that a person may raise a breach of human rights in a proceeding where relief or remedy is sought in relation to an act or decision of a public entity on grounds that the that the act or decision was unlawful under some other law. Section 59(3) of the Bill states that a person is not entitled to be awarded damages on the ground of unlawfulness arising because of a failure to make a decision in a way that is compatible with human rights or because of a failure to give proper consideration to a human right relevant to the decision.
14. Section 39 of the Victorian Charter is similarly drafted, and has been ‘criticised as an “irremediable” remedies provision that is “drafted in terms that are convoluted and extraordinarily difficult to follow.”’<sup>16</sup> The Victorian Review accepted the submission of the Human Rights Commission that ‘the confusing and limited availability of remedies under the Charter has held back the development of a human rights culture’ in that state.<sup>17</sup>
15. We submit that section 59(3) should be removed from the Bill, and that the right to compensatory damages should also be accessible via the standalone cause of action in QCAT. We support the submission of the University of Queensland’s TC Beirne School of Law with respect to the inclusion of damages including compensation for economic loss and hurt and humiliation.
16. We consider that damages should be a remedy available if a person can prove a breach of human rights in a court proceeding. The availability of damages is crucial to driving cultural change within public entities by ensuring there are effective consequences for non-compliance with human rights standards. The UK Act, which is substantially replicated in section 40C of the HR Act, does allow a court or tribunal to award damages in certain circumstances. Additionally, the HR Act does not preclude the ACT Supreme Court from awarding damages where a common law action brought before the court is held to be unlawful by application of the Act.<sup>18</sup> There is no indication in either the ACT or overseas that the inclusion of a standalone cause of action with access to remedies will cause a flood of litigation. The experience in the UK is that awards of damages have been fairly modest.<sup>19</sup>
17. As to damages being awarded through QCAT, this is already part of its jurisdiction under the Anti-Discrimination Act, which will have a substantially similar operation to the Bill.

*Recommendation 1:*

1.1 We urge the Queensland government to amend the Bill to include a standalone cause of action allowing an aggrieved person to access remedies, including damages, for any contravention of their statutory human rights under the Bill. In addition to the existing right to rely on the Human Rights Act in any legal proceedings, this clause should:

- (a) provide for proceedings to be commenced in QCAT via a complaint
- (b) require a mandatory conciliation through the Queensland Human Rights Commission (QHRC) before a complainant can proceed with a claim before QCAT
- (c) if conciliation is unsuccessful in relation to a complaint, invest QCAT with the jurisdiction to hear and determine the complaint, including the awarding damages, and
- (d) allow for appeals from QCAT to be heard by the Supreme Court.

*Recommendation 1 (continued):*

Should the LACSC Committee decline to include a standalone cause of action with rights to access remedies in the Bill, we submit that:

- (c) a 12-month review of the inclusion of a standalone cause of action and damages be provided for in the Bill, or
- (d) that it be a requirement of the first statutory review that the inclusion of a standalone cause of action and damages be considered.

1.2 Section 59(2), which prevents access to damages, should be removed from the Bill, and the right to compensatory damages should also be accessible via the standalone cause of action in QCAT.

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## Rights for Victims

18. Whilst welcoming the protections afforded to accused and incarcerated persons in the criminal justice system, we are concerned about the conspicuous lack of reference to victims' rights in the Bill. We submit that the Bill should be amended to include general rights for victims and specific rights for victims of domestic and family violence.

### *Victims' rights*

19. The inclusion of the *Charter of Victims' Rights (the Charter)* in schedule 1AA of the *Victims of Crime Assistance Act 2009 (Qld) (Victims of Crime Assistance Act)* is indicative of the government's commitment to the 1985 United Nations *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power*. However, the rights contained in the Charter are not enforceable.<sup>20</sup> In the context of the Human Rights Act, this means there is no option for a victim of violence to bring a piggy back claim under the Charter where they say their human rights as a victim have been breached.
20. Whilst there have been some international cases which have affirmed the application of the right to life, right to fair trial, right to privacy and right to a fair hearing to victims,<sup>21</sup> the only relevant Australian case which considered the rights of a complainant was denied by the Victorian Supreme Court.<sup>22</sup> Additionally, the existence of a standalone cause of action in the UK has assisted victims in asserting these rights in the courts. In the absence a standalone cause of action in Queensland, victims are doubly disadvantaged.
21. It seems an unsatisfactory outcome that recourse for victims should depend upon their capacity to interpret rights as arising a Bill that does not explicitly protect them and argue potentially complicated international jurisprudence to have their complaint accepted by the QHRC. We submit that the Bill should specifically include rights drawn from the *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power* including access to justice and fair treatment, the provision of redress through informal and formal procedures, access to victim services, training of criminal justice actors and support services about the needs of victims.



*Recommendation 2*

We submit that the Bill should be amended to include rights drawn from the *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power* including access to justice and fair treatment, the provision of redress through informal and formal procedures, access to victim services, training of criminal justice actors and support services about the needs of victims.

*Victims of domestic and family violence*

22. The rights of victims could also be better protected if the Bill amended Anti-Discrimination Act to include 'victim of domestic/family violence' as a protected attribute. The Bill defines discrimination to include direct and indirect discrimination within the meaning of the Anti-Discrimination Act. Section 7 of the Anti-Discrimination Act could be amended to include being a victim of domestic and family violence as a protected attribute. This would enable Queenslanders who have experienced domestic and family violence clear protection where their human rights have been breached because of discrimination by public entities.
23. In our submission to the LACSC Inquiry we anticipated that a Human Rights Act could draw together the existing gaps in the protection provided by domestic violence laws. We reflected on the experience of female victims of domestic violence under the current regime, noting:

*Although it may be contrary to current community expectations, female victims of violence have no particular legal rights to accommodation of their special needs, no protection against discrimination, and no reliable right to be treated by police or other services in a consistent and supportive way that affirms their fundamental rights to family, safety and security. Their children have no particular legal right to require their school to take into account their family circumstances in provision of their education in the way they would if they were, for example, children with disabilities.*

24. The Bill does not, on its face, deliver such protections for victims and their child survivors of domestic and family violence. The inclusion of victim of domestic and family violence as a protected attribute under anti-discrimination law has been supported by Legal Aid Queensland, Redfern Legal Centre, the Australian Human Rights Commission, Australian Law Reform Commission and others.<sup>23</sup> The Senate Standing Committee on Legal and Constitutional Affairs, Australian Senate, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Majority Report)* (2013) likewise recommended that 'domestic violence' be included as a protected attribute.<sup>24</sup> New Zealand has also recently legislated to include domestic violence as a ground of unlawful discrimination in the *Human Rights Act 1993*.
25. The amendment would also be consistent with the report of the Special Taskforce on Domestic and Family Violence in Queensland (the **Not now, not ever report**), which acknowledged the reliance on government services among survivors of domestic and family violence. In Caxton's experience, victims of domestic and family violence almost invariably experience cumulative disadvantage and present with legal issues related to government debt, accommodation and policing. The Not now, not ever report observed that women may be deterred from seeking help due to discriminatory treatment from services, including the police.<sup>25</sup> For example, for some members of the LGBTIQ+ community the 'barrier to reporting domestic and family violence continues to exist, with research demonstrating that even people who felt supported by law

enforcement in reporting domestic violence experienced initial reluctance to contact the police as a result of perceived institution and interpersonal homophobia.<sup>26</sup> Vulnerable people who have experienced domestic and family violence, relying on the protection of and service provision by public entities have a right to humane treatment under the law.

### *Recommendation 3*

We recommend that the Bill amend the Anti-Discrimination Act to include being a 'victim of domestic/family violence' as a protected attribute under section 7.

## **Rights for Older Persons**

26. In our submission to the LACSC Inquiry we anticipated that a Human Rights Act could provide broad reaching assistance to people with disabilities, particularly those disabilities acquired through age. Caxton's Family, Domestic Violence and Elder Law Practice regularly assists older clients, including people affected by impaired capacity or disability, in their interactions with government agencies and private service providers, including privately run aged care facilities. The following deidentified case study is illustrative:

Barbara was incorrectly diagnosed with dementia and housed in a locked ward of a private aged care facility. Barbara's enduring power of attorney was being misused by her daughter Sharon, who refused to help her find alternative accommodation and who withdrew a significant amount of money from Barbara's bank account. Barbara experienced despair as a result of living amongst people who were too unwell to communicate with her. Her requests to change her colostomy bag were often overlooked by staff, resulting in leakage from the bag. Caxton's Seniors Legal and Support Service (SLASS) stepped in and assisted Barbara to have her enduring power of attorney revoked and to move out of the dementia ward. Barbara's health needs are now met and her quality of life has been turned around—she told our lawyer and social worker: 'I feel like a human again ... I am the same person I was last week but since they moved me, I am treated differently, with respect. I am so thankful to have my freedom again.'

27. We are concerned that the Bill will not protect the rights of older persons in *Aged Care Act 1997* (Cth) approved facilities. We endorse TLCS's call to expand the application of rights to aged care facilities, by way of proposed amendments to sections 9, 10 and 37 of the Bill. At present, the Bill fails to protect the rights of older persons in their dealings with approved aged care providers. We adopt the view put forth by the United Nations Open-Ended Working Group On Ageing as to the responsibility of the Queensland Government in regulating this sector:

States Parties are responsible for acts of violence against older persons and abuse and neglect of older persons committed by organs, officials and agents of the state at all levels, including private actors acting under the direction of or in accordance with the instructions of the state, or whose acts are otherwise attributable to the state.<sup>27</sup>

28. We also agree with the submission of TCLS that a Right to Freedom from Violence, Abuse and Neglect should be included in the Bill. We consider that the inclusion of this right would provide additional protection for all Queenslanders from violence, abuse and neglect. We also consider that this right would be of particular benefit to older clients accessing our services.

*Recommendation 4*

We endorse the TCLS submission with particular reference to the rights of older persons, including the suggested amendments of sections 9, 10 and 37 of the Bill and the inclusion of a Right to Freedom from Violence, Abuse and Neglect.

**Rights for Prisoners**

*The Human Rights Council, in its resolution 24/12, encouraged the States to address overcrowding in detention facilities by taking effective measures, including through enhancing the use of alternatives to pretrial detention and custodial sentences, access to legal aid, and the efficiency as well as the capacity of the criminal justice system and its facilities.*

United Nations<sup>28</sup>

29. We hold concerns about the proposed amendments to the Corrective Services Act and the Youth Justice Act.
30. The amendment of the Corrective Services Act will have the effect of declaring that Queensland Corrective Services, through the chief executive officer or a corrective service officer, will not contravene section 58(1) of the Human Rights Act Bill only because the consideration of:
  - 30.1. the section 30(2) right of a prisoner detained on remand or without charge, to be segregated from convicted offenders,
  - 30.2. the section 30 rights of a prisoner to humane treatment when deprived of liberty, in relation to managing a prisoner in a corrective service facility where it impracticable for the prisoner to be provided with their own room under section 18 of the Corrective Services Act.takes into account the security and good management of corrective services facilities or the safe custody and welfare of all prisoners.
31. The amendment to the Youth Justice Act similarly provides that the chief executive or a corrective services officer will not contravene section 58(1) only because, in considering the rights of a child in detention on remand to be segregated from a child detained on sentence, their consideration takes into account the safety and wellbeing of the child on remand and other detainees, and the chief executives responsibilities and obligations under section 263.
32. These provisions are presumably an attempt to mitigate the operational impact of the Bill on Queensland Corrective Services in relation to the issue of overcrowding. The 2018 Taskforce Flaxton issues paper acknowledges that 'Queensland is experiencing growing overcrowding in its correctional facilities. In Queensland, prison overcrowding has had impacts on infrastructure and resourcing. In a number of high-security correctional facilities, this has resulted in people "doubling-up" in a cell originally built for one person. As prisoner numbers continue to exceed the capacity of correctional facilities, this increases the risk of conflict, violence and serious assaults against prisoners and staff.'<sup>29</sup>
33. In our view, overcrowding must be viewed as human rights issue before it is dealt with as an operational one. Phrases such as 'community safety', 'safety and wellbeing' and 'security and

good management of corrective services facilities' are too broad, imprecise and subjective. Such language is likely to cause confusion for Corrective Services officers who are tasked with managing prisoners in a way which complies with the Corrective Services Act and Human Rights Act. The proposed amendments deny Corrective Services the opportunity to build a culture that respects the human rights of prisoners, and undermines the objects of the Bill to help to promote dialogue about the nature, meaning and scope of human rights. To specifically exclude overcrowding is to unnecessarily limit the rights of prisoners in an area where a human rights framework is needed most.

34. We consider that the consequential amendments of the Corrective Services Act are unnecessary. Section 13 of the Bill provides that human rights protected under the Bill can be limited in circumstances where it is reasonably and demonstrably justified. In our view, section 13 would cover situations where there was a legitimate reason for limiting rights in the corrective services context. It would also help build a culture in the Queensland public sector that respects human rights, and help promote dialogue about the nature
35. While we believe the consequential amendments are wholly unnecessary, if it is the Queensland Government's view that amendments are required to the Corrective Services Act such amendments should be time limited, to encourage Corrective Services to work towards becoming human rights compliant.

*Recommendation 5*

5.1 The amendments to section 5A of the Corrective Services Act and section 263 of the Youth Justice Act should be removed from the Bill.

5.2 In the alternative, for these amendments to be time limited, to encourage Corrective Services to work towards becoming human rights compliant.

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## Reporting requirements

36. We support the requirements for reporting and providing notice by the Human Rights Commissioner (**Commissioner**) in sections 89 and 90 of the Bill. However, we consider that the Commissioner should be required to publish a de-identified summary of all mediated matters in an easily searchable database of problems and outcomes.
37. The Australian Human Rights Commission (AHRC) conciliation register is an excellent example of a simple to use register which manages to balance confidentiality with appropriate reporting. The AHRC has indicated the benefits of the register include assisting potential complaints to make decisions about options for resolving a complaint, increase the transparency of the conciliation process and assist people to prepare for conciliation 'by giving them information on how other similar matters have been resolved.'<sup>30</sup> Such a register would ensure transparency and accountability and would also assist complainants to understand possible remedies and what to expect in mediation.



*Recommendation 6*

Section 90 of the Bill be amended to require the Commissioner to publish de-identified information about a human rights complaint in a conciliation register.

**Resourcing of community legal centres**

*While much focus is on the courts, the central pillar of the justice system, much is done in their shadow, with parties resolving their disputes privately. Community legal education, legal information (including self-help kits) and minor advice help ensure that parties are better equipped to do so. Better coordination and greater quality control in the development and delivery of these services would improve their value and reach.*

Access to Justice Arrangements Report<sup>31</sup>

38. The smooth operation of the Queensland human rights regime will depend on the behind the scenes work of the community legal and legal aid services in providing community legal education, advice and representation to affected Queenslanders. Ensuring that these services are adequately resourced must be a priority for the Government. We agree with LawRight's submission in this regard and endorse the University of Queensland's TC Beirne School of Law submission as to resourcing the implementation of the Human Rights Act.
39. Accessible expert legal services will be of crucial importance to both complainants and the QHRC under the Human Rights Act. Complainants will require specialist legal advice and representation to understand the scope of rights, including the judicial interpretations of rights in domestic and international cases. Legal advice and representation will also be essential in assisting the QHRC to discharge its broad investigative functions under the Bill, including when making preliminary inquiries, requiring information and obtaining submissions. As with the anti-discrimination jurisdiction, we anticipate many complainants will be financially disadvantaged and in need of free legal assistance to navigate their human rights complaints.
40. We welcome the inclusion of a discretionary right to representation at conciliation. We have significant experience representing complainants and individual respondents in the conciliation process in the Anti-Discrimination Commission Queensland (ADCQ). We currently receive frequent referral of complainants (and occasionally respondents) in anti-discrimination complaints from the ADCQ and anticipate we will provide a similar support following the commencement of the Human Rights Act.

*Recommendation 7*

The Government commit to adequate resourcing of the community legal and legal aid services to provide advice, representation and community legal education services following the introduction of the Human Rights Act.

## References

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- <sup>1</sup> George Williams and Daniel Reynolds, submission 6, Victorian Equal Opportunity and Human Rights Commission, submission 447; UQ Pro Bono Centre, submission 449, pp 24-26; 229 ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, Aimee McVeigh Public hearing transcript, Brisbane, 9 June 2016, p 39; Queensland Mental health Commission, submission no 469; A Human Rights Act for Queensland Campaign, submission 470, A Human Rights Act for Queensland: a discussion paper, p 9; Caxton Legal Centre Inc, submission 387.
- <sup>2</sup> The Hon Yvette D'Arth, (Redcliffe—ALP) (Attorney-General and Minister for Justice) Human Rights Bill Introductory Speech, page 3186
- <sup>3</sup> Ibid page 3186.
- <sup>4</sup> Kolodizner, Irina (2009) *The Charter of Rights Debate: A Battle of the Models*, 16 Australian International Law Journal 219, p 231
- <sup>5</sup> Ibid.
- <sup>6</sup> See Williams, George et al, 'A Human Rights Act for Queensland? Lessons Learned from recent Australian Experience' (2016) 41 *Alternative Law Journal* 2; The Hon Justice Mark Moshinsky 'Charter Remedies' in Mathew Groves and Colin Campbell (eds) *Australian Charters of Rights a Decade On* (2017) (Federation Press, 2017) 69; *Jeremy Gans, 'The Charter's Irremediable Remedies Provision'* (2009) 33 Melbourne University Law Review 1; Human Rights Law Centre, Submission to the Review of the Victorian Charter of Human Rights, *More Accessible, More Effective and Simpler to Enforce: Strengthening Victoria's Human Rights Charter* (June 2015); Russell Solomon, 'The Social Construction of Human Rights Legislation: Interpreting Victoria's Statutes through their Limitations' (2017) 22 *Deakin Law Review* 1
- <sup>7</sup> Victoria, Department of Justice and Regulation, [2015 Review of the Charter of Human Rights and Responsibilities Act](#), 2015; ACT Department of Justice and Community Safety (JACS), 'Human Rights Act 2004 Twelve Month Review Report' (2006) and 'Human Rights Act 2004 Twelve Month Review – Discussion Paper' (2006).
- <sup>8</sup> The Hon Justice Mark Moshinsky 'Charter Remedies' in Mathew Groves and Colin Campbell (eds) *Australian Charters of Rights a Decade On* (2017) (Federation Press, 2017) 73.
- <sup>9</sup> Tasmanian Law Reform Institute (2007) [A Charter of Rights for Tasmania](#), Report No.10 (online) 140.
- <sup>10</sup> *Human Rights Amendment Bill 2007* (ACT) [Explanatory statement](#) (online).
- <sup>11</sup> Moshinsky above n 8, 69.
- <sup>12</sup> Yates, Heidi (2014) [The impact of the human rights act in the community](#) *Ethos: Official Publication of the Law Society of the Australian Capital Territory* 233.
- <sup>13</sup> Tasmanian Law Reform Institute (2007) [A Charter of Rights for Tasmania](#), Report No.10 (online) 140.
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- <sup>17</sup> Ibid.
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- <sup>19</sup> See for example *Dobson v Thames Water Utilities* [2009] EWCA 28 [41]-[46]; *R (Faulkner) v Secretary of State for Justice* [2013] 2 AC 254.
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