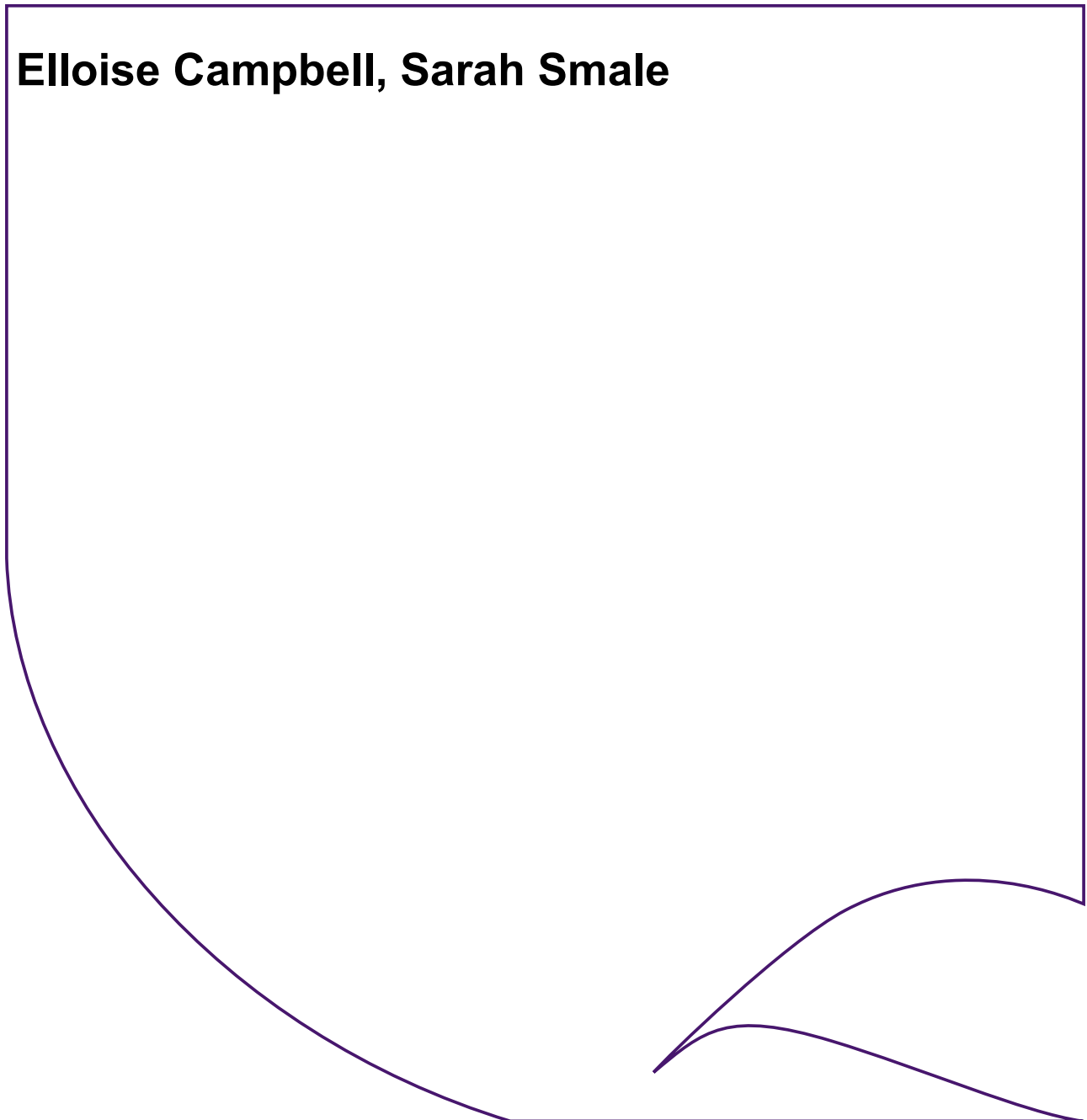


The Impact of Human Rights Legislation on Human Service Delivery

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About the Authors

This paper was researched and authored by UQ law students **Elloise Campbell** and **Sarah Smale** for and on behalf of the **Queensland Council of Social Service (QCOSS)**, Queensland's peak body for the social service sector. Student researchers undertook this task on a *pro bono* basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession.

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1. Introduction

This report observes the implementation and impacts of human rights legislation on human service delivery in the community services sector. The report is divided into sections – accountability in courts and tribunals, human service delivery and acts for advocacy. This report observes relevant cases both nationally in Australia and internationally, to demonstrate the potential uses and impacts of the *Queensland Human Rights Act 2019*.

Queensland's Human Rights Act ('the Act') came into force in January 2019. The Act imposes a duty on public entities (as well as legislators and the courts) to act in a way that is compatible with the 23 rights contained in the Act. Public entities include government actors as well as non-government actors that are performing a public function (sections 9 and 10).

Public entities could include Ministers, public service employees, Queensland Police, Councillors, members of parliament, courts and tribunals, emergency services, public health services, public disability services, public transport, state schools, education and training, housing, prisons and other organisations which opt in.

The Act places two obligations on public entities: to give proper consideration to, and to act compatibly with, human rights when making decisions or taking actions. Notably, a public entity can act or make a decision that limits human rights, but only if it is reasonable and justifiable, or if the entity could not have acted differently or made a different decision because of another law.

The purpose of the Act is to protect and promote human rights, help build a culture in the Queensland public sector that respects and promotes human rights, and to help promote a dialogue about the nature, meaning and scope of human rights. The rights are based on former legislation including:

- *The Universal Declaration of Human Rights*, 1948
- *International Convention on the Elimination of All Forms of Racial Discrimination* 1965 (ICERD)
- *International Covenant on Civil and Political Rights* 1966 (ICCPR)
- *International Covenant on Economic, Social and Cultural Rights* 1966 (ICESCR)
- *Convention on the Elimination of all Forms of Discrimination Against Women* 1979 (CEDAW)
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1984 (CAT)
- *Convention on the Rights of the Child* 1989 (CRC)
- *Convention on the Rights of Persons with Disabilities* 2006 (CRPD)
- *Optional Protocol to the Convention against Torture* 2002 (OPCAT)

The Act complements a number of other pieces of legislation, such as the *Anti-Discrimination Act 1991*; the *Judicial Review Act 1991*; the *Ombudsman Act 2001*; the *Crime and Corruption Act 2001*; the *Right to Information Act 2009*; and the *Information Privacy Act 2009*.

This report outlines examples of cases relating to breaches of these human rights. Examples are provided for other states or countries where there is no example involving the right within Queensland. This report also observes human rights frameworks and compatibility by community organisations.

2. Accountability in Courts and Tribunals

The *Human Rights Act* requires courts, tribunals, and decision makers to interpret legislation in a way that is compatible with human rights and consistent with the purpose of the legislation. The Act requires public entities to act compatibly with human rights and enables court action to be taken when this does not occur.

Therefore, there is potential for community organisations to be held accountable in courts and tribunals when their decisions or actions are not compatible with the Act. There have been cases where non-governmental community organisations have been pursued in courts or tribunals for breaches of human rights obligations. Some examples of cases where community organisations were pursued in courts or tribunals are outlined below.

Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children [2016] VSC 796

- Children detained in an adult prison (run by an organisation that is not the government): sections 17, 26, 30, 32, and 33. The proceeding concerns the detention of some of the plaintiffs in a remand centre established at the Grevillea unit of the Barwon Prison under an Order in Council made on 17 November 2016 under the Children Youth and Families Act 2005 (Vic) ('the Act'). A second Order in Council on the same day establishes a youth justice centre at the Grevillea unit within the Barwon Prison, but the youth justice centre is yet to receive young persons for detention. The Court holds that the two Orders in Council are unlawful under s 38(1) of the Charter of Human Rights and Responsibilities Act 2006 (Vic) as the defendants failed to give proper consideration to the human rights of the plaintiffs.

Burgess & Anor v Director of Housing & Anor [2014] VSC 648 (17 December 2014)

- A tenant and their children being evicted from public housing (run by an organisation that is not the government): sections 26, 25, 17, and 19. First plaintiff alleged to have trafficked heroin from the premises - Decisions of Director to issue notices to vacate and apply for warrant of possession - VCAT grant of possession order and issue of warrant for possession. Consideration of requirements of Director's own policy manual - Whether Director failed to take into account relevant considerations - Whether decisions of Director unlawful under s 38 of the Charter of Human Rights and Responsibilities Act 2006 (Vic) - Both decisions of Director invalidly made but only decision to apply for warrant amenable to certiorari.

Goode v Common Equity Housing Limited (Human Rights) [2016] VCAT 93

- Ms Goode commenced proceedings at VCAT against Common Equity Housing Limited (CEHL), a social housing provider, claiming it illegally discriminated against her and acted inconsistently with her human rights. Ms Goode submitted that CEHL's conduct contravened the Equal Opportunity Act 1995 (Vic) and Equal Opportunity Act 2010 (Vic) (Equal Opportunity Acts), and the Charter. Ms Goode relied on section 38(1) of the Charter, which makes it unlawful for a public authority to act incompatibly with a human right protected by the Charter. Ms Goode alleged that CEHL had acted incompatibly with eight rights protected by the Charter, including her rights to privacy, freedom of association and freedom of expression. To determine whether CEHL had complied with the Charter, VCAT was required to determine whether CEHL was a 'public authority' subject to the Charter.

Victorian Aboriginal Legal Service Submission to the 8-year review of the Charter, Submission 98 (Case Study 1)

- An Aboriginal woman lived in housing owned and leased by a non-Aboriginal community organisation. A condition of her tenancy was that she was required to engage with community services. After her

nephew died she went back to her country for a couple of weeks of 'sorry business'. When she returned she started receiving warnings to engage with services, however she wasn't able to do so because she was overwhelmed with family responsibilities, trauma and grief. A possession order was made, and the police came to her door with a warrant. Her advocates made an application for an urgent review and stay. They argued that the community organisation had failed to engage with the woman's cultural rights and the rights of her grandchild and family members in their eviction process. These rights are protected in the Victorian Charter of Rights and Responsibilities. As a result, the community organisation withdrew their possession application and engaged an Aboriginal support service.

Lifestyle Communities Ltd (No 3) (Anti-Discrimination) [2009] VCAT 1869 (22 September 2009)

- Lifestyle Communities Ltd runs aged care facilities. It sought an exemption from the Equal Opportunity Act 1995 (Vic) to enable it to provide places only to people aged over 50. The Victorian Civil and Administrative Tribunal (VCAT) ruled that the exemption was not justified as a reasonable limitation on the right to equality before the law. VCAT's ruling found there was no reason to exclude all applicants under 50, and that the company's proposal was based on stereotypes.

Parks Victoria (Anti-Discrimination Exemption) [2011] VCAT 2238 (28 November 2011)

- In another case, Parks Victoria wanted to advertise for and employ Indigenous people to care for Wurundjeri country. VCAT found that the purpose of the activity was to provide employment opportunities to Indigenous people, to increase the number of Indigenous people employed by Parks Victoria, to provide opportunities for connection and care for the Wurundjeri country by its traditional owners, and also for the maintenance of the culture associated with the country. The Tribunal was satisfied that the measure was proportionate because at the time the application was made only 7.6 per cent of Parks Victoria's workforce was Indigenous. This measure of limiting the employment opportunity to Aboriginal people was found to be a reasonable limitation on the right to equality of other groups.

Xi v WorkCover Queensland [2016] QCATA 134

- A woman who was of Chinese origin, and who had limited ability to communicate in English, alleged that WorkCover failed to provide an interpreter for her when communicating about her claim. Her complaint was dismissed by the tribunal, and she appealed on the basis that the tribunal was wrong about the law.

Kracke v Mental Health Review Board [2009] VCAT 646 (23 April 2009).

- In this case, Mr Kracke was subject to compulsory medical treatment prescribed by a psychiatrist. The Medical Health Review Board was required to review the psychiatrist's orders within a certain time period, but failed to do so. Mr Kracke argued that the orders therefore became invalid, and his treatment amounted to a breach of the Human Rights Charter, which prohibits medical treatment without consent. The Tribunal held that, since Mr Kracke was in medical need, the law allowing involuntary treatment was a reasonable limit on his rights. It also held that, in this case, the right to be free from torture and ill-treatment was not engaged because the treatment was not severe enough.

Rutherford Ors v Hume CC [2014] VCAT 786

- This case involved an application to establish a Shi-ite Islamic Mosque in a Melbourne suburb, on land adjacent to a church whose congregation was mostly comprised of people of Assyrian background, many of whom had fled Iraq because of extremist Islamic violence. Hume City Council approved the application to build the mosque. Ten local residents objected on the grounds that the mosque would have a significant detrimental impact on the church community and would diminish the safety of the area. In their review of the Council decision to grant the application, the Victorian Civil and Administrative Tribunal considered the right to freedom of thought, conscience and belief protected in

the Charter of Human Rights and Responsibilities. The Tribunal upheld the Council's permit approval, stating:

“Whilst the followers of one religion may have fled war or persecution overseas, at the hands of extremists from another religion, it would be a poor outcome for planning in Victoria if town planning decisions were made to achieve an outcome that effectively replicates in Australia those same divisions, fear and distrust. Town planning decisions should not set out to separate people, or the use of land, based on ethnicity or religion. Town planning decisions should reflect Australia’s rich and proud history of welcoming all religions and provide a society where people of different faiths can live, work and worship side-by-side, without fear of threats, intimidation or violence. There are no adverse amenity considerations or other planning considerations that justify a refusal of the permit.”

Hobsons Bay City Council Anor (Anti-Discrimination Exemption) [2009] VCAT 1198 (17 July 2009)

- In this case, the Victorian Civil and Administrative Tribunal considered whether to grant an exemption to the Equal Opportunity Act 1995 to allow women-only swimming sessions. The Centre had undertaken extensive community consultations that indicated that many women in the area were not participating in sport and recreation because of cultural constraints. The Tribunal noted that the rights of women to practice their culture and religion were relevant to this decision. It found that ‘it is the exercise of those rights to practice aspects of their culture and religion which makes them unable to swim at the Centre while men are present and so means that use of the pool area is currently barred to them’. The Tribunal granted the exemption.

Hoskin v Greater Bendigo City Council and Anor (2015) VCAT 1124

- The Australian Islamic Mission Inc. sought a permit to construct a mosque. The City of Greater Bendigo granted the permit. Eleven objectors to the mosque development took the case to VCAT arguing that an Islamic Mosque was an intrinsically unacceptable land use because of the very nature of Islam. VCAT determined to grant the permit as it was not satisfied that the granting of the permit would likely result in any significant social effects. The human rights relevant to the Bendigo Mosque case were the rights to freedom of culture, religion and belief.

Emanuel & Anor v State of Queensland [2011] QCAT 731

- Two people, whose religious belief prevented them from having their photographs taken, complained of discrimination when the Department of Transport refused to issue them with driver licences without photographs. Their religious belief is based on the Christian second commandment and the books of the Old Testament of the Bible, Exodus, and Deuteronomy.

Magee v Delaney [2012] VSC 407

- In this case, Mr Magee had painted over an advertisement in a bus shelter. He intended this to be a protest against the global advertising industry. He was charged and convicted of property damage. Mr Magee appealed this decision. He asked the Supreme Court to consider how the criminal charges intersected with his right to freedom of expression under the Victorian Human Rights Charter. The Supreme Court found that the painting over of the advertisement was an expression, as it was capable of conveying a meaning. However, it also found that damage to a third party’s property (or a threat of such damage) is not protected. It found the right to freedom of expression is subject to lawful restrictions reasonably necessary to respect the property rights of other persons (irrespective of whether those persons are human beings, companies, government bodies or other types of legal entities). The Court also found that the criminal offence of intentionally causing property damage was a lawful restriction on the right to freedom of expression, for the protection of public order.

Victoria Police v Anderson Ors (Magistrates Court, 23 July 2012)

- In this case, people had gathered outside Max Brenner's Chocolate Bar in a Melbourne shopping complex, to protest the political and social interests of the store. They were charged with trespassing after QV management and Victoria Police asked them to leave and they refused. The Magistrates' Court dismissed the trespass charges. It found that the protestors had gone to the complex to hold a political demonstration, which they had a right to do. The Court said that to find the protestors guilty of trespass would not be compatible with their right to freedom of expression.

Swancom Pty Ltd v Yarra CC [2009] VCAT 923

- Swancom (operators of an hotel) applied for an existing planning permit to be changed. They wanted to extend trading hours in the hotel beer garden from 11:30pm until 3am, and to increase patron numbers from 750 to 1300. The Victorian Civil and Administrative Tribunal heard the case. VCAT held that the application to extend hours and patron numbers should fail. The Tribunal held that while refusing the application might arguably interfere with Swancom's broader property rights, section 20 of the Charter only provides that a person must not be deprived of property 'other than in accordance with law'. The Tribunal was of the opinion that the imposition of reasonable restrictions on the use or development of the land under the regulatory framework is in accordance with the law, and therefore is not unlawful or arbitrary.

Youth Affairs Council of Victoria: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

- The Victorian Charter was used successfully to challenge a threat of expulsion from school where a child had a disability. As a result of the intervention, the child was provided with supports, which led to him being able to stay at the school.

2.1 Comparative examples

2.1.1 The United Kingdom

The Human Rights Act came into effect in the UK in October 2000. The Act enables people in the UK to take cases about their human rights directly to a UK court. Previously they were not able to rely directly on Convention rights in the domestic courts. It also provides public authorities with a legal framework to help them to ensure that their actions respect the human rights of those for whom they provide services, which may help prevent problems arising in the first place or enable a resolution without the need to go to court.

There are 16 basic rights in the Human Rights Act, all taken from the European Convention on Human Rights. They do not only affect matters of life and death like freedom from torture and killing; they also affect people's rights in everyday life: what they can say and do, their beliefs, their right to a fair trial and many other similar basic entitlements.

KB and others v Mental Health Review Tribunal and Secretary of State for Health (2002)

- KB and others were patients detained under the *Mental Health Act 1983 (UK)*. Each of them applied to a Mental Health Review Tribunal for a review of their detention. In each case, the hearing arranged by the Tribunal was repeatedly adjourned, leading to delays of up to 22 weeks. KB and others argued that on the specific facts of their cases, the delays they suffered could not be justified. The court found in each case that the delay in hearing each application was not justified, and that the claimants had not received a speedy hearing as required by Article 5 of the UK's Human Rights Act, the right to liberty and security.

R (JL) v Secretary of State for Home Department (2008)

- A young man attempted to kill himself while in custody at a public-sector Young Offender Institution. He was left with serious permanent brain damage. The Prison Service asked a retired governor to

investigate the incident but did not consider that it was necessary to hold a more detailed independent investigation. The House of Lords (in its judicial capacity, and at the time the highest UK court) held that to comply with Article 2 of the Human Rights Act an independent investigation should be carried out in respect of near deaths in custody which result in serious injury. Such investigations should lead to preventative action and reduce the risk of similar incidents in future.

(C) v Secretary of State for Justice (2008)

- Publicly operated Secure Training Centres in the UK were established to accommodate vulnerable teenagers in custody. Until July 2007, physical restraint could only be used as a form of discipline in situations where it was necessary to prevent escape, damage to property or injury. Then new rules were introduced that expanded the permissible use of restraint to circumstances where it was 'necessary for the purposes of ensuring good order and discipline'. In this case, the Court of Appeal quashed the new rules on the basis that they breached Article 3. The Court of Appeal found that the use of physical restraint that includes the deliberate infliction of pain is degrading and an infringement of human dignity in breach of Article 3. It could not be justified as being strictly necessary for ensuring good order and discipline. Where a person has been deprived of their liberty and is dependent on the state, and is young and vulnerable, the state is under a special obligation to treat them with humanity.

2.1.2 New Zealand

In New Zealand, there has been extensive research on the topic of intervening in court by human rights commissions and organisations to ensure that matters which breach human rights obligations are tried accordingly. The following is taken from research completed by the New Zealand Centre for Human Rights, Law, Policy and Practice affiliated with the University of Auckland.

The New Zealand Bill of Rights Act 1990 (NZBORA) affirms human rights and fundamental freedoms and New Zealand's commitment to the ICCPR (although as it protects a more limited range of rights it is not an exact replica of the ICCPR). It is aimed at the legislature, the Executive and judicial branches of government and people or bodies carrying out a public function or duty, or exercising a power, conferred on them by law. Specifically, Part 1A applies to public sector activity with the exception of employment matters, racial and sexual harassment and victimisation, which are subject to the same legal obligations as the private sector. A public sector activity will breach the HRA if it is inconsistent with the right to freedom from discrimination under s. 19 of the NZBORA and cannot be justified as a reasonable limitation under s. 5. The result is that while the procedures in the HRA apply, interpretation of the right to be free from discrimination is decided by reference to the NZBORA.

The definition of an intervener differs between jurisdictions however is often taken to mean a third party who is permitted to join litigation even though they are not a party to the proceedings.

It has been found that accountability (particularly of public sector actors) is central to a human rights approach. The need to justify government action under s 5 NZBORA is a crucial aspect of accountability. The limitation of a right in the NZBORA is only permissible if it can be justified in a "free and democratic society". However, the financial implications of becoming involved in court proceedings can play a significant role in whether pressure groups or NGOs apply to intervene. While many groups consider their involvement is necessary in order to promote a particular perspective or support a certain issue, the possibility of prohibitive costs orders can affect their decision to intervene.

The following factors may influence a party in whether to intervene:

- The number of people likely to be affected. A case which involves a significant number of people can indicate that an important issue of public interest is involved. See, for example, *Attorney General v Human Rights Review Tribunal* [2006] NZHC 1661, (2006) 18 PRNZ 295; *Drew v Attorney General* [2001] 2 NZLR 428, (2001) 18 CRNZ 460, (2001) 15 PRNZ 1.
- Whether the decision will affect a vulnerable group that might otherwise not be heard. The *RIDCA* case is a good example of this. The people most impacted by the decision were people

with intellectual disability who had fallen foul of the criminal justice system but were unable to understand - and thus engage with - the trial process.

- Whether the case involves an important point of law or is likely to set an important precedent. For example, *Atkinson v Ministry of Health* [2012] NZCA 20, [2011] 2 NZLR 171 which dealt with the definition of discrimination and *Trevethick v Ministry of Health* [2008] NZSC 38 which addressed the rationale for the difference between the funding of disability services & ACC.
- Whether a serious or controversial issue of significance is raised. For example, whether family members should be paid to care for adult disabled children as in *Atkinson*.
- Ensuring international human rights standards are observed: *Attorney General v Zaoui* [2005] NZSC 38, [2006] 1 NZLR 289, (2005) 7 HRNZ 860.

Overall, although intervention has been criticised as politicising the judicial process, there is a growing recognition that allowing the involvement of third parties can better contextualise social issues, enriching the final result. This is reflected in the influence of the NZBORA - particularly in relation to accountability and transparency in the public sector - and has changed the way judges are approaching their task.

3. Human Service Delivery

There is no national human rights legislation in Australia, but three states have human rights legislation: Victoria, ACT and Queensland. Internationally, countries with a human rights act include Canada, Ireland, New Zealand and the United Kingdom. This section explains the potential for human rights to be used to improve human services and uses examples where this has occurred. Some organisations have particular consideration for human rights or place human rights in the centre of their service delivery.

The Human Service Quality Framework (HSFQ) is used by community organisations in Queensland. The HSQF is based on a set of principles including respect for human rights in keeping with the UN Universal Declaration of Human Rights and the Queensland Human Rights Act 2019. On 21 April 2010, the Government launched Australia's Human Rights Framework which outlines the key measures to guide the Government's human rights work.

A number of UN Human Rights Council Universal Periodic Review recommendations called for strengthening of the framework particularly through a greater integration of Australia's international obligations. The Queensland Human Rights Act includes legal enforcement and the creation of precedence. However, it is essential that it is embraced by community organisations. The Act may build upon the ACT and Victorian Acts and international human rights acts to further develop frameworks and build human rights culture.

3.1 Companies

3.1.1 KPMG

KPMG is a multinational professional services network for accounting. This company has implemented human rights policy as part of their service delivery. One particular focus of KPMG is to identify and manage modern slavery risk. KPMG's approach is inclusive of the internationally recognised human rights set out in the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight ILO fundamental conventions encompassed by the Declaration on Fundamental Principles and Rights at Work. It includes a commitment to work to ensure that there is no modern slavery in their operations and supply chain, and they demonstrate continuous improvement in this regard through annual reporting under the *Modern Slavery Act 2018* (Cth). KPMG is also a signatory of the United Nations Global Compact and supports the United Nations Guiding Principles on Business and Human Rights 'Protect, Respect, Remedy' framework.

3.1.2 Bric Housing

Bric Housing is a company which offers affordable housing in South-East Queensland. It has a human service delivery framework which focuses on human rights. Bric Housing relies on the strategic pillars of customer and community impact, including by engaging with tenants, partners and the community to deliver positive outcomes for tenants and the community. It focuses on sustainability and growth by maintaining a financially sustainable organisation to achieve consistent growth through innovation. It is a customer focused practice where people are enriched by the positive social outcomes delivered to tenants and the community.

3.1.3 Mission Australia

Mission Australia is a national Christian charity that provides a range of community services throughout Australia. Mission Australia's services and framework is focused on human rights. The organisation specialises in the areas of homelessness and housing, families and children, early learning, youth, employment and skills, alcohol and other drugs, disability, mental health, and strengthening communities. Mission Australia offers specialist support services that enable people to avoid and escape homelessness. It provides crisis and transitional accommodation, as well as social and affordable housing. It provides support for families and youths and aims to strengthen communities by providing employment opportunities and skills-training. It also provides support to individuals impacted by alcohol and drugs, poor mental health and disability, as well as domestic and family violence.

3.2 Aged care facilities

The Final Report of the Royal Commission into Aged Care Quality and Safety ('Final Report') sets out a roadmap to comprehensively change the design, objectives and governance of the aged care sector. In making its recommendations, which includes a new human rights-based Act, the Royal Commission observed one of the factors hindering genuine reform in the past has been a historically reactive approach to legislative and regulatory change.

3.2.1 Benetas

Benetas is an aged care, home care and health care non-for-profit provider based in Victoria. Benetas has the aim of implementing rights-based practice, with focus on consumer choice and control. This rights-based approach provides a framework for aged care providers to protect and promote the rights of residents in aged care facilities, strengthening their freedom of choice and ultimately enhancing their quality of life, and a rights-based approach to aged care is person-centred. Benetas rejects any form of modern slavery and human trafficking and is committed to implementing effective systems and controls to ensure it does not take place directly within their business or supply chains.

3.3 Healthcare facilities

Rabone and Anor v Pennine Care NHS Foundation Trust (2012)

- This case involves a hospital which comes under the comprehensive public-health service, the National Health Service (NHS). A woman with a recurring depressive disorder had attempted suicide on several occasions. She was initially assessed by the hospital as being at high risk of deliberate self-harm and suicide. Following treatment, she was reassessed as moderate to high risk of self-harm. Her father was concerned about her condition and urged the hospital not to allow her home on leave or to discharge her too soon. However, the woman asked for home leave and was granted it for two days and nights against her parents' wishes. During her home leave she committed suicide. The Supreme Court held that the hospital had a duty to take reasonable steps to protect her from the real and immediate risk of suicide and that article 2 of the European Convention, which protects the right to life, had been breached.

Davies v State of Victoria [2012] VSC 343 (15 August 2012)

- This case involved the treatment of a person with disabilities. While living at a Community Residential Unit, the person was dragged naked along a hallway. This caused bruising and grazing. The Supreme Court of Victoria found that the treatment of the resident constituted cruel, inhumane and degrading treatment. In the landmark decision, Justice Williams of the Supreme Court found that the conduct of a disability support worker in dragging a person with an intellectual disability across a carpeted hallway such as to cause a burn or abrasion constituted “cruel, inhuman or degrading treatment” contrary to section 10(b) of the Charter of Human Rights and Responsibilities.

3.4 Youth Justice Precinct

- In 2010, Ombudsman Victoria conducted an investigation into the conditions at the Melbourne Youth Justice Precinct. This precinct consists of the Melbourne Youth Justice Centre, Melbourne Youth Residential Centre and Malmsbury Youth Justice Centre. Ombudsman Victoria found the precinct was did not comply with the human rights principles in the Charter. It found:
 - there was undesirable mixing of detainees of widely varying ages and different legal situations
 - remanded detainees were being placed in units with sentenced offenders
 - 39 per cent of former and current staff legally required to have a Working with Children Check (WWCC) to work at the precinct did not have a WWCC on their personal file
 - the precinct was struggling to meet the needs of children who were seriously mentally ill, including detainees who were suicidal or displaying self-harming behaviour; and
 - in some instances, remanded detainees were placed in sentenced units during the day, which in one case resulted in a remanded detainee being severely assaulted by four sentenced detainees.
- Ombudsman Victoria found that these were human rights violations. It recommended that the precinct be replaced with a new facility, a review be carried out of all policies and practices relating to conditions to ensure they comply with human rights principles and that the performance of all current staff be reviewed.

3.5 Comparative examples (UK)

3.5.1 Housing Justice

Services and support for homeless people

Housing Justice have integrated a human-rights-based approach into their campaigns work with great success. In 2009 they set up the Homeless Human Rights Action Team, a network of different organisations working with people affected by homelessness in London. The group decided to launch a campaign against Operation Poncho. This was a rigorous enforcement policy in the City of London where police and street washing teams were waking up homeless people and hot washing the areas they were sleeping between the hours of 1am – 4am, causing distress and disturbance to rough sleepers. The Human Rights Action Team found human rights arguments were a powerful influencing tool. As public authorities have legal duties under the Human Rights Act they must seriously consider concerns about human rights. By framing the campaign in human rights language, Housing Justice was able to talk about violations of the rights of rough sleepers in their negotiations with government officials. This helped strengthen the case for why these unethical policies must be stopped. Housing Justice and their campaign partners successfully lobbied decision makers and Operation Poncho was put on hold. Since then many of London boroughs have stopped the practice of hot washing.

3.5.2 Advocacy Matters

Advocacy for disabled people

By the nature of their organisation, Advocacy Matters' use of human rights was quite limited to specific situations and particular articles in the Human Rights Act. To encourage a broader use of human rights in their work Advocacy Matters delivered training on human rights for their advocates where they discussed each article in the Human Rights Act and how these apply to particular situations they come across in their work. They also appointed a Human Rights Champion within their team to support advocates in discussing the human rights aspects of their caseloads. Human rights matters are also now a standing item at staff meetings. These simple steps have given their advocates the capacity and confidence to use human rights in their work and this has led to some positive outcomes for their clients. For example, a learning-disabled couple were going to be separated by the local authority because of their different care needs but advocates were able to successfully challenge this decision using human rights arguments. By encouraging staff to think more broadly about human rights they have also seen a shift from viewing human rights as all about the individual to using human rights to empower groups of people. For example, advocates have supported a group of learning-disabled people to find out more about their rights and use this knowledge to challenge closures to their services.

3.5.3 Praxis Community Projects

Advice and support for migrants and refugees

Praxis decided to look at how human rights could help them in their work with some of their most vulnerable clients – undocumented migrants and women without recourse to public funds. Praxis provided training for their staff and hosted awareness raising events for the communities they support, to encourage individuals to find out more about their rights. For example, they hosted theatre workshops where vulnerable migrant women explored their experiences of contacting social services and how they might have responded differently if they had understood their rights. They also offered training for public service professionals on human rights and their obligations as 'duty bearers' under the Human Rights Act. Taking steps to educate both service providers and the communities they work with about their respective roles as duty bearers and rights holders under the Human Rights Act made a tangible difference on the ground. Service users felt more empowered in their conversations with service providers, and service providers became more aware of the human rights implications of the decisions they were making.

3.5.4 British Humanist Associate (BHA)

Challenging health inequality

BHA have been using human rights at a number of different levels to help them in their work challenging health inequalities and supporting individuals to improve their health and well-being. They are working hard to promote the value of human rights within their own organisation; they provided training on human rights to their senior management team to ensure a commitment to human rights was centrally driven. They also trained and supported project managers to find out more about human rights and how they can be useful within their projects BHA then utilised voluntary and community sector organisations, particularly black and minority ethnic (BME) organisations, to disseminate information and raise awareness about human rights externally.

3.5.5 Women in Prison

Support and services for women in the criminal justice system

Women in Prison used human rights to empower the women they work with, and to encourage service providers that work with women in the criminal justice system to become more aware of their responsibilities as duty bearers under the Human Rights Act. WIP supported their self-advocacy group Women Moving Forward (women in contact with the criminal justice system) to find out more about their rights and how rights can be used to advocate for change. WIP then worked with the group to develop human rights training for service providers. The group co-designed the training which was delivered to key public authorities in London that have duties under the Human Rights Act, including probation officers and housing officers. The training focused on human rights and housing and used a number of different methods to explore what human rights

are and why they are relevant to housing. The impact of providing the training was significant, both in the confidence it gave to the women involved but also in raising awareness amongst duty bearers about their responsibilities under the Human Rights Act.

4. Act for Advocacy

There is great potential for community organisations to use the Act to achieve better outcomes for people through advocacy.

4.1 Young girl protected from giving evidence against her abusers

Fitzroy Legal Service, cited in HRLC Charter in Action (Case Study 48)

- A young Victorian girl had been abused. Her advocates used the Victorian Charter of Human Rights and Responsibilities Act, and in particular the right to the protection of family and children, to argue that she shouldn't be required to give evidence against the alleged perpetrators. They said that this right should be given proper consideration when determining whether a young person should be required to provide testimony. As a result, the girl was not required to give evidence.

4.2 Mother free to care for her daughter

Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

- A Victorian woman with cerebral palsy was at risk of having her child taken from her by Child Protection because of concerns about her ability to care for her daughter. The woman relied on the right to protection of families and children as well as the right to equality before the law. The woman was then given the opportunity to demonstrate her ability to care for her daughter and her daughter remained in her care.

4.3 Protection of families and children, cultural rights, and right to freedom of religion

Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006 (Case Study 77)

- A woman had been moved by her guardian into a residential facility. The facility had no workers who spoke her language, understood her cultural and religious beliefs or would prepare food in a way which was required by her religion. The woman and her family wished for her to stay primarily with them in her family home. The woman's advocates argued that the decision was in breach of the Victorian Charter of Human Rights and Responsibilities Act, namely protection of families and children, cultural rights and the right to freedom of religion. The resulting decision of the tribunal was that the guardianship be revoked.

4.4 IVF treatments granted to woman in prison

Castles v Secretary to the Department of Justice (2010) 28 VR 141; [2010] VSC 310 [113]

- Kimberley Castles was convicted of social security fraud in 2009 and sentenced to three years imprisonment. She was imprisoned in a minimum-security women's prison. Before being incarcerated, Ms Castles had been receiving IVF treatment. She wanted to be able to continue to access IVF at her own cost while in prison, because by the time she was released she would be ineligible for the treatment due to her age. Her requests to access this treatment were denied by the Department of Justice. Ultimately, the Supreme Court of Victoria found that Ms Castles was entitled under s 47(1)(f) of

the *Corrections Act 1986* to undergo IVF treatment. The judgement in this case gave significant consideration to the application of the right to humane treatment when deprived of liberty, which is protected in the Victorian Charter of Rights and Responsibilities Act 2006. The Court found that the right to humane treatment in detention:

“[r]equires the Secretary and other prison authorities to treat Ms Castles humanely, with respect for her dignity and with due consideration for her particular human needs.”

4.5 Rights of children in detention to be held safely and humanely

Certain Children (No 1) [2016] VSC 796 [169]; contra Certain Children (No 2) [2017] VSC 251 [241], [256] – [258]

- This case related to the detention of children at the Barwon Prison. A youth justice and remand centre had been established within a high security adult prison. It was found this engaged the children’s rights to humane treatment when deprived of liberty.

4.6 Bail and right to privacy

R v Wayne Michael Connors [2012] ACTSC 80 (28 May 2012)

- This case in the ACT questioned whether bail conditions were a breach of a person’s right to privacy. Mr Wayne Connors was awaiting trial in the ACT for aggravated robbery. He was released on bail with the condition that he submit to urine testing to check for illicit drug use. Mr Connors argued that the requirement was a breach of his right to privacy under the ACT’s Human Rights Act 2004. The Chief Justice of the ACT Supreme Court found it was not a breach. His ruling recognised that bail conditions like this did limit people’s right to privacy, and that there was a danger of them being enforced in a way that was unfairly oppressive. However, in this particular case he ruled the limitation was reasonable, lawful, and ‘demonstrably justifiable’.

4.7 Human Rights Law Centre, Melbourne

The Human Rights Law Centre based in Melbourne uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. It lays out examples of the Victorian Human Rights Charter being used by community organisations to achieve better outcomes for people using community services. It works to strengthen the legal and institutional protection of human rights and promotes the human rights of people seeking asylum and refugees, democratic freedoms and partners with Aboriginal and Torres Strait Islander peoples to promote their rights. The Human Rights Law Centre advocates for refugees and asylum seekers, individuals in prison, democratic freedoms, reproductive rights and Aboriginal and Torres Strait Islander peoples.

4.8 Queensland Advocacy Incorporated (QAI), Queensland

QAI is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. QAI’s mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable People with disability in Queensland. QAI does this by engaging in systems advocacy work, through campaigns directed to attitudinal, law and policy change, and by supporting the development of a range of advocacy initiatives.

4.9 British Institute of Human Rights (BIHR)

BIHR, Preventing a Woman and her Newborn Baby Being Made Homeless.

- In the UK, the Human Rights Act was used successfully by a community organisation who was supporting a pregnant single mother who had been given notice to leave her rented property while she was in hospital giving birth to retain her home.

British Institute of Human Rights, The Human Rights Act – Changing lives, 2nd edition

- An elderly couple in the UK who had lived together for more than 65 years were separated when the husband was moved to an aged care residential home and the wife's request to go with him was refused. She said, "We have never been separated in all our years and for it to happen now when we need each other so much, is so upsetting. I am lost without him—we were a partnership." A public campaign was launched on the grounds of their right to respect for family life. The decision was reversed, and the couple was reunited.

BIHR is the leading provider of human rights training and consultancy services to public sector in the UK. They have been providing training for almost 15 years, to over 10,000 individuals in over 1,000 organisations. Clients include local authorities, NHS organisations, national and regional government bodies, public sector inspectorates, national, regional and local third sector organisations, and community groups. The BIHR have undertaken a number of projects to inform others about the UK Human Rights Act. Some of their methodologies and partnerships could be mimicked in Queensland. The best examples are outlined below:

4.9.1 Activism against Gender-Based Violence Project

- BIHR worked with women who had experienced domestic abuse to develop an online tool to support people to know their rights and the duties on public bodies when rebuilding their lives after domestic abuse. Alongside this digital resource, BIHR delivered human rights sessions to staff working with people who had experienced domestic abuse, supporting them to know the human rights framework so they can support women to know their rights too. Through this work, they were able to support women to realise how human rights can make a difference in their lives – when interacting with public services and rebuilding their lives.

4.9.2 Work with aged-care homes

- BIHR developed a bespoke 2-year programme of Equality and Human Rights training which is still being delivered to all Care Home staff at the Royal Star and Garter Homes (local public entities in the UK) who provide care for veterans and their partners who live with disability or dementia. The purpose of the course is to provide innovative training and consultancy solutions that make human rights legal standards accessible and practical, empowering people and organisations to understand how human rights laws apply to their public-work sector.
- The training sessions cover:
 - An introduction to human rights and the Human Rights Act
 - An introduction to the Equality Act
 - Some key human rights relevant to residential care
 - Using human rights and equalities in practice

4.9.3 Human rights and frontline healthcare

- BIHR's "Delivering Compassionate Care: Connecting Human Rights to the Frontline" project aimed to place human rights at the heart of mental health services, helping to ensure frontline staff have the

knowledge and skills to fulfil the vital role they can play in upholding the dignity and human rights of the people using their service. The three-year project was funded by the Department of Health and worked with seven “pilot services” across England delivering mental health and mental capacity services. The project aimed to build the knowledge and confidence of frontline practitioners to embed human rights across their work, to improve outcomes for people using their service.

- Their seven issue-specific toolkits focused on different practice areas:
 - Dementia and Human Rights: A practitioner’s guide (produced with Bristol Dementia Wellbeing Service)
 - Learning Disability and Human Rights: A practitioner’s guide (produced with Mersey Care NHS Foundation Trust)
 - Mental Health Care for Children and Young People and Human Rights: A practitioner’s guide (produced with The St Aubyn’s Centre)
 - Mental Health Early Intervention: A practitioner’s guide (produced with Tees, Esk and Wear Valleys NHS Foundation Trust)
 - Mental Health Accommodation Support and Human Rights: A practitioner’s guide (produced with St Martin of Tours Housing Association)
 - Rehabilitation and Human Rights: A practitioner’s guide (produced with Avon and Wiltshire Mental Health Partnership NHS Trust)
 - Social Care Intervention and Human Rights: A practitioner’s guide (produced with Bristol City Council)

5. Conclusion

This report demonstrates the potential use and impact of the *Queensland Human Rights Act 2019*. The Act places obligations on public entities to give proper consideration to, and act compatibly with, human rights when making decisions or taking actions. A public entity can act or make a decision that limits human rights, but only if it is reasonable and justifiable, or if the entity could not have acted differently or made a different decision because of another law.

The purpose of the Act is to protect and promote human rights, help build a culture in the Queensland public sector that respects and promotes human rights, and help promote a dialogue about the nature, meaning and scope of human rights. This report has aimed to demonstrate examples of non-governmental organisations taken to court or tribunals for human rights breaches, examples of human rights focused service delivery, and human rights legislation being used for the purpose of advocacy. The evidence amassed in this report was sourced from states in Australia with Human Rights Acts in force, as well as comparable commonwealth jurisdictions with similar Acts, being the United Kingdom and New Zealand. The benefit of human rights legislation in court and tribunals, human service delivery and for advocacy shows the potential use and impact of the *Queensland Human Rights Act 2019*.



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