

Juliana Foxlee  
Apunipima Cape York Health Council  
PO BOX 12045  
Westcourt QLD 4870



18 April 2016

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
Brisbane QLD 4000

## Human Rights Act Inquiry

### Introduction

Apunipima Cape York Health Council is the Aboriginal Community Controlled Health Organisation (ACCHO) for Cape York. Cape York has a total of 17 remote communities; Apunipima provides comprehensive primary health care services to 11 communities and advocacy services to all 17.

Apunipima recognises the complex interaction of social, emotional, physical, cultural, environmental and historical elements that contribute to the Aboriginal and Torres Strait Islander people at an individual, family and community levels. We therefore understand that looking after Aboriginal and Torres Strait Islander people's health requires a holistic approach, one which recognises place, history and relationships.

According to our peak body, the National Aboriginal Community Controlled Health Organisation (NACCHO):

*Aboriginal health means not just the physical well-being of an individual but refers to the social, emotional and cultural well-being of the whole Community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well-being of their Community. It is a whole of life view and includes the cyclical concept of life-death-life.*

Apunipima aligns itself with the values and standards embodied in international human rights declarations and fora, particularly the United Nations Permanent Forum on Indigenous Issues and the United Nations Declaration on the Rights of Indigenous Peoples.

Representatives from Aboriginal Community Controlled Health Sector peak bodies regularly attend United Nations Permanent Forum on Indigenous Issues meetings, ensuring that Indigenous Australians are knowledgeable about, and involved in, the formation and protection of Human Rights and emphasising our belief that human rights matter when it comes to Indigenous self-determination.

Apunipima believes that it's imperative for Queensland Legislative Assembly to legislate a Human Rights Act outside of the Queensland constitution.

We believe the Act should contain:

- a) Explicit recognition of Queensland's Aboriginal and Torres Strait Islander people's cultural rights, social and economic rights and the right to self – determination as outlined United Nations Declaration on the Rights of Indigenous Peoples
- b) The requirement that legislators need to publicly state how their bills comply (or don't comply) with the Act
- c) Civil, Political, Economic, Social and Cultural Rights
- d) A regular, mandatory, public and perpetual review process
- e) The ability for individuals to appeal to the courts if they believe a breach has occurred without having to refer to separate, relevant legislation (individual causes of action)

Benefits from such an Act would include:

- a) A new way and new language with which to address the social, cultural and economic determinants which underpin Cape York Aboriginal and Torres Strait Islander people's suffering (from imprisonment, substance abuse, family violence, unemployment, child removal to physical and mental illness and the shorter life spans than other Queenslanders)
- b) The empowerment of the public through human rights education, promotion and enculturation
- c) The provision of a greater set of checks and balances upon and within the Queensland Parliament which lacks an Upper House
- d) The provision of explicit human rights protections for all Queenslanders, especially the most vulnerable

Our organisation believes a Queensland Human Rights Act would advance the cause of the Cape York's Aboriginal and Torres Strait Islander populations by requiring decision makers to focus on human rights each and every time a decision is made.

### **Terms of Reference**

That, in undertaking the inquiry, the committee consider:

- 1) the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms;
  - a) Apunipima believes a progressive, responsive Human Rights Act that is open to individual causes of action and incorporates Civil, Political, Economic, Social and Cultural Rights would provide a powerful vehicle for advocacy and be a game-changer in terms of how we draft and review legislation and hold our elected representatives to account.
  - b) While Queenslanders are protected by our Anti-Discrimination Commission and the national Human Rights Commission, nothing yet exists that embeds Queenslanders' human rights within Queensland Law. A Queensland Human Rights Act would ensure that the rights of Queenslanders and especially marginalised, vulnerable Queenslanders remain at the forefront of decision-makers' minds when they are drafting, amending and passing legislation.

- 2) the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally;

The legislation in Victoria is currently not open to individual causes of action and only incorporates Civil, Political and Cultural rights. Despite these limitations, politicians are still required to publicly assess legislation against the Victorian Charter of Rights and Responsibilities and advocacy organisations utilise the Act as a vehicle for social change. Apunipima's interest is in advocating and acting to improve the health of Aboriginal and Torres Strait Islanders on Cape York – to this end we believe Queensland should enact a more robust version of Victoria's bill – enhancing people's capacity to sue for breach and broadening the rights contained within the Act. It is also worth considering whether we go down the Victorian road of having a Human Rights Commission / Ombudsman model or adopt a Commission that also manages complaints such as exists in the ACT. The value of the latter suggestion is it would reduce the burden of privacy / information sharing concerns currently experienced by the Victorian bodies.

- 3) the costs and benefits of adopting a HR Act (including financial, legal, social and otherwise); and

We are not qualified to comment on the economic costs of establishing an independent QLD Human Rights Commission but we believe there would be multiple benefits from establishing an Act (assuming the Act is progressive, robust and includes mechanisms to hold public authorities to account) including:

- a) ensuring new legislation is compatible with the spirit and the letter of the HR Act
- b) supports politicians to be crystal clear about where their proposed legislation links to, or departs, from the provisions in the Human Rights Act which in turn empowers voters to choose their leaders wisely
- c) providing an advocacy vehicle for those wanting social change
- d) a new lens through which to view existing and new laws
- e) increasing public awareness of inherent, universal rights
- f) connecting our values to the values of the international community
- g) shifting the focus from the law makers to the people
- h) putting people and their rights at the centre of the conversation
- i) providing a new language in which to discuss old problems
- j) the creation of a new human rights focused culture within our public authorities and the broader community

- 4) Previous and current reviews and inquiries (in Australia and internationally) on the issue of human rights legislation.

The 2015 Review of the Charter of the Human Rights and Responsibilities Act 2006 (Victoria) and the submissions that informed it provides interesting insight into the evolution of Victoria's Human Rights Act and how it could be strengthened, broadened and improved.

Queensland has an excellent opportunity to learn from Victoria's process and begin its own from an informed and receptive position.

Our research suggests it would be desirable for a Queensland Act to:

- a) Create an informed and empowered human rights culture within government and bodies which government funds by fostering senior leadership, building staff knowledge and capacity and by seeking external feedback and oversight.
- b) Clearly define those who are required to comply with the Act. The Review states that there is a need, 'to ensure greater certainty about who is a public authority, so individuals are aware of their rights and entities aware of their obligations.
- c) Design an open information sharing model – informal discussions with the Victorian Ombudsman's Office (the body that manages Human Rights complaints) indicated that the vast array of privacy legislation makes it difficult for the various bodies involved in examining and resolving potential breaches of the Act to share relevant information. The alternative to this is to have manage breaches and complaints within the Commission as occurs in the ACT.
- d) To enable individuals to take legal action against those whom they feel have breached their human rights without having to base it on a piece of separate, existing legislation
- e) Enable the public to make submissions into the compatibility of new legislation with the Human Rights Act
- f) Ensure legislators clearly explain whether their bills are compatible or incompatible with the Human Rights Act and that this statement be made publicly available
- g) Reference the Act when signing up to national initiatives and ensure the initiatives comply with the Act or have equivalent safeguards
- h) Ensure self-determination of Queensland's Aboriginal and Torres Strait Islander peoples and their right to be involved in decisions that affect them be explicitly noted within the Act
- i) Explicitly ensure the protection of Queensland's Aboriginal and Torres Strait Islander peoples' cultural rights
- j) Explicitly note that children are entitled to all the rights contained with Act.
- k) Explicitly note that a child has the right to protection by the virtue of them being a child. The ACT HR Act includes the clause that 'Every child has the right to protection needed by the child because of being a child, without distinction or discrimination of any kind,' while the Victorian HR ACT states that children have the right to discrimination free protection which is in their best interest. The Victorian Equal Opportunities and Human Rights Commission in their submission to the 2015 Review of their state's HR Act recommended that an amended Act should note that children have the right to protection in their best interests and 'as needed by him or her by reason of being a child.'
- l) Include social and economic rights as well as civil and political rights. Health is impacted by social determinants among other things – if we are serious about turning the

Aboriginal and Torres Strait Islander health crisis around we need to address the complex social and economic mix which has resulted in them suffering the worst health outcomes in the country.

- m) Include the right to education enabling public authority decisions to be scrutinised for the impact it would have on education
- n) Clearly define the meaning and scope of discrimination
- o) Incorporate regular, public, mandatory, perpetual reviews to ensure the Act stays relevant, meaningful and inclusive

### Conclusion

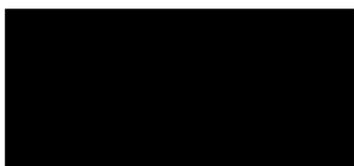
A Human Rights Act which embodies the social, economic, civil, political rights of our Aboriginal and Torres Strait Islander people as well as their right to self - determination would be a step forward for Queensland.

Apunipima's focus is on creating healthy lives for the Aboriginal and Torres Strait Islander peoples of Cape York.

To this end we believe that a Queensland Human Rights Act would:

- Turn decision makers' focus towards the people they make the decisions for
- Make those decision makers more accountable to the people and;
- Increase inclusion by creating a new language and culture of rights firmly rooted in what we share, not what separates us

Yours sincerely,



Juliana Foxlee on behalf of Apunipima Cape York Health Council