



## Submission to the National Human Rights Consultation

Queensland Council of Social Service  
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**Submitted by:**

Queensland Council of Social Service Inc (QCOSS)  
Ground Floor Pidgeon Close (off Beesley St) West End  
PO Box 3786 South Brisbane 4101  
Ph: 3004 6900 Fax: 3004 6999  
[www.qcoss.org.au](http://www.qcoss.org.au)

Community Organisation

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**Contact:**

Nadine Lester  
QCOSS Inc  
Ph: 07 3004 6900 Fax: 07 3004 6999  
Email: [nadinel@qcoss.org.au](mailto:nadinel@qcoss.org.au)

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## **About QCOSS Inc**

Queensland Council of Social Service (QCOSS) is the peak body for over 600 welfare and community sector organisations in Queensland. For over 50 years QCOSS has worked to promote social justice and exists to provide a voice for Queenslanders affected by poverty and inequality. We act as a State-wide Council that leads on issues of significance to the social, community and health sectors. We work for a Fair Queensland and develop and advocate socially, economically and environmentally responsible public policy and action by community, government and business.

## **About this submission**

Human rights issues affect a very large number of Australians. Hundreds of thousands experience circumstances which prevent them from enjoying rights recognised under international law, such as the right to an adequate standard of living, to health care, to work, and to social security. The failure to effectively protect these rights results in high costs for the individuals affected, and for society as a whole. This includes the personal costs of social exclusion, health impacts, and exposure to further human rights abuses for individuals, and economic costs to society of lost productivity and increased government expenditure. Addressing these issues requires a stronger approach to human rights protection. While the elements of the current framework for protecting human rights – robust democratic institutions, human rights education through the Australian Human Rights Commission and non-government organisations, and programs to address disadvantage and support families – are important, they are not effective without an underpinning human rights charter.

QCOSS believes that to protect human rights effectively, the federal government should enact a human rights act which implements the International Covenant on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights. This should be complemented by similar legislation in the states and territories. Federal and state human rights acts should also be combined with other measures to increase the ability of those people who are most vulnerable to breaches of their human rights to participate in the development of public policy and programs. Such measures include taking steps to make consultation processes around legislation and policies more accessible to disadvantaged Australians, and improving human rights education in schools and to the general public to ensure that the population has the necessary knowledge to advocate for their own and others' rights as part Australia's democratic system.

### *Note to the National Human Rights Consultation Secretariat:*

This submission is primarily about economic, social and cultural rights, and a human rights charter.

It also contains information relating to homelessness and poverty, health, Indigenous rights, immigration and refugees, children and young people's rights, and race discrimination.

## **Which human rights (including corresponding responsibilities) should be protected and promoted?**

QCOSS believes that all human rights set out in the treaties comprising the International Bill of Rights should be protected and promoted. This is discussed further in our response to the second consultation question, below.

The protection of human rights implies a responsibility on the part of individuals to respect of the rights of others. It is not necessary to articulate specific responsibilities of individuals as part of a human rights protection framework.

## **Are these human rights currently sufficiently protected and promoted?**

### **Civil and Political Rights**

QCOSS believes that the full set of human rights recognised in the International Covenant on Civil and Political Rights (ICCPR) should be protected and promoted by implementation in Australian law.

Civil and political rights are not sufficiently protected and promoted at present. The 2004 National Action Plan on human rights argues that human rights are best protected and promoted through a robust democratic system which includes an independent judiciary, accountable and responsible government, effective opposition parties, and free media<sup>1</sup>. This assumes, however, that all individuals enjoy an equal standing in society and that there is political will to protect human rights. In practice, adequate protection of civil and political rights in Australia is undermined by:

- Widespread discrimination against particular groups, to the extent that breaches of their human rights are considered justified by a substantial proportion of the population;
- An imbalance between the degree of power held by particular groups and the potential political advantages in implementing laws that may breach their rights;
- Lack of resources provided for the protection of civil and political rights.

While democratic processes may have achieved progress on some high profile civil and political rights issues in Australia, such as the detention of asylum seekers, many other human rights issues cannot be effectively addressed through a judicial framework that does not include clear human rights standards, and do not gain sufficient public support to be resolved through other democratic institutions. For example:

- **In Queensland, 17 year old offenders are incarcerated in adult prisons. QCOSS is concerned that this practice exposes vulnerable young people to potentially harmful environments. The United Nations (UN) Human Rights Committee has also expressed concern about the detention of juveniles in adult prisons in its Concluding Observations on Australia's implementation of the ICCPR in April 2009<sup>2</sup>.** To date, Queensland's political parties have competed to be seen as tough on juvenile

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<sup>1</sup> *Australia's National Framework for Human Rights: National Action Plan*, December 2004, p. 5.

<sup>2</sup> Human Rights Committee, April 2009, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant. Concluding Observations of the Human Rights Committee*. UN Doc. CCPR/C/AUS/CO/5.

crime. Human rights legislation would allow a Queensland government to take steps to end this abuse of human rights.

- Governments have identified violence against women as a priority. The 2008 Australian Community Sector Survey, however, found that in 2006-07 more than 400 eligible people were turned away from sexual assault or domestic violence services<sup>3</sup>. Rates of people turned away from other services needed by women escaping domestic violence, such as housing services, were higher. Political support for eliminating violence against women therefore has not translated into adequate resourcing of agencies assisting the victims of violence.
- Negative attitudes towards people with a disability, and scarcity of appropriate support services, contribute to their overrepresentation as victims of crime, and present barriers to justice for victims. Various studies have found, for example, that between 50% and 99% of women with intellectual or psychosocial disabilities are sexually assaulted during their lifetimes<sup>4</sup>.
- The UN Human Rights Committee expressed concerns that the Northern Territory Emergency Response (NTER) breaches Australia's obligations under the ICCPR<sup>5</sup>. The suspension of the Racial Discrimination Act in order to adopt NTER measures represents a deliberate decision on the part of the Australian government to breach the human rights of Indigenous people, which was taken with popular support. This example demonstrates the inadequacy of relying on institutions such as parliament, political parties, and the media to protect and promote human rights where discriminatory attitudes towards particular groups exist.

It is also noteworthy that recent consultations on protecting human rights in Victoria, Australian Capital Territory, Western Australia, and Tasmania found strong community support for improved protection of human rights and for legal protection of civil and political rights in particular. In Western Australia, for example, a public opinion poll conducted in 2007 found that 89% of respondents felt the law should be changed to better protect human rights, and 91% supported the inclusion of civil and political rights in such legislation<sup>6</sup>. The Tasmanian Law Reform Institute reported that 95% of submissions to the consultation it conducted argued that human rights were not adequately protected by Tasmanian law<sup>7</sup>. There is a clear perception amongst the Australian public that human rights, including civil and political rights, are not adequately protected by existing frameworks.

### **Economic, social and cultural rights**

QCOSS believes that all rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) should be protected and promoted in Australian law.

These rights are not adequately protected and promoted in Australia at present, as the examples provided below demonstrate. Factors that contribute to the inadequate protection of economic, social and cultural rights in Australia include:

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<sup>3</sup> Australian Council of Social Service, June 2008, *Australian Community Sector Survey Report 2008*, ACOSS Paper 154.

<sup>4</sup> French, P., May 2007, *Disabled Justice: The Barriers to Justice for Persons with Disability in Queensland*, Queensland Advocacy Incorporated, Brisbane.

<sup>5</sup> Human Rights Committee, op cit.

<sup>6</sup> Department of the Attorney General, November 2007, *A WA Human Rights Act: Report of the Consultation Committee for a Proposed WA Human Rights Act*, Appendix E p. 1-2.

<sup>7</sup> Tasmania Law Reform Institute, October 2007, *A Charter of Rights for Tasmania*, Report No. 10., p. 20.

- Failure to adequately consider the impacts of government policy on economic, social and cultural rights;
- Failure to take adequate steps to address existing economic, social and cultural rights issues such as poverty, homelessness, and inadequate standards of living;
- Failure to take effective measures, such as adequate consumer protections, to prevent the development of situations that breach economic, social and cultural rights;
- Discriminatory attitudes against particular groups and the lack of political power experienced by such groups.

QCOSS believes that any framework for improving the protection of human rights in Australia must include better protection of economic, social and cultural rights to be effective. The arguments for inclusion of economic, social and cultural rights in measures aimed at promoting human rights in Australia include:

- The indivisibility of human rights;
- The extent to which economic, social and cultural rights issues affect the Australian population;
- Denial of economic, social and cultural rights, such as the withholding of social security, as a penalty for perceived offences;
- The cost of failing to protect economic, social and cultural rights; and
- Demand for protection of economic, social and cultural rights, as evidenced by the use of civil and political rights frameworks by individuals in jurisdictions where human rights charters operate to prevent or redress breaches of their economic, social and cultural rights.

These arguments are discussed in more detail below.

### *Indivisibility of human rights*

Despite the separation of the rights articulated in the Universal Declaration of Human Rights into two categories, all human rights are interrelated. Failure to protect economic, social and cultural rights tends to expose those affected to breaches of their civil and political rights. For example:

- **At 30 June 2006, 74% of young people in Queensland Youth Detention Centres were being held on remand<sup>8</sup>. It has been recognised for at least 10 years that lack of suitable accommodation results in many young people being remanded<sup>9</sup>.** The failure to safeguard young peoples' right to adequate housing therefore may lead to their arbitrary detention.
- The life expectancy of Indigenous Australians is approximately 17 years less than that of the general population. While a range of factors contribute to this disparity, many can be categorised under the broader issues of inadequate access to health services and poor standard of living, both relating to rights contained in the ICESCR. These breaches of the economic, social and cultural rights of Aboriginal and Torres Strait Islander people diminish their ability to enjoy the right to life guaranteed under the ICCPR.
- Homelessness compromises the right to political participation under the ICCPR. People who do not have stable accommodation face difficulty maintaining their enrolment on the electoral roll. Other barriers to political participation, particularly voting, by homeless people include difficulty

<sup>8</sup> Coalition Against Inappropriate Remand (CAIR), March 2008, Rethinking Youth Remand and Enhancing Community Safety, p. 33.

<sup>9</sup> Ibid., p. 40

accessing information about elections and candidates, the probability of needing to travel to attend a polling booth, disengagement with the political process due to social exclusion, and the necessity of dealing with more pressing needs such as obtaining food and accommodation<sup>10</sup>. Many homeless people are therefore unable to exercise their right to vote and to participate in public affairs as a result of their right to adequate housing not being protected.

Lack of respect for civil and political rights also creates barriers to enjoyment of economic, social and cultural rights. The poor uptake of interpreting services by health professionals, for example, not only disregards the ICCPR right of people from culturally and linguistically diverse (CALD) backgrounds to use their own language, but also compromises the quality of medical care provided to CALD patients, a breach of their rights under the ICESCR. **Examples identified by the Queensland Accessing Interpreters Working Group included<sup>11</sup>:**

- **A Brisbane medical centre refusing to see a patient who required an interpreter, resulting in a longer wait and higher costs for the patient to access medical care at an alternative clinic.**
- **An out-patient at a Brisbane hospital missing appointments because notifications of the appointments were sent to her in English, and not understanding the seriousness of her health problems because the hospital did not use an interpreter.**

#### *Proportion of people affected by economic, social and cultural rights issues*

Substantial numbers of people in Australia are disadvantaged by inadequate protection of economic, social and cultural rights. Examples of economic and social rights issues affecting a large number of people include:

- **Almost 22,000 small customers in Queensland were disconnected from electricity supply for non-payment in the 2007-08 financial year. Of these, less than 40% were reconnected within 7 days<sup>12</sup>.** Electricity is an essential service and disconnection has implications for the right to health as well as the right to an adequate standard of living.
- Approximately 105,000 people in Australia are homeless<sup>13</sup>. Housing is recognised as a component of the right to an adequate standard of living.
- **Out of an estimated potential population of 146,485 Queenslanders with severe or profound core activity limitations, only 3.7% used accommodation support services, 7.3% used community support services, and 5.2% used community access services in 2006-2007<sup>14</sup>. All three indicators were below the national average.** This suggests that many people with a disability in Queensland do not receive sufficient support to exercise their right to an adequate standard of living and to participate in cultural and social life.
- Over 630,000 people in Australia were unemployed and seeking work in April 2009<sup>15</sup>. At the date of the last Underemployed Workers Survey in September 2008, there were 603,700 part-time workers in Australia who preferred and

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<sup>10</sup> Australian Electoral Commission, February 2005, *Electorally Engaging the Homeless*, Research Report Number 6.

<sup>11</sup> Queensland Accessing Interpreters Working Group, December 2008, *A Matter of Interpretation*.

<sup>12</sup> Queensland Competition Authority, *Small Electricity Customer Disconnection and Complaints Data Year Ended 30 June 2008*.

<sup>13</sup> Australian Bureau of Statistics (ABS), 2008, *Counting the Homeless 2006*, Cat. No. 2050.0, p. vii.

<sup>14</sup> Steering Committee for the Review of Government Service Provision (SCRGSP), 2009, *Report on Government Services 2009*, Productivity Commission, Canberra.

<sup>15</sup> ABS, April 2009, *Labour Force, Australia*, Cat. No. 6202.0

were available to work more hours<sup>16</sup>. Therefore more than 1 million Australians find their right to work compromised. Financial hardship and rules for receiving income assistance may also mean that many of this group may be forced into work that they do not freely choose or accept and that does not comply with their right to just and favourable conditions of work.

- **Approximately 413,000 Queenslanders, or 10.6% of the population, were estimated to be living in poverty in 2005-06 using the 50% of median income poverty line<sup>17</sup>.** Poverty affects a wide range of economic, social and cultural rights, including the right to an adequate standard of living, the right to health, and to participate in cultural life.

In opposing inclusion of economic, social and cultural rights in the Australian Capital Territory (ACT) Human Rights Act, the ACT government has argued that a successful claim on economic, social and cultural rights grounds would require expenditure on one individual at the expense of others<sup>18</sup>. The extent to which these issues affect the Australian population, however, reflects policy failures on the part of government. The high numbers of electricity disconnections in Queensland, for example, contrast with much lower disconnection rates in Victoria where the state government has implemented a much stronger consumer protection framework. QCOSS considers, therefore, that the human rights framework in Australia should include measures which compel the government to consider the effect of policy and legislation on economic, social and cultural rights, and to take reasonable steps to achieve realisation of these rights.

#### *Penalties involving denial of economic, social and cultural rights*

The belief that citizens require protection from the state has been the basis of legal standards establishing the right to a fair trial in criminal matters, developed over hundreds of years. In contrast, the Australian government has been relatively free to impose punishments impacting on economic, social and cultural rights on groups that are politically unpopular, despite the fact that these penalties may have far-reaching effects on the lives of those targeted.

The **penalty regime applying to unemployment payments** is one example. Under various compliance frameworks, unemployed persons have been subjected to a reduction or loss of income as punishment for failing to meet activity test requirements imposed as a condition of receiving assistance. Again, the numbers of people affected are substantial. A 2002 ACOSS report notes that under the previous breach regime, where first and second breaches resulted in a reduction in payments and third breaches in the total loss of payments for 8 weeks, more than 300,000 breach penalties were applied for the 1999-2000 financial year and more than 13,000 third breaches<sup>19</sup>. In 2006 the compliance regime was altered such that unemployment payment recipients who fail their activity test requirements may avoid an initial financial penalty by subsequent compliance, but a fixed term 8 week non-payment period is still imposed for repeated failures or what are deemed serious failures. Compliance data published by the Department of Education, Employment and Workplace Relations shows that in the 2007-08 financial year, there were more than 32,000 instances of fixed 8-week non-payment periods being imposed on

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<sup>16</sup> ABS, 2009, *Underemployed Workers, Australia, September 2008*, Cat. No. 6265.0, p. 5.

<sup>17</sup> Australian Council of Social Service (ACOSS), 2007, *Australia Fair: Update on those missing out*.

<sup>18</sup> Department of Justice and Community Safety, 2006, *Human Rights Act 2004 Twelve Month Review – Report*, p. 40.

<sup>19</sup> ACOSS, 2001, *Breaching the Safety Net: the harsh impact of social security penalties*, ACOSS INFO 305, p. 5-6.

jobseekers<sup>20</sup>. More than 212,000 participation failures, under which payments could potentially be delayed until an activity test requirement was satisfied, were also recorded during this period<sup>21</sup>. The number of people in this group who lost payments for an indefinite period pending compliance was not reported.

These penalties are disproportionate to the 'offences' for which they are imposed, especially when the impacts of breaching are taken into account. **The Welfare Rights Centre has reported that community organisations in regional areas of Queensland have found some of the consequences for people who have had non-payment periods imposed have included having to take on unsafe or illegal work for cash, returning to prison, eviction due to inability to pay rent, self-harm or suicide, and added stress on families leading to conflict and family breakdown<sup>22</sup>.** A 2002 study of welfare recipients in Brisbane similarly found that more than one-fifth of respondents were forced to move into less desirable accommodation after Centrelink breaching, including three who reported living on the streets as a result<sup>23</sup>. The Welfare Rights Centre also points out that non-payment periods are not necessarily limited to 8 weeks, in cases where payments are suspended until a person carries out a particular instruction in accordance with their activity agreement<sup>24</sup>. People with barriers to compliance, such as a mental health problem, may therefore have their payments suspended for much longer periods, resulting in the most vulnerable recipients effectively falling out of the welfare system.

The value of this policy in targeting unemployment payments at people who are genuinely seeking work is questionable when, as the Welfare Rights Centre has pointed out, the imposition of 8 week non-payment periods also restricts access to job seeking services<sup>25</sup>. Rather, it reflects the political value in appearing to take action on a perception arising from the stigmatisation of unemployment, and as such emphasises the vulnerability of marginalised groups to human rights abuses when adequate safeguards are not present.

The denial of a range of rights to **asylum seekers and refugees** on various types of visas is a further example of economic, social and cultural rights being withheld as punishment. During the late 1990s and early 2000s a range of government measures were introduced to deter people from engaging Australia's protection obligations under the Refugee Convention as onshore applicants. These included the 45 day rule, under which asylum seekers applying for protection visas more than 45 days after arriving in Australia were moved on to bridging visas without work rights or Medicare access, and the temporary protection visa regime. Such measures effectively penalised people for seeking protection via a different means than the government's preferred method of resettlement through offshore humanitarian program.

Research into the impacts of the 45 day rule found that a majority of bridging visa holders were living in poverty, with either no income or an income inadequate to meet basic needs, approximately two-thirds were homeless, and almost one-quarter

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<sup>20</sup> Department of Education, Employment and Workplace Relations, 2008, *Job Seeker Compliance Data – June Quarter 2008*.

<sup>21</sup> Ibid.

<sup>22</sup> Welfare Rights Centre (WRC), November 2007, *Falling Out of Welfare: Report on Regional Tour of South East Queensland*, p. 15-16.

<sup>23</sup> Schooneveldt, S, 2002, *Do Centrelink Activity Breach Penalties coerce outcomes from unemployed welfare recipients in line with Mutual Obligation policy?* Paper presented to the Social Change in the 21<sup>st</sup> Century Conference, 22 November 2002, p. 8.

<sup>24</sup> WRC, Op. Cit., p. 13.

<sup>25</sup> Ibid, p. 14.

had been denied medical treatment<sup>26</sup>. The temporary protection visa regime also had a devastating impact, with the denial of access to services and uncertainty associated with holding a temporary visa causing difficulties in settling in Australia, finding work and accessing adequate health care<sup>27</sup>. Both types of visas were found to contribute to mental and physical health problems experienced by visa holders. While both the 45 day rule and temporary protection visas have now been abolished, inadequate protection of economic, social and cultural rights leaves open the possibility of these or similar measures being reintroduced by a future government.

The consequences of denying income support, work rights, and access to health care and other social services are at least as serious, if not more than, those of penalties available in the criminal justice system, yet equivalent protections are not available to those likely to be targeted with economic and social penalties. In the case of bridging visas and temporary protection visas, such penalties were imposed as a result of arbitrary rules implemented with the intention of deterring behaviour which was both legal and protected by international human rights treaties to which Australia is a signatory. In regards to activity test penalties, ACOSS has previously highlighted the contrast between the standards associated with the right to a fair trial in the criminal justice system and the operation of the Centrelink breaching regime, with the presumption of innocence being reversed and the burden placed on welfare recipients to demonstrate that penalties should not be imposed<sup>28</sup>. The ability of governments and public servants to impose penalties restricting economic, social and cultural rights demands that measures be implemented to better protect these rights to prevent them being unreasonably limited.

#### *Cost of failing to protect economic, social and cultural rights*

Protection of economic, social and cultural rights has been perceived as creating a heavy financial burden on government. Failing to address issues that impinge on economic, social and cultural rights, however, may carry a greater cost. For example:

- The United Nations Special Rapporteur on the right to adequate housing has identified the shift from provision of public housing to promotion of home ownership as one of the factors driving the growth in subprime lending<sup>29</sup>. The subprime mortgage crisis in turn is considered to be one of the main causes of the current global economic crisis.
- **Conservative estimates place the cost to the Queensland economy of the expected increase in social exclusion for 2010 at \$3.58 billion<sup>30</sup>.**
- Access Economics has estimated that if the disadvantage experienced by Indigenous Australians were to be alleviated, including improving health and educational attainment, in 2029 Gross Domestic Product would be 1% or \$10 billion higher than otherwise, government revenue would be \$4.6 billion higher, and government expenditure would be reduced by \$3.7 billion<sup>31</sup>.

<sup>26</sup> Network of Asylum Seeker Agencies Victoria, March 2005, *Seeking Safety, Not Charity: A report in support of work rights for asylum seekers living in the community on Bridging Visa E*.

<sup>27</sup> Briskman, L., Latham, S., and Goddard, C., 2008, *Human Rights Overboard: Seeking Asylum in Australia*, Scribe Publications, Melbourne.

<sup>28</sup> ACOSS 2001, Op. Cit.

<sup>29</sup> United Nations Human Rights Council, February 2009, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development – Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik*, UN Doc. A/HRC/10/7.

<sup>30</sup> Mangan, J., April 2009, *Implications for the Queensland Economy from Current World Economic Conditions*, University of Queensland.

<sup>31</sup> Access Economics, August 2008, *An Overview of the Economic Impact of Indigenous Disadvantage*, Report by Access Economics Pty Limited for Reconciliation Australia.

Failing to realise the economic, social and cultural rights of Aboriginal and Torres Strait Islander people therefore carries an economic cost in the order of billions of dollars.

- **Failure to effectively address issues such as poverty and homelessness and inadequate provision of mental health services contribute to Queensland's adult imprisonment rate of around 170 per 100,000 of population<sup>32</sup>. It has been estimated that reducing this rate to a level comparable with world best outcomes would save the Queensland government more than \$120 million per year<sup>33</sup>.**

In addition to the economic costs, failing to protect economic, social and cultural rights also carries a significant social cost. **The Queensland Chief Health Officer's 2008 report on chronic disease in Queensland reveals, for example, that 17% of all the burden of disease in the state is caused by socioeconomic disadvantage, with an average 4.3 years of healthy life lost as a result<sup>34</sup>.** The 17 year gap in life expectancy between Aboriginal and Torres Strait Islander people and the general population as a result of failing to protect the economic, social and cultural rights of Indigenous Australians has already been discussed. **In Queensland, Aboriginal and Torres Strait Islander people have a health adjusted life expectancy 12.8 years less than the general population<sup>35</sup>.** This indicates that not only do Indigenous Queenslanders suffer higher rates of chronic disease than other Queenslanders, they also die sooner from such diseases than non-Indigenous people.

Including economic, social and cultural rights in a human rights protection framework is therefore likely to encourage policies that would hold considerable economic and social benefits.

#### *Use of civil and political rights frameworks to address economic, social and cultural rights*

The implementation of human rights legislation in Victoria and the Australian Capital Territory has led human rights act proponents to collect case studies showing how individuals have been able to use these charters of human rights to obtain better outcomes in their dealing with government bodies. In both cases, the legislation only implements those parts of the ICCPR that fall within state jurisdiction, and does not explicitly protect economic, social and cultural rights. Many of the case studies, however, show individuals using civil and political rights protected under the acts to achieve improvements in their economic, social and cultural rights. These include several examples of protection of the family being cited to gain access to public housing or prevent eviction into homelessness, and protection from torture and other cruel, inhuman or degrading treatment and the right to privacy cited to ensure provision of appropriate health services<sup>36</sup>. These examples show that there is a clear need for protection of the economic, social and cultural rights of disadvantaged people in Australia. The limited protection provided by human rights acts incorporating civil and political rights is only available, however, where the personal

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<sup>32</sup> ABS, 2009, *Corrective Services, Australia, Dec 2008*, Cat. No. 4512.0

<sup>33</sup> Hamburger, K. 2006, *Restorative Justice: Victims and Offenders: In the Context of Developing a National Approach to a Best Practice Response to Social Breakdown and Crime in Australia*.

<sup>34</sup> Queensland Health, 2008, *The Health of Queenslanders 2008: Prevention of Chronic Disease*. Second Report of the Chief Health Officer Queensland, Queensland Health, Brisbane.

<sup>35</sup> Ibid.

<sup>36</sup> Human Rights Law Resource Centre, *Case Studies: How a Human Rights Act can Promote Dignity and Address Disadvantage*, <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/case-studies/>.

circumstances of the individual involved means that the inability to access required services impacts on those civil and political rights covered in legislation. Protection of the family, for example, could not be cited by a vulnerable single person in need of housing. To achieve effective protection, economic, social and cultural rights need to be explicitly included in legislation.

## **How could Australia better promote and protect human rights?**

Human rights in Australia are best protected by a combination of measures that improve the ability of those most likely to have their human rights breached to be heard and to participate in policy processes. This includes the implementation of human rights charters at both federal and state levels, mechanisms for increasing public participation in policy making, and better human rights and civics education.

### *Human Rights Acts*

QCOSS supports the introduction of a federal human rights act. As discussed above, a human rights act should include the rights contained in the ICESCR as well as the ICCPR.

The dialogue model adopted by human rights acts in the United Kingdom, ACT and Victoria has proved beneficial in improving human rights protection by contributing to the development of a human rights culture within government and the public service. The elements which make this model effective, and which should be included in a federal human rights act, include:

- The requirement for legislation to be scrutinised for compatibility with human rights. A scrutiny committee established to examine and report on the compatibility of legislation should also be able to initiate reviews of existing as well as proposed legislation and to receive submissions from the public on legislation under review.
- The requirement for new legislation to be accompanied by a statement of compatibility at the time it is passed. Compatibility statements should be required to include reasons for concluding that the legislation is compatible with human rights. In cases where legislation limits human rights or overrides the human rights charter, a statement explaining why the limitation on human rights is reasonable and justified should be required.
- A requirement for courts to interpret law consistently with human rights so far as it is possible to do so.
- The ability for courts to issue a declaration of incompatibility where it is not possible to interpret legislation consistently with human rights. The government should be required to present declarations of incompatibility to Parliament and to provide a response to Parliament within a reasonable amount of time. Both declarations of incompatibility and written responses should be made publicly available.
- A requirement for public authorities to act consistently with human rights and to consider human rights in decision making.

A human rights act should include provisions for individuals to seek remedy for breaches of their rights, through either the courts or another independent body with powers to make binding decisions on human rights breaches.

Remedy provisions should also extend to economic, social and cultural rights. While opponents of economic, social and cultural rights have argued that they are not

justiciable and their inclusion would have serious financial implications, the experience of South Africa suggests that these concerns are unfounded. The South African model provides for prohibitions on conduct that breaches particular economic and social rights, such as arbitrary eviction and refusal of emergency medical treatment, and requires government to take reasonable measures to achieve the progressive realisation of other economic and social rights<sup>37</sup>. The courts have approached enforcement of economic, social and cultural rights by focussing on obligations of the state to protect individuals from invasion of their rights, and evaluating the reasonableness of measures to address economic, social and cultural rights<sup>38</sup>. In the Australian context, where the majority of the population enjoys a relatively high standard of living, the progressive realisation clause may appear less relevant. The greater exposure of groups such as Aboriginal and Torres Strait Islander people and people with a disability to socioeconomic disadvantage, however, suggests that the concept of progressive realisation is pertinent in addressing systemic discrimination against sections of the population who are more likely to experience breaches of their economic, social and cultural rights. The role of the courts in protecting rights from invasion could also be adopted in Australia, by providing courts or tribunals with greater powers to intervene when decisions of public authorities have an unreasonable impact on economic, social and cultural rights.

QCOSS believes that a federal human rights act should be complemented by state human rights legislation. Although the federal government could enact human rights legislation binding the states by using its external affairs power to implement the ICCPR and ICESCR, this option is likely to meet with resistance. Developing state human rights legislation provides an opportunity to address unique circumstances, such as the higher proportion of people living outside the state capital in Queensland and its more severe history of human rights abuses against Indigenous people. It also allows for greater clarity regarding the relationship between state or federal legislation and human rights acts, and is likely to produce a human rights charter with which citizens feel a greater sense of connection. This will facilitate advocacy using human rights principles.

State human rights acts should also include economic, social and cultural rights as set out in the ICESCR, and should be based on the model described above.

#### *Improved public participation in policy making*

Improving the protection and promotion of human rights in Australia also requires programs and policy measures to address human rights issues. This is best achieved by improving the scope for those people who are most vulnerable to human rights abuses to contribute to the development of such programs and policies. Practices such as rushing legislation through parliament, and short consultation periods, actively limit democratic participation and create an environment in which it is easier for government to breach the human rights of marginalised or disadvantaged groups. A key example of such practices is the passage through Parliament of the legislative package for the Northern Territory Emergency Response in 2007. The Howard government announced a wide range of measures, many of which had human rights implications, on 21 June 2007. Legislation was introduced to Parliament and passed through the House of Representatives on 7 August. The legislative package was referred to the Senate Standing Committee on Legal and Constitutional Affairs on 9 August, which, despite strong concerns having been

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<sup>37</sup> Department of Justice and Community Safety, Op. Cit., p, 42.

<sup>38</sup> Ibid.

expressed about the measures by a number of Indigenous and human rights organisations in the weeks following the announcement of the package, was required to report on 13 August. The legislation then passed through the Senate on 17 August, less than 2 months after the initial announcement and 10 days after being introduced into Parliament. This timeframe could not have allowed for adequate consideration of the likely impacts of measures which required the suspension of the Racial Discrimination Act, or for effective consultation with those affected. This is reflected in the finding of the NTER Review Board that the lack of engagement with Aboriginal people affected by the intervention had diminished its effectiveness (NTER Review Board Report p.10)<sup>39</sup>.

Any framework for improving the protection and promotion of human rights in Australia should include a commitment by government to enhance the participation of disadvantaged groups in policy making processes, and to respect the rights of citizens generally to participate in public affairs. Public consultation processes around legislation, policies and programs should encompass the following principles:

- Processes for reviewing programs, policies and legislation should be transparent and accountable.
- Information about consultation processes should be widely distributed, including through channels that are likely to reach disadvantaged Australians, and available in plain language.
- A variety of methods should be available for input into consultation processes.
- Sufficient time should be allowed for the public to contribute to consultations.

#### *Human rights and civics education*

The effectiveness of human rights charters and democratic participation in protecting human rights depends on citizens having sufficient knowledge about political processes and rights to be able to advocate on their own behalf. Civics education has only been recognised as a concern in Australia relatively recently, however, with surveys conducted in the 1990s showing a large proportion of the population did not have a good understanding of Australia's system of government. The Australian results of the International Association for the Evaluation of Educational Achievement's (IEA) Civic Education Study are indicative of the lack of knowledge and engagement in the wider population. This study of 14 year olds, conducted in 1999, found that Australian students did not have a strong understanding of civil rights, and half did not understand the essential conditions for a functioning democracy<sup>40</sup>. This lack of knowledge was reflected in civic engagement attitudes significantly below the international average<sup>41</sup>. Although national initiatives on civics education in schools are addressing this problem, this does not reach older generations. Without an adequate understanding of human rights and democracy, Australians are less inclined to participate in the protection of human rights.

The implementation of a human rights act, or other mechanisms for improving the protection and promotion of human rights in Australia, will need to be accompanied by a public awareness campaign to educate Australians on human rights and how their rights can be protected. This should include easy to use and accessible resources to assist people whose rights have been breached to seek remedies, as well as more general information about human rights, democracy in Australia, and

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<sup>39</sup> NTER Review Board, October 2008, *Northern Territory Emergency Response: Report of the NTER Review Board*, p. 10.

<sup>40</sup> Mellor, S., Kennedy, K., and Greenwood, L., 2001, *Citizenship and Democracy: Student's Knowledge and Beliefs – Australian Fourteen Year Olds and the IEA Civic Education Study*, p. xviii.

<sup>41</sup> *Ibid*, p. xix.

citizen engagement. Information about human rights protections should be made widely available through a variety of media, but measures should also be taken to ensure that such information reaches members of disadvantaged groups.

## **QCOSS Recommendations**

1. The Commonwealth government should enact a human rights act which gives effect in Australian law to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
2. Protection of economic, social and cultural rights under a human rights act should include measures to compel government to consider the effect of policy and legislation on such rights, to take reasonable steps to achieve the full realisation of these rights by disadvantaged Australians, and to prevent unreasonable limitation of economic, social and cultural rights.
3. The human rights act should include the following:
  - a. Establishment of a scrutiny committee to examine and report on the compatibility of legislation with human rights, which has the authority to initiate reviews of proposed and existing legislation, and to receive submissions from the public on legislation under review;
  - b. A requirement that new legislation is accompanied by a statement of compatibility at the time it is passed, which gives reasons for concluding that the legislation is compatible with human rights, or an explanation of why any limitation on human rights under the legislation is reasonable or justified;
  - c. A requirement that the courts interpret legislation consistently with human rights so far as it is possible to do so;
  - d. The ability for the courts to issue a declaration of incompatibility where it is not possible to interpret legislation consistently with human rights, and a requirement that when any such declaration is made: (i) it is tabled in parliament; (ii) a response is provided to parliament by the government; and (iii) both the declaration and response are made publicly available;
  - e. A requirement that public authorities act consistently with human rights and to consider human rights in decision making; and
  - f. Provisions for individuals to seek remedy for breaches of their rights, either through the courts or another independent body with the power to make binding decisions.
4. Remedy provisions should be extended to economic, social and cultural rights, by allowing courts and tribunals to consider whether the actions of public authorities constitute an unreasonable invasion of such rights, and whether the government has taken reasonable steps to realise the economic, social and cultural rights of those groups who experience systemic discrimination in Australia.
5. State governments should enact complementary legislation protecting human rights, where they have not already done so. Such legislation should include the elements listed above and should protect economic, social and cultural rights as well as civil and political rights.
6. As part of a broader framework for protecting and promoting human rights in Australia, governments should commit to enhancing the participation of disadvantaged groups in policy making processes, by:

- a. Ensuring processes for reviewing programs, policies and legislation are transparent and accountable;
  - b. Making information about consultation processes widely available, in plain language, and targeting channels through which disadvantaged Australians are likely to be reached;
  - c. Allowing input into consultations through a variety of methods; and
  - d. Allowing adequate time for the public to contribute to consultation processes.
7. A public awareness campaign should be conducted to educate Australians about human rights and how they can protect their rights.
  8. Human rights components of the civics and citizenship curriculum should be strengthened to ensure young Australians develop a strong understanding of human rights.