LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr ML Furner MP (Chair)
Mr MJ Crandon MP
Mr DJ Brown MP
Mr JM Krause MP
Mr TL Mander MP
Ms JE Pease MP

Staff present:

Mr S Finnimore (Research Director)
Mrs L Pretty (Principal Research Officer)

PUBLIC HEARING—HUMAN RIGHTS INQUIRY

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 9 JUNE 2016

Brisbane

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Committee met at 9.00 am

CHAIR: Good morning everyone. I declare open this public hearing for the committee's inquiry into whether it is appropriate and desirable to legislate for a human rights act in Queensland, other than through a constitutionally entrenched model. The parliament referred the inquiry to its bipartisan Legal Affairs and Community Safety Committee for consideration. The committee is to report by 30 June 2016.

My name is Mark Furner. I am the chair of the committee. With me are: Mr Michael Crandon, the deputy chair of the committee; Mr Don Brown; and Mr Mander, who is substituting for Mrs Jann Stuckey. Later Ms Joan Pease, the member for Lytton, will be joining us.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live over the parliament's internet site. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. I ask everyone present to turn mobiles phones off or switch them to silent mode.

The purpose of today is to assist the committee with its consideration of whether to introduce human rights legislation to Queensland. The committee is considering whether Queenslanders are sufficiently protected by existing legislation, the common law and the democratic system. The committee is looking at whether a human rights act may improve the way the government makes laws, provides services and protects the vulnerable of society. The committee is considering whether this legislation may improve decision making in the courts.

The committee has received almost 500 submissions from people and organisations in Queensland, Victoria, the ACT and New Zealand. In May the committee heard from people in Townsville and Cairns and from the Indigenous communities of New Mapoon, Thursday Island and Lockhart River. A number of stakeholders, all of whom have made written submissions to our inquiry, have been invited to participate in the hearing today. Many different opinions will be expressed today, but all of us here are united by the aim of improving the lives of the people of Queensland. The program for today has been published on the committee's web page.

I will let witnesses know that I will be strict in terms of opening statements. They can be up to five minutes in length and no more. I have a stopwatch that I have downloaded for the purpose of keeping time.

ALLAN, Professor James, University of Queensland

ARONEY, Professor Nicholas, University of Queensland

FOWLER, Mr Mark, Chair, CLEAR International Australia Ltd

ILES, Mr Martin, Australian Christian Lobby

CHAIR: I welcome the first witnesses. Mr Fowler, would you start please.

Mr Fowler: Having regard to the terms of reference, the particular concern of our submission is the right to religious freedom. In 1983 then Acting High Court Chief Justice Mason and Justice Brennan stated, 'Freedom of religion, the paradigm freedom of conscience, is the essence of a free society.' The right of individuals to formulate and articulate their beliefs and to act upon their consciences and to associate with fellow believers is a fundamental hallmark of a just, open and egalitarian society. Whilst religious freedom is an independently protected right, the circumstances underpinning religious freedom claims often also enliven other freedoms such as associational freedoms and freedom of speech.

In many respects, religious freedom is the ultimate test of a society's willingness to recognise the liberty of the individual. I say this because history, both within the west and within non-Western societies, has demonstrated that religiously burdened convictions have the potential to challenge the state like no other claim on human life. Looking only to history of the west, from the fifth century bishops' mediating on behalf of their city with invading barbarians after the fall of the Roman Empire to Archbishop Stephen Langton's role in drafting the Magna Carta to William Wilberforce's tireless efforts resulting in the abolition of slavery in English law, it is the access to and sense of obligation to an other worldly narrative sourced outside of any secular account that has for so much of history been the incubator for freedom's dissent against the abuse of state power.

Submissions to past human rights charter inquiries both in Australia and New Zealand—and I would say the current inquiry—attest to a high level of concern over such charters amongst religious institutions. This is curious. As Professor Michael McConnell has argued, the very idea of individual freedom and its protection in modern, liberal democracies owes its origin to the defence of religion against encroachments by the state. What does it tell us about the proposed reforms that religious people, with such a long and deep heritage of defending the freedom of others, carry these concerns? Is there something within the nature of a modern human rights charters that is itself of concern?

Whilst our written submissions put forward a number of issues, Professor Patrick Parkinson, in his review of submissions to the 2009 Brennan inquiry, found that one concern was a perception of a progressive watering down of the religious freedom protections under international human rights law over time. That protection is found in the International Covenant on Civil and Political Rights of 1966, which Australia has ratified, and whose provisions extend to Queensland. Article 18(3) of the convention provides that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedom of others.

It is argued that the Victorian charter of rights and responsibilities, to take an example, effectively weakens this guarantee of religious freedom by allowing that religious freedom may be subject to reasonable limitations, thus derogating from the standard of necessary limitations found in the ICCPR. The Victorian charter also omits the rights of parents to ensure the religious and moral education of their children.

To adopt such a model as that implemented in the Victorian charter may amount to an effective withdrawal of the human rights of individuals or corporate entities. This is an unacceptable proposition for any charter that purports to protect human rights. Any proposed bill should not derogate from the standards implemented in international law. Similarly, it is also important to emphasise that article 18 extends religious freedom rights to all, including individuals not just corporations.

Finally, as may be implied by the above discussion, the balancing of religious freedom rights against other rights will be a necessary task of any proposed charter. Importantly, the recently released Australian Law Reform Commission's freedoms inquiry report linked a finding of no significant encroachment upon religious freedom to the ongoing presence of exemptions granted to religious bodies in the context of Commonwealth law.

However, as acknowledged by the Law Reform Commission, it has been argued that an exemption regime is not an appropriate vehicle to recognise religious freedom rights, to the extent that it infers that religious freedom is not a valid right but merely an exemption to another valid right. The Law Reform Commission thus put forward for consideration the model of a general limitations clause, citing the work of Professor Nicholas Aroney and Patrick Parkinson. Such a clause holds that the right to religious freedom is not unlawful, but for the presence of an exemption. It is instead an equally valid and subsisting right that must be balanced against other rights. To the extent that the charter endeavours to balance religious freedom with other rights, that principle is one that should be reflected in its terms.

Mr Iles: I am here today representing a number of Christian churches and organisations that have signed our submission. The church denominations in that group are the Presbyterian Church of Queensland, Queensland Baptists and the Australian Christian Churches, collectively having 52,000 members throughout the state of Queensland. Also included are the educational bodies Alphacrucis College, the Associated Christian Schools, Christian Schools Australia, collectively having an enrolment of 29,000 students across 63 institutions. Also included is the Australian Christian Lobby which has 11,000 supporters within the state of Queensland.

We have chosen to distil all our collective views into a single, considered submission rather than campaign for those nearly 100,000 constituents to write in their own individual submissions. Each of signatories has asked that I convey their thanks to the committee for the opportunity to make written and oral submissions. Our submission is very detailed so I will take this opportunity to speak generally.

The signatories wish to make it known that Christians are generally concerned about many of the objectives that motivate ideas like a human rights act. For example, all persons possess inalienable human dignity being made in the image of God according to scripture. Christians also espouse the importance of duties in social life. Wherever a right exists of course there is a corresponding duty that others have to recognise that right. Duties appear in Christian teaching. For example, the greatest commandment: 'You shall love the Lord your God with all your heart, with all your soul and with all your mind.' This is the great and first commandment. The second is like it, 'You shall love your neighbour as yourself.' When challenged with who is my neighbour, Christ replied with the story of the good Samaritan, 'Our neighbours are those persons in our lives, or our sphere of influence, whom we can help.' The emphasis therefore is on duty—duty to God, duty to neighbours.

The same can be said of a citizen's relationship to the state, which rights instruments tend to regulate. The importance of obedience to civil authorities is taught both by Christ and Paul, 'Render to Caesar the things which are Caesar's.' The duty of the citizen to obey the state is complemented by the state's duty to govern justly.

This is a cohesive vision of sociopolitical life. It is social ethic that is others focused because of its emphasis on duty. It is also mindful of the importance of freedom in the fact that it prevents the state from subsuming the entire life of the citizenry by allowing for truth which transcends the state, which all ought to be able to seek out, as in the freedom of religion, as articulated by Mr Fowler.

Human rights acts, though often motivated by very similar aspirations—justice, human dignity and even duty—fundamentally differ in crucial ways. The very language of rights speaks of autonomy and individualism. It is not others focused. It is self-focused. It is not socially oriented, it is individually oriented. Whether part of the rights and duties equation is codify in law alone, it takes the emphasis away from duty—what I can do for others—and places it on rights—what I can demand of others. The language of rights is perhaps imbalanced and not healthy to genuine social community.

Modern human rights legislation also tends to be far less concerned with fundamental freedoms—that is, rights which protect the citizen from the excesses of state power—and is rather more concerned with rights which operate to regulate the relationship between one citizen and another citizen. This brings the power of the state into social and political contests, taking the form of punishing improper speech, belief, expression and so forth. This phenomenon is antithetical to the true purpose of human rights as expressed in seminal treaties like the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. These general concerns relate mainly to the educative effect of laws like rights laws.

Our submission further articulates in some considerable detail the following specific concerns with human rights legislation. First, there is no compelling need for a human rights act. The common law recognises a great many fundamental rights and Queensland has a healthy democracy. Second, a human rights act undermines democracy by taking genuinely and highly contested political and social questions away from the democratic process towards unelected judges. Third, a human rights act undermines the role of the courts which no longer apply fixed laws to contested cases but are drawn in to applying uncertain laws in unpredictable ways. Fourth, Christian churches and organisations are concerned to maintain fundamental freedoms which are important for human flourishing.

All these concerns stem from a broad based concern about human dignity, social cohesion, duty and state power. They are motivated by a deep concern for the common good.

Prof. Allan: Thank you to the chair and the committee for having asked me here today. I do not purport to speak for anyone but myself. My wife does not even agree with me on most things. I am really letting you know what I think. I am not going to repeat my written submission. I am going to run through one substantive overview and then a couple of procedural points. I should not be too long.

Substantively, I think bills of rights are a terrible idea. At core, they are fundamentally undemocratic. The only point of having a bill of rights is to increase the input of unelected judges—the George Williams of the world. The people who are pushing these things are not doing them because you are going to get the same outcome. There is no point in spending your life trying to push one of these instruments if you think it will make no difference to how things work. That means you have to take a particular view of rights.

Rights are not self-defining. At core, they are highly debatable. Nobody is pushing for an absolute view of rights. Without a bill of rights in place, it is the elected parliamentarians who make these rights related calls. There is reasonable disagreement on a whole host of issues from prisoner voting to same sex marriage to everything else. You either have a process where you count everyone equally and they vote for representatives who decide or you have a process where seven or nine top judges decide things by purporting to be moral experts or philosopher kings of some sense.

I know that no-one is pushing for a constitutional bill of rights. We are now talking about a statutory bill of rights. Statutory bills of rights can be very potent. Just witness what is going on in the UK where most professors, such as Aileen Kavanagh at Oxford, now say that the judges there are every bit as powerful as American or Canadian judges. Compare that to New Zealand where things have not gone that far. New Zealand is much more tempered, but it is still true in New Zealand. With their statutory bill of rights the judges are much more influential than they were before.

I will not repeat all my written information on that front. I will quickly make a couple of procedural claims. I was against the move to a longer and fixed election date. I did not care about the longer, but I really did not like the fixed election dates. I thought it was a mistake. You really have to enjoy the process—the process that you used to decide that. You gave everyone a say. You had a plebiscite and everyone's view counted the same. I was on losing side—there you go.

The process you are using for this bill of rights is, in my view, nothing like that. It is not very good at all. You are not giving everyone a say. There was basically no signalling before the election. You are travelling around and getting input of a few hundred people. It is really a sham, in my view. It is a way to avoid public opinion. It is not as bad as what they did in Victoria, where they stacked the committee full of everyone in favour of bills of rights and then purported to have some sort of impartial thing. If you want to know what Queenslanders think, have a plebiscite or run an election campaign as one of the parties. I would bet a lot of money that it would lose if you asked people, but I have been wrong before. The procedural point is I do not like this process at all. Again I speak for myself, but I would bet that there are at least a few others.

The other procedural point is I feel a bit as though I am in the sort of crazy timeslot that goes first with the handful of people who are a bit out of their minds who are against a bill of rights and then you have the rest of the day. When I look down at the usual list of suspects who will be occupying your time until three o'clock, and I think it would have been more fruitful to mix things up a bit. I spent a couple of years travelling around the country with George Williams arguing about a national bill of rights—I won that one, thank God—but really I do not like the idea that we give a few of the objections and then you spend the rest of the entire day. There is a self-selecting bias. The people who really want a bill of rights are the people you are going to be hearing from overwhelmingly.

Lastly, this is not a left-right political thing. At the national level the biggest input against the bill of rights came from people like Bob Carr. At least as many people object to bills of rights from the political left, particularly after you have a bill of rights. If you look at the kinds of people who object to bills of rights after they are in place, again there are at least as many from the left such as Professor Tom Campbell. There is this sense that this is a left-right political issue: it is not a left-right political issue. It may be a progressive greeny versus redistribute wealth issue.

In conclusion, I do not like the procedure of this, and I think substantively the only point of a bill of rights is to increase the input of judges.

Professor Aroney: Thank you for the opportunity to address you this morning. In my submission, there are five reasons why Queensland should not adopt a bill of rights: firstly, charters of rights do not produce dialogue; secondly, they undermine the separation of powers; thirdly, they undermine the rule of law; and fourthly, they are in the nature of constitutional statutes that should not be enacted without bipartisan support. I will conclude by arguing that the best way to address human rights concerns is through the enactment of carefully targeted legislation.

My first point is that human rights charters do not produce dialogue. In a recent study of the relationship between rights and the balancing of rights under the Victorian charter, Professor Paul Babie, Dr Joel Harrison and I found that religious freedom, for example—because that is what we were asked to study—was better protected before the charter than under it. More generally, and this is the most important point, we found at best the charter did not make a difference in cases, and at worst it supported decisions in which one right was given priority over another. The charter of rights was usually irrelevant, because what really matters in political and legal debate are the philosophical perspectives from which a charter is interpreted and applied and not the charter itself.

In our study we examined the wider debate in Victoria concerning the exact balance to be struck between different rights, and we found that there was not much dialogue; rather, we found that participants in the debate were constantly talking past each other. They were making their arguments without really considering the arguments of the other side. We found that a charter of rights does not make a difference because these are political questions. They are based on philosophical points of view.

This brings me to my second point. Human rights charters undermine the separation of powers because they weaken the ability of both the parliament and the courts to perform their proper functions. Charters of rights pervert the functioning of courts because they require judges to apply their own

personal values to cases that involve essentially political judgements about the proper balance to be struck between competing rights and interests. Charters of rights also pervert the functioning of the parliament because they require parliament to deliberate about rights in a technically legalistic way which gives legally trained members of parliament an unfair advantage over nonlawyers.

That brings me to my third point. Human rights charters undermine the rule of law. This is because they produce uncertainty. One of the most important ingredients of a constitutional system is that the content of the law is knowable in advance. Citizens are able to know what the law is and ensure that their behaviour conforms to the law. However, charters of rights subvert the rule of law because they make the meaning of every statute subject to reinterpretation according to an individual judge's personal moral convictions about what the law should say rather than what it does actually say and in substitution for what the parliament plainly meant when it enacted the statute.

As Professor Allan mentioned, fortunately a majority of the High Court of Australia has, for the time being, placed a limit on the extent to which judges can reinterpret statutes, but you have to ask why the court did this. In my view, it is because the court operates in a context where there is no national bill of rights. This has enabled the court to maintain a strict view about the separation of judicial power from political power, but if more and more Australian jurisdictions adopt charters of rights this will change. Judges will become accustomed to making political decisions, and under those conditions there is every prospect that a majority of the court will eventually revisit its decision in the Momcilovic case and authorise a more radical reinterpretation of statutes like in the UK. When that happens, citizens will be unable to rely on the plain meaning of a statute and will have to second-guess the way in which a judge might reinterpret the law. This is because it is an essentially personal decision. It will become virtually impossible to predict how a particular judge will do the reinterpreting, and this seriously undermines the rule of law.

This brings me to my fourth point. Human rights charters are in the nature of constitutional statutes, and they should not been enacted without bipartisan support or a plebiscite. I think that is a very significant thing. It should not be a one-sided political decision. The committee will hear evidence today from various interest groups who will wish to draw attention to situations in which they claim human rights have been neglected or abused. In our submission, where such situations exist targeted legislation is the most effective and appropriate way to address those problems. A charter of rights is a much larger constitutional statute that will have lots of unintended consequences.

In conclusion, I would respectfully submit for your consideration that, as you hear evidence today about situations where human rights have allegedly been neglected or abused, you constantly bear in mind whether targeted legislation would be a more effective and appropriate way of addressing the problem.

CHAIR: I might start with you, Professor, and your final point. I understand where you are coming from with respect to there being statutes in place now, and I specifically refer to the Anti-Discrimination Act 1991. This committee heard from a witness in Townsville who alleged that he was discriminated against on the basis of race. As you would probably know, that is an attribute under that act. He indicated that when he moved to Cairns he put in an application for a rental property, and he was told by the agent that he was the perfect candidate. Then when he was sighted or he produced his photo ID, suddenly the house was unavailable. Clearly on the balance of the evidence that he provided to the committee it would tend to suggest that he had been discriminated against on the basis of his race. You suggest that the current legislation, in particular the Anti-Discrimination Act 1991, should be amended to compensate or to protect that individual. Is that the position you are putting to the committee?

Prof. Aroney: I cannot comment specifically on that particular case because I do not know the details. I just have a general point that, whenever an alleged abuse or failure is identified, I would respectfully submit that you should consider whether specified legislation and amendments to legislation is the appropriate way to address those issues. The parliament is in a position to take a view of the whole picture in a way that a court does not. Courts are very good at dealing with particular cases and doing justice according to established law for those particular people before the court. Their job, and the whole evidentiary system in the court system, is not to give evidence about the whole sweep of the state of the community and striking balances about how best to regulate any particular topic. My simple point is that in any particular case reflection needs to be given as to how targeted legislation should be enacted. That will vary from case to case and the merits of that particular case in the circumstances.

CHAIR: Using the example of the Anti-Discrimination Act, do you think there are any gaps in the current statutes?

Prof Aroney: I do not know. On the information that you provided to me, I am surprised that that was not found to be a case of discrimination on the basis of race. It would be interesting to discover exactly why that was the case.

CHAIR: Unfortunately, the person concerned felt that he was not in a position to take it further. I think that is the situation in many cases where, regardless of a particular statute, disadvantaged people in our society are not in a position to pursue recourse.

Prof. Aroney: That is where targeted legislation or government policy could potentially be directed to address any particular issue of that nature, but because I do not know the background to that particular case I am not in a position to form a view.

Mr Fowler: If you were to look to the Victorian model, you have to piggyback any claim under the charter on an existing other claim under another statute. I agree with your assessment, Mark, that there would be a very live prospect for a claim under the Anti-Discrimination Act in those circumstances. If you take the Victorian model, you would have to substantiate that claim before the charter could be enlivened anyway.

CHAIR: Mr Iles, I understand that in your submission you call on the Queensland anti-discrimination legislation to be amended to add the general limitation clauses; is that correct?

Mr Iles: That is correct.

CHAIR: Can you expand on that, please?

Mr Iles: Part of this issue is that because anti-discrimination has been a very heavily legislated right in Australia, many rights in general have come to be viewed almost exclusively through a prism of anti-discrimination. We noticed this in discussions in political lobbying and so forth. People want to improve human rights by changing anti-discrimination laws or expanding anti-discrimination laws, but the right to nondiscrimination is but one of many rights existing in the community, many rights existing under international law, so there perhaps needs to be a way to perhaps remedy what has become an overreach on anti-discrimination law. The issues around the enactment of a bill of rights—which have been articulated pretty well this morning and are in our submission—lead us to believe that it is probably not the right way to enact more rights; rather, perhaps it is better to enact a definition of discrimination that accords more closely with tradition and international law.

Mr CRANDON: I have a very quick question for Martyn and Mark. For the record, do you support a plebiscite?

Mr Fowler: On the question of whether a charter should go to a plebiscite? Yes, for the reasons that Professor Aroney put.

Mr Iles: I feel so persuaded by the same.

Mr CRANDON: My specific question is to you, Mark. You talked about the Victorian model, and in fact I think you used the words 'withdrawal of human rights'. Can you expand on that for the committee and perhaps give us some examples to consider?

Mr Fowler: Thank you for the question. I might take a few minutes to do that, because it is always helpful in these ethereal, philosophical debates to try and ground them in reality somewhere. I have thought through a couple of examples, and I will just reel them off and then we will think about a few of them. I have looked around the world to similar claims that have happened in other jurisdictions like the US, the EU and so on. These are the factual circumstances where these are enlivened.

A Jewish prisoner convicted of larceny, for example, was not able to access a kosher diet because he was held in a remote prison. That is an issue entailing the state obviously, so this is a state issue. A Muslim prisoner not allowed out of his cell to attend Friday Muslim prayer services is another example of a religious freedom claim.

Another example is a health authority banning the wearing of the Sikh bangle or a kirpan—a kirpan is a Sikh traditional knife that is one of the five things that they must ascribe to as part of their faith; they have to wear this thing—so a health authority bans the wearing of that. Similarly, a health authority banning the wearing of a cross is another example out of the UK that was determined in the European Court of Human Rights. You also might have heard of this one—the issue of identity photos. It has got some traction recently in New Zealand with the cult of the Spaghetti Monster getting its right to have its aspirants wear a coronet on their head. Also in more serious circumstances the UN Human Rights Committee has recently looked at whether Sikhs have the right to wear their turban in identity photos which in the first case you might ask, 'What is the real religious freedom right there?' The problem is that once you are on the photo without the turban every time you are identified you have to remove the turban. I give those wide range of examples because we are talking about the reach of

pluralism in our society and there is a dynamic to this conversation. Settler society as we are welcoming different cultures from across the world, we need to provide a platform for openness and the expression of these kinds of claims.

What I am saying is that when you look at all of the international covenants—and I have only referred to the ICCPR, which is the UN instrument of 1966, but you can also look to the two European Union covenants, the European Court of Human Rights and also the Charter of Fundamental Freedoms—they set the standard for religious freedom limitations at the level of necessary limitations, so all three of those international. The last of those—the charter of fundamental human rights and freedoms—is 2000, so it is a recent charter and it says that religious freedom can only be limited to the extent that it is necessary. What the Victorian charter does is says that religious freedom—and it is not just religious freedom; it is all of the rights in that charter, and it is applied across-the-board—and all of those rights may be limited to the extent that it is reasonable to do so. Let us think about reasonable as opposed to necessary in the kinds of claims we have been talking about. For the Sikh wearing the turban in identity photos, the question is: can the state compel the removal of the turban? Is the standard is it a reasonable limitation or is it a necessary limitation? What we are talking about there is the right of religious freedom against the right for public order or the maintenance of public order, so you have a balancing going on. Which is the appropriate one? Which prevails? If it is a necessary limitation, then it is obviously a higher standard than a reasonable limitation, if that makes sense. Recently the UN court of human rights—only in 2012—held that it was not necessary to require the removal of the turban and therefore the turban could remain. That seems like a bit of an oblique example, but I am trying to give you a nuts and bolts working of how these things play out in real lives. These are actual statements about how willing we are to be inclusive of differing faiths and differing cultures as well. Is that a helpful analysis for you, Michael?

Mr CRANDON: Yes; thank you.

Mr BROWN: I firstly thank you all for coming in and giving your submissions today. Professor Allan, even with a statutory bill of rights, do you think an unintended consequence will be the politicisation of appointments of judges?

Prof. Allan: Before I answer that, let me just say as the only atheist amongst the four of us my objection about this is not focused solely on freedom of religion or the right to religion, which seems to be the overwhelming focus so far, and nor would I put the kind of weight that I am hearing on UN bodies. The UN Human Rights Committee has made more resolutions against Israel than every other country on earth put together. You would not take moral advice from the countries on those bodies if your life depended on it, so I really do not care what they think. I think Australia has a much better human rights record than almost all the countries on those bodies.

As for judges and appointment of judges, it is pretty hard not to at least get a little politicised to this extent: if you do not have a bill of rights and at the end of the day the big-ticket social policy making issues are made by the parliament, then you can appoint a top lawyer with great technical legal expertise from the other side of politics. I like that. That is the way the world was 40 years ago. In Canada that never happens anymore. I do not know what decisions are left for parliament in Canada because an extremely powerful charter of rights is entrenched, but to the extent that judges are making just about every call it is a huge battle. You can see it in the US right now. A huge percentage of people vote for president based solely on the likely appointment that is going to be made to the Supreme Court. In the UK they have finessed it, and I do not like this either. If you worry that there is a sort of cast of lawyerly expertise or there is a sort of a lawyerly cast that has different values than the larger public—and I think that is probably true—the latest technique or ploy is to say, 'What we need is an independent appointments commission.'

Independent is, sort of in my view, ridiculous. Everybody on the planet has a certain set of values they bring to the table. I like the fact that after an election the new party picks the judges, so you get this balance on the courts—that is, the centre right party picks judges for a while and then the Centre Left. This idea that the lawyers can have this power to pick their own successors, which is what has happened in the UK, is terrible. You are not going to get Posners on the court. You are not going to get your Scalias. You are not going to get your off-the-wall kinds of judges which are useful every once in a while to call. I think that what would happen here is that usually after you have got your statutory bill of rights what comes next is the call for an 'independent judicial appointments committee' which means judges and lawyers pick the successors on the bench. That is a really terrible idea in the long run. It is not working out in the UK in my view and I know that judges like it because they have this view of what merit is, but it is really hard to define merit. I personally would say that the best judge in the long term is not the brightest person in the room. We do not want someone who is able to avoid the clear meaning of statutes in some sort of Jesuitical way. I want a pretty smart person who really knows the law. I am

unusual about that. I do not see any correlation, but I agree with you that in the long term once you have got your bill of rights the next thing is that there is going to be a lobby. The lobbying will be for a judicial appointments committee that looks like the thing that you see in the UK right now. Basically, they want to take all judicial appointments out of your hands.

Mr BROWN: This is a question for anyone on the panel. If we come down with what the federal system has where legislation is sent off to be reviewed against a set of human rights and recommendations but bills are still able to proceed maybe offending those rights, is that palatable to you?

Prof. Aroney: If I could comment on that, I would still be concerned about that. I am a sceptic of that idea because I think that it contributes to—and to use a rather large phrase—the juridification of politics because what it requires the parliament and the committees of the parliament to do is to assess legislation in a very technical, legalistic way and you will have the committee and the advisers to the committee preparing reports that are very elaborate and very legalistic and work in a lawyer's way through some social policy issue and it forces it into that mould. There is a place for that sort of analysis. I would not be a lawyer if I did not think there was a place for that analysis, but at the same time what it does is it biases the nature of the political debate in a juridified way. As Professor Ran Hirschl has said, this worldwide movement towards introducing bills of rights and invoking legalistic language has created a juristocracy which is a place where judges tend to rule and I would suggest that if you go down that path it will tend to make lawyers rule within the parliament too.

Prof. Allan: If I can just add to Nick, I agree totally with Nick, but you see this with bills of rights and statutory bills of rights with statements of compatibility where someone gets up at second reading and says that we have looked at this and it either is or is not compatible with our view of rights. If you look at the work of Janet Hebert in Canada or Grant Huscroft they have looked at New Zealand and Canada and elsewhere. Grant is exactly right: what tends to happen is the parliamentarians do not sit around and say to themselves, 'Let's think about rights and how we're going to protect rights.' What they do is they hand it off to advisers who go and say, 'What are the judges saying about it?'

I will give you an example from New Zealand. They wanted to put health warnings on alcohol bottles. Does that breach someone's rights or not? We all are going to have different views on this. The thing about rights is they are not self-defining. Reasonable people disagree. They sent it off to the lawyers. The lawyers could not find any precedence in New Zealand so they looked at Canada. There was Canadian case law that says that this is a breach to freedom of expression for companies, so the Attorney-General—Labour—got up in the House and said, 'Putting alcohol warnings on beer bottles, this bill is going to breach people's rights'—ridiculous in my view—and then she proceeded to vote for the bill anyway. Nick calls it juridify, but if you think that asking, 'Will this bill breach rights or not?' is going to mean that parliamentarians ask themselves in committees, 'What do we think?', you are wrong. What is going to happen is you are going to get reports about what do the judges in various jurisdictions think and you will defer to them all the time. That is what has happened.

Mr Fowler: I share those concerns actually wholeheartedly. You would have noted from our submissions that Clear sets aside quite pointedly the question as to whether or not it supports the proposition for a charter. It sets that aside and then says, 'On the basis that you decide that there should be, we want to have a say about this particular right.' My personal approach is very much along the lines of what Professors Allan and Aroney have articulated. I have some deep concerns around the handing of essentially social policy questions to an unelected group that cannot then thereafter be challenged. For example, the enshrining in the second amendment in the US the right to bear arms and what that now means in the US, nothing can be done about that because an unelected group has determined that that is the law. You have young children picking up guns shooting their mothers in the back, which was a reported case just the other day, because the right extends to bearing a locked and loaded gun. This was a case whereby a legislature had legislated that you cannot leave your gun locked and loaded and that was held to be unconstitutional. The point being that you get these issues of social policy concern being determined and not being able to be unwound. That is one of the big concerns I personally have.

To answer your question though, Mr Brown, on parliamentary committees like the Commonwealth Parliamentary Joint Committee on Human Rights, I have been watching some of what that committee has been doing. I share the same concerns that Professors Allan and Aroney have shared, and that is the handing over again to judges and lawyers on these social policy questions, which a lot of human rights issues are. I have also seen that committee play the role of educating around the nature of rights, as long as there is a balancing of a true presentation of where the precedents are falling. As you possibly know, that committee is set up under a separate statute in the Commonwealth and must have regard to the seven international treaties to which Australia is a

signatory and report on those particular treaties, including the ICCPR. It is a good thing for parliamentarians to be aware of the human rights that are at play when they are considering bills, and that can provide the role of a clearing house for that. The issue is what slant is being put on that by the secretariat? For example, what are they hearing? Are they getting a full breadth analysis of what the human rights law does when it weighs the issues.

Mr MANDER: My question is to Professor Allan. Some may argue that the state of Queensland and the nation of Australia has had a long history of a flourishing democracy and that a bill of rights is unnecessary. Do you see a bill of rights being relevant in any developing democracy outside of this country? Do you see a need for it anywhere else to counter that argument that a flourishing democracy—one that has a history as rich as ours—does not need it?

Prof. Allan: I lived for four years in Hong Kong. If you gave me the choice between unelected judges or the attorneys bureau, I am going with the unelected judges, so I am not an absolutist about this. The argument you are going to hear for the rest of the day ad nauseam is going to be a sort of version of, 'Don't you want your rights protected?' It is as though you are not living in a country or a state with lots of rights protections. I am from Canada. Canada has a really strong free speech protection, but there is more scope to speak your mind in Australia without a bill of rights at the national level than there is in Canada on just about every level, including defamation, because whenever you take the cases to the court on free speech issues the top Canadian judges are not really sympathetic. People seem to think that we will articulate a right in incredibly expansive terms that makes your back tingle because who does not want to have a right to pick your favourite thing?

They tend to assume that the right will get treated as some sort of absolute right, but there will be all sorts of limits on the right to free speech, right to religion, right to association. What happens with a bill of rights is that who draws the limits, who makes the exceptions, moves from parliament to the judges. Rights are going to conflict with a bill of rights. Somebody has to decide.

Where I would agree with my two colleagues here is that, if you have some sort of right to equality and it runs up against the right to freedom of religion, the evidence is pretty overwhelming around the common law world that religion is going to lose to equality as a general claim. Overall, the equality right is going to trump the freedom of religion right again and again and again. There will be a few exceptions.

That is not something that I see as the only reason. It is pretty peripheral for me. You are going to hear from people who do not like bills of rights because of their effect on the criminal law. Again, that is not me; I am not a lock-'em-up-and-throw-them-away-forever kind of guy. That is peripheral. There will be people who do not like bills of rights, because it makes more work for lawyers. That is undoubtedly true. Again, it is peripheral. You have to run arguments that you do not otherwise have to run, which means more costs in court. You can take a look at the freedom of political communication, which the High Court just made up. Every single time you take a case, you have to argue it, but they only end up striking down what? Two statutes ever in 30 years.

Again, if this thing comes in, it could be good for me. I will have the sideline of opposing it and there will be a whole bunch of legal academics writing books and articles. It is good for them, but the costs are high and the real costs are really democratic costs. You are no longer treating the view of the secretary, or the plumber the same as the view of the person with three degrees from Harvard in human rights or a law degree. I do not think that you are a better moral person because you have a law degree. You will hear different views for the rest of the day on that front. They will not come out and say it, but that is the underlying sense.

CHAIR: We will wait and see on that.

Prof. Allan: I am pretty sure.

Prof. Aroney: Do you mind if I comment on that? I teach students the implied freedom of political communication along with other implied rights in the Constitution and I create scenarios for the students to consider the application of the considered case law to a particular scenario. Every single time we are at our wits' end to be able to predict the outcome in a particular case. If you pick the scenario appropriately and look at the decided cases, it becomes very unpredictable and becomes all a matter of your own personal opinion. I wanted to just add that this is based on almost 20 years of teaching this area of law to students. They are the sort of people who are going to be eventually judges and applying that sort of law.

One other point that I wanted to make was that, attached to our submission, was a paper written by the Hon. Dyson Heydon, a former justice of the High Court. He point out that it is typical to say that there are four different types of rights instrument: aspirational ones that have no effect, like the declaration of human rights—an international thing; international covenants that are binding on nations;

constitutional rights like in the United States; and statutory rights like in the UK, which is being thought of here. But what former Justice Dyson Heydon points out is that the power of the courts to reinterpret legislation under the statutory bills of rights should not be seen as a third category, but actually—and these are has words—should be placed in a fifth and more extreme category. In his judgement, the capacity of a court to reinterpret legislation is an exercise of a power more significant than the capacity to overturn legislation, because you subvert the legislation. I think that is a very important point.

Mr KRAUSE: I have a question to Professor Aroney. Thank you all for presenting to us here this morning. On that last point you made about the fifth category of the power of the courts to reinterpret legislation and perhaps go against the intent of the legislature, have you considered whether there are any constitutional implications of that power in itself when you consider the definition of 'judicial power' under the Commonwealth Constitution and how that applies throughout the country?

Prof. Aroney: That is the point of the Momcilovic case, where the High Court had to consider how should the Victorian charter apply in a particular situation. One of the points I made—but I could expand on it—is that a majority of the courts said that, because, at a matter of the federal Constitution, at that level, there is a strong emphasis in the court's judgements on the integrity of the court and its separation from the political branches of government that it is not appropriate for the court, when it interprets legislation, to reinterpret it.

Mr KRAUSE: It has to exercise judicial power, not legislative power.

Prof. Aroney: That is right. Restraint needs to be exercised when that happens. My concern is that, if more and more jurisdictions in Australia adopt rights instruments, the culture of the judiciary will shift. The judges will become accustomed to making political decisions and that could, in fact, undermine the way the court interprets the federal Constitution in maintaining this strong separation of judicial power from the other powers.

My submission very much is that charters of rights not only hurt the parliament and weaken the parliament, they weaken the courts, because they politicise the courts and prevent them from doing the good things that they do. We need the rule of law. We need the courts to decide individual particular cases and not have someone like Socrates judicially murdered by a mob. We need to distinguish between judicial power and political power and keep that distinction sharp.

Mr KRAUSE: I also take your point about the uncertainty that may be created through this process of implementing a statutory human rights act where all statutes may be subject to reinterpretation. We have a scenario before the parliament at the moment in relation to a piece of legislation where people claim, in relation to vegetation management, that it will create uncertainty about how it will be applied. It is within our power to fix that uncertainty within the legislature. Perhaps that could be taken away if there were a statutory human rights act put in place.

I just want to draw Professor Allan's submission out in one respect only. It has been said by a number of submitters that a human rights act would give undemocratic power to judges, an undisciplined power to judges who are elected, to interpret laws according to their view of human rights. Are you able to expand on your comments about that and also provide some examples to the committee for our consideration?

Prof. Allan: If you have a constitutionalised model, what happens is that the judges hold the statute up and, if they think that it is not rights respecting, they strike it down and invalidate it. It clearly cannot do that with a statutory model. The key thing is how you operate the model—what gives judges power. The two main things are the reading down provision, or section 32 in Victoria, section 6 in New Zealand, section 3—section 3 or 4 in the UK; I think it is 3—where you basically say to the judges, 'Do everything you can to read all other statutes in a rights respecting way. ' They say, 'If you can' in New Zealand. In Victoria and the UK they say, 'If it is possible.' What is possible? Is it possible to read black to mean white? You think I am kidding, but in the Ghaidan and Mendoza case in the UK, which has been rejected in Australia and rejected in New Zealand, but the House of Lords, now the Supreme Court, which you would have thought was one of the most interpretively conservative bodies on the planet—no longer is—said, 'You don't need ambiguity in the statute. You can read words in.' By implication you can read words out. It does not matter if the judges know—and I am basically quoting here—'the clear intention of parliament.' All of that goes out the window if we can give it a rights respecting meaning up to the point of judicial vandalism.

This was so shocking that, in Momcilovic, all seven of the High Court said, 'We're not going down that path.' It is pretty clear to me that former attorney-general Hulls in Victoria designed the Victorian charter to try to pick up on the Ghaidan and Mendoza case. The High Court has not followed that. That is one way in which it can become very potent. I do not think that we are going to go down the UK road—God, I hope we do not. The Kiwis—the New Zealanders—have used the reading down provision

much more circumspectly, but if your wife gives you a shopping list to go to the store and you get to interpret it in what you think is a rights respecting way and she says 'vegetables' and you think 'beer', I am barely being facetious; that is a big power, the power to interpret.

The other main one is the declarations power. This is where judges cannot strike down laws, but they declare to the world, 'You legislators have infringed people's timeless, fundamental human rights.' Then you are given the power to say, 'Yes, but we are going to do it anyway, because, you legislators, we get up everything morning and our goal is to take people's rights away.' That is obviously not a fair characterisation. What is happening is people are making reasonable disagreement calls on, say, prisoner voting and should rapists and murderers get to vote. It is a debateable call. It is not obvious what the rights respecting answer is. These declarations structure things so that the judges are telling us what our rights are and then the legislators get to take the rights away if they want, which is why there have been 19 declarations in the UK and the judges always win except for once on prisoner voting. Cameron is holding tough there. These declarations are basically a very powerful tool now.

Nick is sort of pessimistic about Momcilovic but, as things stand right now—after Momcilovic—the High Court has basically made it impossible for a national bill of rights to ever have a declarations power. You also have this weird outcome where they will let the state courts issue declarations, but you cannot appeal to the High Court on them. Since Momcilovic, which was 2006, off the top of my head I do not think in Victoria or in the ACT—and I tend not to count a glorified city—as far as I know there has not been a declaration issued since Momcilovic. The High Court made it plain that it does not want to see them in criminal cases. The state can issue them at the state level, but, given Momcilovic, if it stays the way it is—and I take Nick's point that it might not—the High Court has really cut the legs out of the declarations power. Thank God I say, but you have to be confident that it is going to stay that way.

As things stand at present, what is going to do the work and give the judges power under the statutory model is the reading down provision. Interpret this in some *Alice in Wonderland* way where you do not care about parliament's intent, you do not care about the purpose; you just try to give the words some sort of rights respecting meaning according to you, the judge. That is why it is so pernicious. That is why former Justice Heydon says that it is worse than striking it the down, because you have no idea what the statute means anymore. It depends on what some lobby group wants to push, what agenda it wants to push.

Mr KRAUSE: One of the other concerns raised with the committee is the incremental creep on certain statutory bills of rights, and New Zealand's in particular, where there was a fairly tight drafting of that bill of rights to not give courts the power to take action upon it. I understand that that situation has changed—based on some evidence that we heard from New Zealand—where the High Court over there has made some sort of decision about the voting rights of prisoners. Are either of you—Professor Aroney or Professor Allan—aware of that situation and would you like to comment?

Prof. Allan: I lived in New Zealand for just over a decade. My son still hopes for the All Blacks. Cricket, it is Australia. What happened in New Zealand was they tried to bring in a constitutionalised bill of rights—Geoffrey Palmer—but, of course, they do not have a written Constitution in New Zealand. You cannot really bring in a constitutionalised model. He was the first one—Palmer was prime minister for about nine months—to go the statutory model. He copied a lot of the Canadian charter. You can see the genealogy. It goes Canada, New Zealand, UK and then Victoria is an amalgam of New Zealand and the UK. What happened in New Zealand is that he could not get it through the Labour caucus. Not a single National Party person voted for the proposal. To get it through the Labour Party caucus in 1990, they first put in a section 4 that said, 'This bill of rights loses to every other statute on the statute books past and present.' Then they took out the remedies clause. They said, 'You will not get a remedy.' In the very first big case that hit the courts in New Zealand, Baigent, the judges ignored the, 'This loses to all other statutes' and they read back in a remedies clause. They just said, 'We're going to give you one anyway.'

What I think you are talking about is the declarations power. There was no declarations power in the New Zealand bill of rights. Once the Brits drafted their human rights act and put one in, about the next day in New Zealand in the top court in the case of Moonen the New Zealand judges said, 'Oh, well, it's implicit in the bill of rights that we have a declarations power, too.' It was like interpretation in the service of an agenda. You do not have to be bitingly cynical to think that the judges just made it up. They have given themselves a declarations power that was exercised in a case called Taylor about five months ago. That was not at the top court level; it is under appeal. Again, that just puts them in the same position as Victoria. The really dangerous work is done by the reading down provision, the 'Do everything you can, unelected judges, to read statutes in a way you judges things is rights respecting.'

CHAIR: Thank you, professor. Unfortunately, we are out of time. Can I thank each and every one of you for your attendance here today and for your submissions. The committee will now have a 15-minute break and resume at 10.15 am.

Proceedings suspended from 9.59 am to 10.15 am

CASSIMATIS, Professor Anthony, University of Queensland

HARRIS-RIMMER, Associate Professor Susan, Griffith University

WILLIAMS, Professor George AO, Dean, Law Faculty, University of New South Wales, via teleconference

CHAIR: Good morning everyone. I am Mark Furner, the chair of committee. With me is Mr Brown, the member for Capalaba; Deputy Chair Mr Crandon, member for Coomera; Mr Krause, member for Beaudesert; and Mr Mander, member for Everton. What we are going to do is flow through a period of opening statements. Generally I put you on a timer for about five minutes. There are two other witnesses in the room, Associate Professor Harris-Rimmer and Professor Cassimatis. We will start with you, Professor Williams.

Prof. Williams: Thank you. I do appreciate the opportunity to give evidence to your committee today. My apologies for not being there in person. I had intended to be, but today is my first day of being Dean of the UNSW law faculty so it prevented me from getting out of the state today.

CHAIR: Congratulations!

Prof. Williams: I would say that this is an area that I have worked on for many years. By way of background, I started work first in this area in the 1990s studying Australia's arrangements particularly at the state level. I was fortunate to be asked to chair the community consultation in Victoria that led to enactment of the charter of human rights and responsibilities there. I have also had the benefit of studying very extensively how these models operate, both their strengths and their weaknesses, in countries like the United Kingdom, Canada and the like. I have returned from six months at the end of last year looking very carefully at the United Kingdom human rights act in particular and what might be learnt for Queensland and other jurisdictions.

I think the right question here at the base level is would a human rights act of an appropriate form improve Queensland's system of government. It is not a question of whether we can have the perfect instrument, whether everything can be got right, this is an area by nature that evolves over time. My own strong view is that a well-drafted human rights act would definitely improve the system of government. I reach that conclusion because the evidence does show that the right form of instrument will improve human rights protection in Queensland, including important democratic rights such as freedom of speech. It will also improve, I believe, the quality of democratic processes in Queensland. Indeed, one of the strongest arguments in my view as to why this type of instrument is needed is because it will improve the work of parliament. I am not a fan of models that focus upon judicial power. I think that the final say must reside with parliament. I think the right instrument will have quite a significant degree of influence upon the work of parliament and also the executive improving their work.

I think also what is significant in these areas is that these models can be now devised at low cost. The Victorian charter, for example, cost 50 cents per Victorian per year and at that low cost has nonetheless had a big impact. The evidence on this is in particular from Victoria and the ACT. They have had their models, as we know, nearly for a decade. My view is that Queensland has an opportunity to draft an improved model based upon what they have done. They have been successful there but certainly things can be improved. I think, as I say in my submission, Queensland should look at a better stand-alone cause of action, it should seek to improve the work of parliamentary committees in this area and also work needs to be done in light of High Court decisions to have more clarity around the interpretive role of the courts to make sure that that modest role is better understood and limited to the area that is thought appropriate.

More broadly, I would quickly respond to a few point that I know have been of interest to the community in regard to other evidence. I think that this can be drafted in a way that does not limit other rights. That can be done simply by putting an appropriate clause in to say the right to protection in the Queensland human rights act or a charter of rights and responsibilities do not derogate from other rights. I think it can also be done in a way that complements the existing role of the common law. One of the great weaknesses of the common law at the moment is it does not work well within a democratic system, it does not provide a role for parliament, it is at the margins of interpretation and I think a model is needed that puts parliament front and centre in the human rights protection process.

I think also that the right drafted model will provide a more sophisticated and properly understood method of balancing rights that is not present at the moment in the Queensland system. I would also say that this can be done without leading to a dramatic and expensive increase in litigation. Again the evidence shows clearly that that has been achieved in other jurisdictions and can also be achieved in Queensland.

I suppose my bottom line is that there are a number of design and other issues here but I think Queensland's experience, including the fact that it has a unicameral parliament, provides a strong case for improving systems within the state for this type of protection. I think also the evidence shows that that can be done in a modest, effective, low-cost way that will nonetheless bear out very significant benefits for the community and also for the operation of parliament.

CHAIR: Thank you, Professor Williams. I will now go to Associate Professor Harris-Rimmer.

Prof. Harris-Rimmer: Thank you for the opportunity to make this submission. I agree with many of the comments of my colleague, Professor Williams. Indeed, we have also worked on these issues in other jurisdictions in terms of the ACT in my case in particular and in Victoria. I welcome that this committee is happening, that you are undertaking this very important inquiry, and I believe it is an extremely timely inquiry which is why it has received such a strong amount of public submissions.

My two take-away points are that a human rights act, a dialogue model such as we are talking about, highlights active citizenship in the role of parliament in the protection of the rights of citizens of the state of Queensland and it can add quite a lot to the improvement of service delivery of public authorities. That is the strongest evidence we have from 10 to 20 years of practice in other jurisdictions.

The reasons I think a legislative response like this is so desirable in Queensland is because Queensland, as we know, is a unique place—a very unique place—and it is this uniqueness which I think we have to keep in mind when we are thinking about adapting other models of legislation to our jurisdiction. Queensland is a very large, geographically diverse place where there are lots of remote and regional communities away from the capital and the concentration in South-East Queensland. Queensland itself is very remote from the capital of Australia, Canberra, and has an often troubled relationship with the federal system. It is the site of many High Court precedents around human rights issues, including Mabo and Wik, but many other types of decisions including, most recently, quite a lot of discussion about the VLAD legislation. It has been an area of discussion—Queensland human rights—in the national conversation for a long time. There is a certain amount of signalling one can get from passing a human rights act in Queensland which shows a level of innovation, modernity, along with the concept of a smart state that wants to move to a new type of economic transition to a new type of knowledge economy. There is also the idea that Queensland looks after its citizens no matter where they are, which has always been a strong message that we have had from the Queensland parliament and something I am sure all of these members I am facing could agree with—the idea that every citizen counts in the state of Queensland. This is a way to underline that message that every citizen counts in the state of Queensland.

What I am asking for is that the right type of human rights instrument can turn the current welfare framework of government service delivery, where not everybody has access to the parliament, not everybody has the same powerful voice, it can turn that type of citizenry into a full citizenship model. What we are interested in in the human rights enterprise is having dignity and equality recognised in aspects of people's lives as members of the community and as members of the state.

Most of the submissions recognise that Queensland's current protection of human rights is piecemeal and inadequate in some places, but that our democratic system has served us well, mostly, over the last 50 years. What we are looking for here is a best practice model of protection. The experience of Victoria and my previous jurisdiction, the ACT, by ordinary statute has shown positive incremental improvements in ordinary people's lives. That has been the story. No big fireworks, no big crises, no big spending—ordinary incremental improvements in ordinary people's lives, minimal cost and minimal structural change. What it has changed, and also as a result of the national human rights inquiry, has been parliament. That relationship between the parliament and public authorities delivering services has been the area of the most change not, in fact, the courts.

Why do I think this is important? Exactly what George says: we want a reasonable and necessary response to human rights issues. The way to do that is through a dialogue model, through conversations between the elected members and those organs of government that are in front-line contact with the citizens of Queensland. Obviously I believe that we should pass a bill of rights. I am for an expansive view of that which covers economic rights and social rights, but that is because I am interested in service delivery and high equality of service delivery which includes access to justice and that is why I think economic rights should be included in the human rights act. In the UK education has been included and I believe that has had a great deal of positive effects for people in remote communities. For a place like Queensland, where we have a lot more people in remote communities than we do in the UK, that is very useful.

Just building on the comments of the earlier group, a lot of these examples are not grounded in the facts of the other jurisdictions. There are no 'rights as trump' types of conversations going on in other jurisdictions. The whole point of a dialogue model is to be able to have conversations about what

is a reasonable and necessary way of treating a prisoner, for example, in making sure they have access to freedom of religion. Some of the fears which have been expressed already this morning I don't think are founded on the basis of the evidence of other jurisdictions. If there were concerns, there is no reason why the Queensland parliament cannot design something that expressly deals with reasonable and necessary options for balancing rights.

The other issue from this morning was that it is necessary to have a plebiscite. I think it is extremely strange to have a plebiscite for an ordinary piece of legislation. You have a plebiscite if you are going to entrench a bill of rights. Nobody is talking about that here. I think it is completely unnecessary to have a plebiscite, but I always believe in more democracy, more deliberative governance, so that would be a reason why you might think about such a thing or a listening tour.

Finally, the main issue I think this committee should think about is even if you are not persuaded to pass a bill, in other jurisdictions there have been changes made to the parliamentary system that have very good effects. This is about setting up parliamentary committees that deal with human rights that can do more active scrutiny of bills on a human rights basis with more analysis; a women's committee such as they have in Europe to deal with women's human rights; an audit committee that deals with the impact on human rights of delegated legislation, for example. There is a range of things that this committee could do, short of passing a bill of rights, that would still have a strong impact on human rights. I ask you to keep your minds open and think of as many options as you can in your deliberations.

CHAIR: Thank you.

Prof. Cassimatis: Thank you to the committee for the invitation to address you. I wish to acknowledge the assistance I received from Associate Professor Peter Billings and Mr Russell Hinchy, although I do not make this submission on their behalf. The chairperson of the Commonwealth human rights inquiry in 2009, Father Frank Brennan, commented at the time of that inquiry on the risk of exaggeration in debates on bills of rights. Some opponents of bills of rights raise such alarming concerns that one might expect a flood of people fleeing the tyranny of judges in Victoria and the ACT. On the other side, some advocates of bills of rights paint such a rosy picture of life under the charters that you might expect a flow of people the other way, fleeing unbridled executive and legislative power and finding refuge under the protection of the Victorian and the ACT charters. The truth I believe lies between these extremes. The charters offer relatively modest but important protections of human rights particularly for the vulnerable in society. For that reason I support the enactment of a statutory bill of rights for Queensland.

I generally support the recommendations made by Professor Williams and Mr Reynolds. I believe that a statutory bill of rights for Queensland would create modest but important benefits for the population of Queensland. Statutory interpretation under a bill of rights under the Victorian model will not fundamentally alter the relationship between the judiciary and the parliament. It will involve an approach to interpretation consistent with the common law principle of legality, with the benefit of combining Australia's international human rights obligations with the traditional common law rights and principles that currently are considered under the principle of legality.

The changes a legislative bill of rights will bring about will not threaten the rule of law. The separation of powers will not be undermined. Through additional safeguards against arbitrary exercises of executive power, the changes will enhance respect for those fundamental concepts. Limitation clauses requiring balancing of human rights obligations and the proportionality analysis that they entail will be consistent with the proportionality approaches that are currently applied by Australian courts in relation to interstate trade and the legality of subordinate legislation.

The drafting history of international human rights instruments and the jurisprudence of international human rights bodies provide far greater certainty as to the content of international human rights law than some of the critics have been prepared to acknowledge. Declarations of incompatibility are consistent with the practice that Australian courts have engaged in for over 100 years of announcing in particular cases that relevant law sometimes produces unjust outcomes and calling for parliament to address those injustices. The fear that the parliament in Queensland will be timid in the face of such a declaration is difficult to accept, certainly in light of the Commonwealth parliament's express suspension of the Racial Discrimination Act, for example in relation to the Northern Territory intervention, and the unicameral nature of the Queensland parliament and rising threats to civil liberties through mass surveillance technologies are additional reasons for Queensland to enact a statutory bill of rights.

Finally, I would acknowledge the contribution of bill of rights sceptics to the debate as I think they have identified important concerns with entrenched constitutional bills of rights. A leading sceptical scholar against entrenched constitutional bills of rights is Professor Jeremy Waldron. I will conclude by

quoting from Professor Waldron's testimony to the UK parliament's Joint Committee on Human Rights in 2011. Professor Waldron was asked about the role of the UK courts in protecting fundamental rights of individuals and vulnerable minorities. Professor Waldron's response was—

... everything depends on the mechanism by which the court can act as a safeguard in these matters. In the United Kingdom, under the Human Rights Act in the scheme of the European Convention on Human Rights, the courts act to issue very important warnings effectively to the polity that, in their opinion, the limits are being transgressed or approached and it should pause and take it very seriously, and there are remedies available for implementing that. That seems to me to be an important function, coupled with the other functions laid down in the Human Rights Act, whereby the Attorney-General is required to give assurances that legislation conforms to the human rights provisions and so on. It is a spectrum of warnings.

Thank you.

CHAIR: Thank you, Professor. In your submission, you indicate that you need to acknowledge that Australia already has human rights or equivalent legislation in every jurisdiction. If that is the case, why do we need a human rights act?

Prof. Cassimatis: I am an international lawyer. That is my main area of expertise. Australia has assumed international obligations under a range of treaties—the seven that were referred to previously and a number of others, as well. Our obligation under international law is to ensure respect of those rights set out in those instruments. The concern is that the legislation that we have, which is implementation of certain of the rights particularly in the field of anti-discrimination law, does not cover the entire field of obligations that we have assumed internationally. It is the gaps that are the main concern.

CHAIR: Fair enough; it is focussing on the gaps. You were in the room this morning when I questioned the previous panel about a matter involving an Aboriginal man in Townsville who gave evidence to this committee about being discriminated against when seeking a rental property. He was given the green light on his first application and up until the time when the real estate agent saw his photo ID. Then all of a sudden the house was unavailable. Do you believe introducing a human rights act would remedy that situation?

Prof. Cassimatis: I cannot be sure about that particular circumstance, but I do think that a general act that mirrors the broad provisions of the international obligations Australia has assumed is more likely to cover areas that would otherwise be missed by specific legislation in particular areas.

CHAIR: Associate Professor Harris-Rimmer, I was interested in the recommendations in your submission. The second last dot point is that the role of the Queensland Anti-Discrimination Commission be expanded to include primary responsibility for addressing human rights issues. How would that operate? Can you explain to the committee how that function would take place?

Prof. Harris-Rimmer: This is one of those wonderful options that the committee can take, regardless of their position on a bill. Currently, I think the Queensland equal opportunity commission does an excellent job with the resources it has, but it could do more, partly in the community education area, but also in the complaints area and the investigations area. What we have seen in Victoria and the ACT is that with the act has come more resources and more attention. Where those types of bodies have really shown their worth is in that dialogue between citizens and the public service, as an interlocutor.

Exactly in the case that you describe, where does that gentleman go to get some help with his situation and resolve that situation? What you need is a body like this that can mediate between the parties and come to some sort of facilitated understanding that has some nice policy behind it and some decent training. What you want is to prevent these situations happening in the first place.

What we really want is that equal opportunity commission to be given a stronger human rights mandate. At the moment, it has an anti-discrimination mandate, but not a positive rights mandate. Increase its abilities and some of its functions, including with lots more community education and that mediation area that it does. It can also target groups. One of the things that we have issues with in human rights is the rights of groups. Human rights are really individual rights. Sometimes, when there is a group situation, it is hard for those groups to figure out how to mediate their relationship with the state. One of the things these human rights commissions can do really well is mediate the rights of groups. I am saying that we want a stronger remit, more funding, more resources for the equal opportunity commission of Queensland, including perhaps a rebranding.

CHAIR: Professor Williams, I picked up a comment you made in your opening address about not being a fan of judicial power. Certainly the panel before you indicated concerns about handing power over to unelected judges. Was that the angle you were coming from or have I picked up on something otherwise?

Prof. Williams: My starting point is that recognising the solution to some of the human rights challenges Queensland faces is to understand that that solution ultimately cannot be provided by a judge-focused model. We cannot pretend that we can shift power to the judges and that will solve these issues. Not only would it pose some real democratic problems but also I think it misunderstands how the judiciary works. I practise as a barrister and I understand it is very expensive to go to court. It takes a lot of time to do so. If we are serious about fixing these problems, surely the answer does relate to prevention and making sure, in the first place, that parliament enacts laws that are more respectful of things like freedom of speech. Also making sure that the executive is informed at a policy level about these things before it announces a policy or a proposal for a new law.

My view is that the courts do have a role, a complementary role; if you like, quite a weak role as compared to anything like the US Bill of Rights, for example. However, it is a complementary role that comes in after the human rights act has properly shaped debate within those more democratic institutions. If that happens, you do not need to get to the courts. The experience in Victoria and the ACT where these models worked well is that we have had big shifts with service delivery, we have had big shifts within the executive and quite different parliamentary debates. You just do not get the litigation, because the work is being properly done in those other institutions, but the litigation is there if something goes really wrong. On rare occasions it is used, but it should be limited in the model to an expectation that it will be in rare occasions.

CHAIR: A last resort. I guess that comes through in your submission, where you say that the charter must have teeth. Is that what you are suggesting?

Prof. Williams: It needs to have proper remedies in there because ultimately, if we only go for a parliament-based model, the evidence is equally there that that does not work. For example, I have just completed a very large study of the new human rights framework at the federal level, where you have a very expensive process involving a parliamentary committee that examines laws for human rights compliance, but it is internal only to parliament. What happens is that those reports are routinely ignored. The fact that there is no external check and no role for the courts means that after the event it cannot be looked at again. If you totally remove the courts from the process, you have parliament effectively acting as a self-enforcement mechanism and no institution works well in that way. Particularly with Queensland lacking an upper house, you just cannot have an effective model if it is only parliament. You need a model that is focused on parliament, with the courts having this external role.

You do need a proper remedy, particularly for public authorities, so that if you find that a person has been treated wrongly by a government authority or by a local government body where human rights—let us say, freedom of speech or other areas relating to service delivery—have quite clearly been infringed, there should be a proper remedy. I think it is a clear expectation of the community that where there has been a breach of that kind there would be a remedy. In my experience as a barrister, you find that community members are often quite shocked to find that, where something as basic as these rights have been infringed, at the moment in Queensland, as with most of the other states, there is simply no remedy. In fact, people are left frustrated and often quite angry about how that system operates.

Mr CRANDON: Thank you all for coming. I want to tick off on a question that you already addressed, Susan, which is the idea of a plebiscite. You indicated that you were not all that sure that one was necessary. What is your view, Anthony?

Prof. Cassimatis: An electoral mandate, I would say. If the issue of a bill of rights was before the electorate through a normal election, I would support that, or a plebiscite.

Mr CRANDON: George, I am addressing everyone by their first name because Susan's name is very long. George, what are your views?

Prof. Williams: I see it as expensive and unnecessary. One of the attractions of these modes is they can be done at a low cost. There is a lot of competing priorities for the public purse. If you hold a plebiscite, it is actually far more expensive than running this instrument for some years and, as had been indicated, it is actually not needed. It will also have a counter-productive effect, that is, if you had a plebiscite, it got up and you introduced a human rights act, would that mean that for the future amendments you need a new plebiscite? You actually do not want that. You want these instruments to be subject to parliamentary control. Parliament should be able to change it, update it, improve it over time. The last thing we want is a plebiscite or some other mechanism suggesting it is fixed and cannot be easily changed.

Mr CRANDON: Thank you, George. Now to my more substantive question and I think everyone has touched on this aspect of things already. You referred to our situation being unicameral. We have been unicameral since 1922. I make the observation that even in the past seven years that I have been

in this place we have come a long. Certainly, we have come a long way from 1922. I get the impression, Susan—and correct me if I am wrong on my interpretation—that you are not fully committed to the concept of a bill of rights, but you think we could do a lot more in the parliament to rectify a few things.

Prof. Harris-Rimmer: I am completely and fully committed to a human rights act, but I also understand the politics of the situation. I suppose what I am saying is, do not think that is all this committee has to decide. There is a range of other ways that the Queensland government can protect human rights. If you decide not to go with the human rights act, do not stop the conversation there. Think about a whole range of other things that you could do to improve human rights in Queensland. I am urging you very strongly to go the human rights act route.

With the plebiscite, the logic of it is slightly wrong. The point of human rights is that democracies, no matter how wonderful, serve the majority. That is the point of a democracy; the majority chooses. The point of human rights is that there is a check for marginalised and vulnerable people who cannot access their democratic power in the way others can. It is a check and balance arrangement. Therefore, to hold a plebiscite on human rights is not quite what we are going for. It is not a bad idea, but the point is that the vulnerable and marginalised who need the human rights act will never win a plebiscite.

I think the concept would be—and a much cheaper way of doing—a listening tour with an expert committee; another way, to bolster the equal opportunity commission. Getting out to the furthest reaches of Queensland and finding out what is affecting people's lives, what they see as their human rights, how is it working. That would be very valuable. A very expensive plebiscite, I think, sends exactly the wrong message, actually.

Mr CRANDON: Something along the lines of what this committee has been doing, going to Thursday Island and all of those sorts of things.

Prof. Harris-Rimmer: Exactly. It is getting out and about and talking to people

Mr CRANDON: Anthony, if we do not go to a bill of rights, there are things that we can do. For example, the Finance and Administration Committee, which I was on previously, recently held an inquiry into four-year terms. We put forward a recommendation to strengthen the committee system: to make the committee system much stronger than it is, unable to be removed by successive governments and those sorts of things. Since 2009 to 2010, the committee system has changed dramatically. It is a much stronger committee system now than it ever was and as a parliament we are moving towards strengthening that even further. Do you think that we can resolve some of these issues that you have talked about and that you are concerned with, by simply strengthening that and keeping it out of the judges' hands, so to speak?

Prof. Cassimatis: I think that some of the issues can be addressed that way. Credit should be given where it is due. The Queensland government and the parliament have come a long way. I was looking at the Legislative Standards Act 1992, which is unique legislation in Australia and a product of the Queensland parliament. That sets out a process in terms of explanatory memoranda which involves consideration, amongst other things, of human rights instruments. There are significant improvements there.

A bill of rights is one part of an architecture that produces respect for human dignity, but it is an important part. All of the other things that you have described are extremely important as well. A bill of rights is not sufficient if you do not have a commitment to the standards within the community. That is why I think some electoral mandate is important. The standards will not survive. I think that it is essential for the effectiveness of the system to include some degree of judicial oversight in addition to the sorts of measures that you have described.

Prof. Williams: I agree with that comment. A human rights act or a bill of rights is no guarantee of the outcomes because political leadership, for example, is just as important. It is a necessary part of getting the outcomes you are looking for. The evidence shows that where many of the things you are talking about have been tried they have not been effective. There are number of jurisdictions that have gone through improved parliamentary committees, different processes, greater community involvement and none of those have been effective, in the absence of a law of this kind, in drawing together those things in a stronger form.

I would also say that what those things show is that it is not a question of is this with the judges or not with the judges because the Queensland system at the moment is that the judges do this. They develop the common law without direction from parliament in a way that I actually find quite disturbing. I think it is much better for parliament to say, 'These are the rights that we wish you to develop. This is the form in which they appear. Here is the balancing approach that you should apply.' If that is not

done, you will simply find that this will continue to develop without parliamentary guidance. That is not desirable. The experience across the law is that parliament does provide that guidance because it is seen as necessary to do so.

The final point I would make in this area is that when you look at how the current Queensland system is working it is very poor on a number of indicators. I completed a major study last year that is about to be published in the Queensland University of Technology law journal. It assessed the statute book across the country and asked where the problems lie with laws that breach basic democratic rights. We are not talking about refugees, terrorists or the like, but freedom of speech, association and the core community democratic rights. Queensland really stood out, along with New South Wales, as having the greatest number of problematic laws. What that quite clearly showed is that current processes are not working and that where judges are playing a role it is equally not proving to be effective without further parliamentary involvement.

Mr CRANDON: Thank you for that, George. Some people have suggested that by going to a bill of rights model in a statutory form that could be a simple step taken to get people used to it, if you like, with a view then to come back later and perhaps entrench the legislation. Would you care to comment on that? Perhaps Susan and Anthony might like to do the same.

Prof. Williams: It is not clear to me that it should be entrenched and nor would it be entrenched in Queensland. There are a limited number of things that can be entrenched in your Constitution. There are very few at the moment. I think there are good reasons the state constitutions remain more flexible. I also think that it is very important that parliament has an ongoing leadership role in this area by identifying, as in Victoria, that certain things are working and certain things are not. That should be respected. We want an evolving instrument in line with community aspirations.

A lot of this actually focuses too much just on the law, the courts and the like. I think one of the most important things to keep in mind here is education. It is about parliament setting down basic rights and other things that can be used in schools. There are enormous amounts of ignorance and misunderstanding about how democracy in Queensland and elsewhere works. Putting this down in a form that fosters debate—with a strong preamble, as in Victoria—can be extremely powerful in connecting citizens to their parliament, their government and how the system works. Another key reason these things need to be written down is so they can work in that education and community development sense.

Prof. Harris-Rimmer: I am also not a fan of entrenched bills of rights for the reason that I am very interested in emerging technologies and how they are impacting on human rights around the world. You need a certain amount of flexibility to deal with transitional periods.

Human rights are ordinary, everyday things. When you start making them grand constitutional statements that is the wrong way of thinking about it. It is about everyday citizens' lives and so ordinary legislation is better, I think. Having said that, as George says, it only works if the architecture around it is full. Having a piece of legislation that is not alive and living in people's lives and not accessible is not going to work either.

Prof. Cassimatis: I am also of the same view. Entrenchment, if it includes the striking down of legislation, could be a negative thing. I do not agree with the previous panel on many things, but on that particular point an entrenched bill of rights with a power to strike down legislation gives the last word to judges. I am a strong believer in the dialogue model where the last word is not the judges' word. That would be something that I would oppose.

Mr BROWN: Professor Harris-Rimmer, can you refresh my memory on this. You are wanting to adopt a similar model to Victoria and the ACT with amendments. What are the amendments?

Prof. Harris-Rimmer: I think we should basically start a fresh from first principles in Queensland because Queensland is a unique jurisdiction. The amendments I am interested in are around remedies. Like George said, I think we need some remedies in a human rights act to give it some impact. If public authorities do the wrong thing in relation to their clients we need to have some sort of penalty, whatever that is. That is one of the amendments.

The other amendment would be basically around the way parliament deals with the statements of compatibility. There is a lot we could do to strengthen that process, which is what George was referring to before. I am also arguing for the inclusion of economic and social rights, which has been considered in the ACT but has not been undertaken yet.

I suppose what I am saying is that we could just pick up the human rights act in Victoria and change some of the provisions and whack it down here and I would be thrilled with that, but I think Queensland is a very unique jurisdiction. Victoria does not have remote and rural communities in the

same way Queensland does. It does not have significant economic features the way we do. I do think we need to think about it from the point of view of what our jurisdiction needs to protect human rights. We need to be very thoughtful about designing our own act.

Mr BROWN: We had a witness in Cairns that wanted to entrench the rights of the environment. Do you support going that far? Where do we draw the line?

Prof. Harris-Rimmer: I think you would have to think about how to narrow that. There are certain constitutions and bills of rights around the world that have the right to access water or clean air. It is maybe not a right to the environment as such but certain aspects of the environment. It is certainly doable.

The question again would be: what is reasonable and proportionate? All those tests can be done. All the trade agreements that we are signing have reasonableness and proportionality tests around environmental standards. This is part of environmental law—stock standard. There is no reason we cannot think about some of those things. Queensland has a unique environment compared to, say, the ACT. It is something that we could think about.

I think most Queenslanders would be pretty happy about access to clean water being part of their human rights act. Again, it depends on what the citizens of Queensland perceive their human rights to be and what they want to protect. I think access to water would be right up there.

Mr BROWN: Professor Cassimatis, is a human rights act just a lazy way to fill the gaps? Should it be left to parliament to fill the gaps with legislation if there are gaps in international conventions?

Prof. Cassimatis: Our obligation is that there should be no gaps. I do not mind if they are filled by specific legislation or by a combination of specific legislation and general overarching legislation that operates as a safety net. To me, as long as we are ensuring respect for the rights that we have assumed internationally then I really do not have a particular view. I think it is less likely that there will be gaps if you have an overarching instrument, but I may be wrong on that. Certainly, I can see no criticism from international law if you were to do it via piecemeal legislation.

CHAIR: Susan, could you respond to that question as well?

Prof. Harris-Rimmer: I think that you will always be playing catch-up. You will be responding to the latest case that shows you were the gap is and then you will have to patch that. It will be like a dam with your finger in it all over the place.

Even though I completely agree, from the perspective of international law what matters is where the rubber hits the road—are the rights protected. The international law does not care how. If we are seeing this as an opportunity to educate the community about their citizenship and about their relationship with the state and their relationship with the parliament, having one easy to understand place that tells you what your human rights are is really valuable. It has been exceptionally valuable in Victoria and the ACT. Most citizens are not capable of looking at 25 different pieces of legislation and inferring what their rights are. They should actually have to.

One of the things that is so wonderful about this inquiry is that people will have a reference tool now. They will be able to say, 'This is what the Queensland parliament thinks about the status of human rights in Queensland.' Your report will be very valuable. Having some clear statement of principle so that public authorities can say, 'Right, this is what I am meant to do when I deal with clients. I am meant to treat them with dignity and respect. This is how I am meant to do it,' is very valuable. Clarity is exceptionally important in this area.

Mr BROWN: I will paraphrase your submission. You are saying that if we get this bill wrong and judges get it wrong then we should go back and revisit the bill again. Are you not contradicting yourself by saying that on one hand we are supposed to do it under legislation but on the other if we get the bill of rights wrong we can go back and change it?

Prof. Harris-Rimmer: It is about the dialogue idea. It is like other pieces of legislation being responsive to the way communities change. We did not feel the same way about, say, gay marriage 25 years ago as the majority of people do now. Things change and attitudes change. Having a human rights instrument that is responsive to community ideas changing is good. Having something that is constantly changing is not so good. I am not interested in endless changes, but the capacity to revisit is important. In that way, I do not see the contradiction.

Prof. Williams: I think the way you deal with this is, as in Victoria, you build in a regular review process. You establish that at the four-year mark and the eight-year mark parliament comes back and looks at the instrument. That provides a regular opportunity to re-engage in that debate rather than it happening all the time. In Victoria we have had a major report which said, 'This has worked very well. It has delivered human rights protection at low cost, but here are some things we think can be improved.' That is exactly the conversation that should happen.

I take a slightly different view to the others on which rights should be included. I think it makes sense to start with international law. We should examine what that offers. I think it is important that a human rights act is grounded in the values and aspirations of the Queensland population. Those will often reflect international law. The views of the community must take precedence, in my view.

The rights that should be included are those that have the overwhelming acceptance of the community. You start very obviously with freedom of speech and association and you work your way out from there. The aim is to produce an instrument where somebody in a school or somebody in the community says, 'It is blindingly obvious that this should be protected. It is one of the things that we take for granted. We think it is appropriate that it is given that important recognition.'

One thing you will find is that the polling very clearly demonstrates strong community support for instruments of this kind. With freedom of speech the assumption is that it is already protected. In fact, a recent survey showed that around 62 per cent of people around the country assume we already have a national bill of rights. We are dealing here with a community that thinks this is already occurring and is broadly supportive of, at least, a key set of democratic rights having this type of protection.

CHAIR: Before I go to the next committee member, I acknowledge former attorney-general Matt Foley in the audience. Welcome, Matt.

Mr MANDER: My first question is to the Associate Professor. You said earlier that the bill of rights needs to be about the ordinary everyday stuff. Put yourself in the place of an MP for a moment—I know that is a scary thought—having to talk to constituents. If I were to sell this concept to my constituents, give me one practical example that I could give to people to say, 'This is the reason we need a bill of rights in our state.'

Prof. Harris-Rimmer: When you are dealing with the government, ask people where do they actually deal with the Queensland government? Where do they meet the Queensland government? It is usually when they are applying for a service or dealing with something that is happening in their community such as a road or building application. Where do they meet the Queensland government in terms of their everyday lives? Usually it is in hospitals and schools, that sort of area. Then you say to them, 'Do you want your parliamentarians to specify that those people you meet, the representatives of the Queensland government, should be dealing with you with respect and recognising your dignity as a citizen?' They all say, 'Yes, that is exactly what we would like. We hate being treated as though we are cogs in a wheel. We want to be treated as humans and our situation given a proper hearing and having easy access to decisions that affect our lives. We want better access and we want to understand how this all works.' If you put it like that as opposed to some sort of Hollywood movie scenario around *Prisoners*, something that they can really relate to, then most people really like that and they understand.

Everyone has had some sort of issue with government where they have not felt like they have been heard, and what most people want is this idea that they have been able to state their case and been listened to; they have had some sort of process which they can have some trust in. You guys know better than I how to deal with constituents, but you know that is what they want. They want something that feels fair. This is a way of underlining that you are out to make their lives fairer; that is all. The interaction as a citizen with government should be based on principles of fairness and not just economic efficiency. Not necessarily the way we often think of it now, this idea of welfare, which is that you need to ask—even beg—and then you are meant to be grateful for whatever you are given. It is a question of dignity and respect. If you ask more vulnerable and marginalised constituents that question, they will have no hesitation in telling you that they would be happy, so it depends on who you are meeting as well. The people who turn up, the people who are heavily involved, are not usually the most marginalised people in your community. This is also a way to signal to them that they are important to you.

Mr MANDER: Referring to a comment that Professor Williams just made, I might ask you the same question and I might come back to you, Professor Williams. You talk about the fact that through polling 62 per cent of people think we already have freedom of speech. Is that not in itself evidence that people believe these rights that we have are inherent in our democratic process and there is no need to entrench them or formalise them because they have served us well for decades? Isn't that evidence in itself that people just assume we have these rights, and therefore their experience is that they exercise those rights?

Prof. Harris-Rimmer: Until they do not.

Prof. Williams: I wish that was the answer. I think actually the answer in large part is they are watching too many US cop shows, because what the polling shows is they think we have something akin to the US Bill of Rights, and they think from that that Australia has a like system. What they are

also saying in those polls is what surprises them is they think we have this bill of rights, but free speech is not actually well-protected and they cannot understand why there is a disconnect between the strong instrument they expect we have and what they are seeing on the ground.

As Susan has also indicated, there is a lot of anxiety about a lack of understanding as to how it is that governments and agencies can often act in a way that seems quite disrespectful to community members' basic human rights, as they see it; how in particular when you are focusing on areas like aged care, mental health and a number of areas, that government do not have the record of service delivery in these areas that the community might expect. It is just not in terms of the raw delivery of those services, but basic respect in how that happens.

The way the politics tend to work out in these areas is that if you look at these instruments around the world they can be contested in introduction, but there has never been one that has been removed because they do become quite popular and they are usually popular at the point of introduction. In Victoria and ACT they are now just part of the furniture. Even in the UK, where the Conservatives there are talking about removing the Human Rights Act, it is because they want to replace it with an even stronger instrument. I was asked to brief the Minister for Justice in the Cameron government recently. They are looking at copying aspects of the Victorian and ACT models because they think that these Australian models are now world's best in terms of what the UK can move to in its own evolution, and it is the Conservative Party that is looking at doing this. These instruments tap into a bedrock of support for decent, proper treatment by government.

I think in terms of how you talk to constituents, there are a legion of stories and examples there that demonstrate these make a difference on the ground to the quality of people's lives and they do so at low cost.

Mr MANDER: Associate Professor, just going back to you about another issue unless you want to comment on that.

Prof. Harris-Rimmer: Just on that, George is so right. You teach even law students criminal law, and they constantly think they have various rights under the US Bill of Rights which of course they do not have under the Queensland Criminal Code, so there is a great deal of misunderstanding about what rights Queensland's citizens actually have. I think when they find out what their rights are, they are usually pretty shocked that they cannot find them written down anywhere very clearly, that they do not have the ones they thought they had and that they are actually very reliant on the parliament doing the right thing by them. As you know, there are winners and losers in politics, so where there are scarce resources there will be losers. If you ask the losers what they think their human rights are, they are usually pretty fast to tell you that they are losers in particular situations. I think you should think of it like that. When there are winners and losers and economic scarcity, how do we deal with the winners and losers in society in that situation? One way is to acknowledge their citizenship and listen to their concerns more diligently.

Mr MANDER: You made some comments in your submission about strengthening anti-discrimination laws. I am interested in the gaps you see, particularly for those with disabilities and with regard to sexual orientation. I need to be educated.

Prof. Harris-Rimmer: What George's research and other people's research has found has been that in the area of care, aged care and schools, where the rubber has often hit the road around human rights issues, often it is about how well state institutions deal with the rights of people who are vulnerable, and people with disabilities are often very vulnerable in these situations. Of course in the interim we now have a new convention, the international Convention on the Rights of Persons with Disabilities, so everything is moving in international law as well. There is this idea about recognising the capacity of people with disability instead of just this 'able-ist' movement and helping them specifically with their issues of discrimination, so I think there is this idea—which again is evolving all the time—that people with disabilities are really active and valuable members of the community. How then would they be treated and included in situations around governance and decision-making? I suppose what we would be looking for is the Equal Opportunity Commission, but also the government more generally, to have more focus. If I could give an analogy.

The domestic violence reforms did not need a human rights act, but they are based on both the international human rights law with respect to women's rights and they are grounded in a rights perspective, so those domestic violence reforms would have been made more coherent by a human rights act. It does not mean they are not wonderful on their own, but they are basically saying that women should be full members of society and this is something that is stopping their full citizenship and participation, stopping their ability to live in society. It is the same thing around this disability issue. Once you take people with disabilities seriously and ask for their concern about what they want to be included in society, you would have a raft of reforms like those domestic violence reforms. You start

with the focus on the group that is the most marginalised and you ask them what they want. It is just a different model of government. We usually wait for the most powerful to tell us what is happening, but this is a way of asking the least powerful how to affect their lives and enhance their lives.

Mr CRANDON: I want to take up Susan's example of the laws we are systematically introducing over time now. I think in total there were something like 132 or 142 recommendations. That whole review was conducted over two parliaments over two governments. Both sides of the government are 100 per cent supportive of all of those recommendations being implemented, and yet you have just made a statement that it would have been better under—I do not understand. I need some explanation on that, because we are one as far as those recommendations and the changes are concerned, as we are in so many other areas. I would just like you to expand on that. I just do not see—

Prof. Harris-Rimmer: I think they are absolutely brilliant. I am just saying it could have been enhanced by a human rights act.

Mr CRANDON: How?

Prof. Harris-Rimmer: Because this way when you reviewed a human rights act, for example, in four or eight years' time, you would have seen the domestic violence reforms as not just part of criminal law, not just responses to front-line services, but as part of women's equal participation in Queensland society: the rights perspective that infuses the report. There are ways that you could have come to the same policy conclusions without the human rights basis, but that is not the way the report was written. It was very much based on the human rights of women. That is why I think it is wonderful. It is a wonderful piece of work. I think it is great that it received such bipartisan support. What I am saying is if you take that experience and think about other marginalised groups in that same way, that would be wonderful. This is what I am saying.

Mr CRANDON: Which the parliament is doing. We are looking at all of those other areas that you are talking about without the bill of rights being there. That is where I am struggling with what you said. You used an example that actually surprised me. I do not know whether you saw the surprise on my face.

Prof. Harris-Rimmer: Because it was reactive. I have to tell you that it was reactive. It was because women were dying all over the place that we had that response: it was a reactive measure. The purpose of a human rights act is to be a little bit more pro-active about the rights of marginalised people, but you can get to the same place—

Mr CRANDON: I think it was being pro-active. I think there was noise coming from the community, and there were some terrible things that have happened over an extended period of time, and this government and the previous government took it on and said, 'Right, we are going to fix this. Enough is enough. It has been going on too long', and we have that happen in other areas as well. It just surprised me that you used that as the example.

Prof. Harris-Rimmer: It is because it is best practice and you could be doing that in other areas. The point is that it is not looking at the human rights of women generally; it is just one aspect. I want the human rights of women considered in that way across that whole lived experience—that is the coalface; that is the extreme end—but in women's rights to participate in full employment, for example, or other types of rights, not receiving systematic treatment. If you have a human rights act, it will make you think more systematically about the way groups are treated in society. That has been our experience in the UK, ACT and Victoria.

I totally agree with everything you said. I think it is a wonderful thing that the Queensland government is doing. What I am saying is: do more of that. This is one way of signalling to the community that you are going to do more of that, and you are going to do it in a systematic and structured way over time. That is what people want to hear. They want to see that there is a commitment over time that can be reviewed and monitored.

Mr BROWN: Picking up on that point about domestic violence, the interesting thing is that the human rights act came in in Victoria in 2004. The Victorian government has just gone through the same reactive process the Queensland government has gone through. How is Victoria better? Using a real-life example about how governments have reacted to domestic violence, we have done a review and Victoria has done a review. We are implementing our review; Victoria is implementing their review. How did the human rights act in Victoria make their process better than ours?

Prof. Harris-Rimmer: George is the real expert on the Victoria act, but I would say the same thing: it made it more structural and systematic and promoted a rights culture, both in the parliament and in the Public Service, and made all of those changes easier to get through. Exactly as George says, it is not a magic bullet. You need the political leadership, which you have in both cases. You also need the community support and you need that political leadership as well.

Prof. Williams: I think the area of domestic violence and there are a number of areas that demonstrate parliament and the executive's capacity to bring about really important human rights reforms, and that needs to be applauded, and there are many examples of this kind. The virtue of a human rights act is what it often does is direct attention to those areas that are not, if you like, the political flavour of the day where there is not the clear community seizing of the issue and it is often directing attention at areas that might be ignored. Hence in Victoria if you look at where it has had the biggest impact it has not been those areas where there is already political will. It is particularly things like how do you deal with a problem with people with disabilities in residential care and how do you deal with the issue of people with mental illness and when they should be incarcerated and a very broad range of areas that have the very large impact upon people's daily lives that often are just outside of the public gaze. Giving those people the capacity to have their rights respected—a tool they can use in dealing with government—is changing behaviours in a way that is systemic, long term and often never would generate the political will to actually bring about the changes in the absence of what might be a big scandal or some other activity. I think it is that systemic approach that brings large, long-term benefits to the community beyond the good example that you raise of a different and very important way of achieving outcomes.

CHAIR: We are out of time for this panel. I thank everyone who has attended this morning and also for your submissions to this inquiry. Thanks very much. The committee will now adjourn until 11.45. Thank you.

Proceedings suspended from 11.16 am to 11.45 am

ARMSTRONG, Ms Paige, Chief Executive Officer, Queenslanders with Disability Network

CHESTERMAN AO RFD QC, Mr Richard, Member, Human Rights Working Group, Queensland Law Society

DUFFY, Ms Julie, Queensland Office of the Public Guardian

HARDY, Dr Fotina, Australian Association of Social Workers (Queensland Branch)

PAPADOPOULOS, Ms Colleen, Queenslanders with Disability Network

POTTS, Mr Bill, President, Queensland Law Society

ROGERS, Mr Dan, Chair, Human Rights Working Group, Queensland Law Society

van SCHOUBROECK, Dr Lesley, Queensland Mental Health Commissioner

CHAIR: Good morning and welcome. In this session we welcome representatives from organisations providing valuable services for Queenslanders—the Queensland Law Society, the Queensland Office of the Public Guardian, the Queensland Mental Health Commission, Queenslanders with Disability Network and the Queensland branch of the Australian Association of Social Workers. Welcome, everyone. Please keep your opening statements neat and I will let you know when you are getting close to your five minutes.

Mr Potts: For those on the committee who do not know, my organisation is the peak representative body of some 12,000 admitted solicitors in this state. We are delighted to appear concerning the seminal and historic issue for all Queenslanders. Queensland is the third Australian jurisdiction potentially to adopt a human rights act and we believe it is incumbent on this state to lead the field in its deliberations around enacting for the fundamental rights of all human beings to be treated with dignity and respect. The Law Society is charged with a higher duty of providing input and recommendations to the inquiry which would, we hope, achieve two inextricably linked ends: firstly, to submit comment which reflects the opinions of its full membership and, secondly, assume the role of an independent, all-partisan representative body upon which a government can rely to provide it with fulsome advice which aligns only with the promotion of good evidence based law and policy and pursues no other agenda.

The society's Human Rights Working Group comprises human rights experts representing the full gamut of members' opinions which the society received through a very broad and lengthy consultation process. Esteemed members of the society's working group include Professor George Williams, whom I think you have heard from, and Dr Sue Harris-Rimmer, who are both strong proponents of human rights legislation and both of whom, as I said, have appeared before this committee. Throughout the thorough and considered work of its Human Rights Working Group plan, the society has examined the complicating factors and uncertainties germane to human rights legislation enacted in other jurisdictions in order to inform the Queensland government of the necessary cautions to be applied if and when it elects to follow suit. Indeed, I consider it incumbent on the Law Society as the state's peak legal body with an eminently constituted Human Rights Working Group to stand ready to provide comment on and legal advice concerning any draft legislation the government may elect to put forward in fulfilling our role to assist in this important reform. The society's submissions in this inquiry clearly delineated the proponent views, the substantive author of which is Mr Dan Rogers, the chair of the working group, who sits to my right here today, and the opponent views, the substantive author of which is the Hon. Judge Richard Chesterman AO RFD QC, who is also here in attendance and is seated to my left. I would invite the committee to address its questions and queries to those two persons.

CHAIR: Thank you.

Dr van Schoubroeck: Thank you for the opportunity to be here this morning. The commission's role is to drive ongoing reform towards a more recovery oriented system, and it is the recovery part that underpins this. Our legislation requires that we promote the best interests of people with mental health problems and drug and alcohol problems, and respect for human rights is fundamental to that recovery. It allows people to be socially included and to have lives with purpose, and if you have lived with people with mental illness you know some of the challenges that we face. The treatment for mental illness and oversight has made significant progress in the last 50 years—we cannot argue with that—

but there are still stories of forced treatment that is now outlawed or certainly only to be used in prescribed circumstances, and that is the backdrop to my submission. Some of you may recall that in February 2010 the Queensland government issued an apology to those who as children in the care of the state of Queensland suffered in any way while resident in an adult mental health facility. It also undertook to consult and plan formal reconciliation processes with those people. I have spoken to some of those people. They have heard nothing, so we have a long way to go I think. That is why we do strongly support an introduction of a human rights act that can safeguard those things and make those broader protections, so it is not just the human rights framework and the legislation but it is also the effectiveness of government delivered and funded services. It goes to the heart of the implementation. I think it will provide safeguards to vulnerable Queenslanders living with mental illness and drug and alcohol problems, not just those being treated as patients. It is really important for fostering dignity and respect and choice and they have a common experience, as many of you all know, of stigma, discrimination and powerlessness. Without that I do not believe we can meet our human rights framework and our international obligations in this space.

It is silos between agencies at the moment. Great agencies are doing their best, but it is siloed. Responsibility for a lot of it is under the Mental Health Act, but it is not all there as you can attest because there are so many people here. It is a good example of legislation that seeks to protect the rights of people under involuntary treatment. It has some checks and balances, but there is no yardstick to say whether these are the best we can do in Queensland and when we have implemented them whether we have implemented them as best we can. We currently hear from people who are having problems in the current system and they come to me and they talk to the Chief Psychiatrist, the Mental Health Tribunal, the Health Ombudsman, the State Ombudsman, the Mental Health Court, the Public Guardian sometimes and community visitors and they say, 'I cannot get redress.' They get confused. I am not surprised. I think we are more vulnerable than other parts of Australia. It is a unicameral system and, while I have respect for committees, those of you who have been on a committee or have been in a different jurisdiction where there is an upper house understand there is far more opportunity for debate and for the public to hear the pros and cons. Without that I think you need something which embeds the understanding of what the pros and cons are and know when we have gaps. Despite the best efforts of members, I do not think a committee without some of those other frameworks can actually attempt to do that. I think it would protect Queenslanders by explicitly requiring law makers to consider the implications of our legislation and compensate for any checks on executive power.

It should, I think, require the government and the parliament to consider human rights when we make laws. It should cover all of the programs and services provided by government. It should protect all rights and have accessible and effective remedies. Having listened to the debate this morning, I accept that this is not simple and we need to guard against lawyerfication, if I can use that word, but that does not mean we should not do it, because I think we should acknowledge that we cannot be complacent that Queensland has sufficient. You just need to go back to the women I was talking about with regard to the apologies in 2010. Nothing has happened because we think we have done it, we have ticked the box, but there is no framework for following through as you move through that system. Thank you for the opportunity.

Ms Duffy: I thank the committee for inviting me here today to talk about the Office of the Public Guardian and the committee's inquiry into whether it is appropriate and desirable to legislate for a human rights act in Queensland. The Office of the Public Guardian is an independent statutory body which protects the rights and wellbeing of vulnerable adults with impaired decision-making capacity and children and young people in out-of-home care, including foster care, kinship care, residential care and youth detention. The legislation governing decision making by the Public Guardian is underpinned by two United Nations conventions—the Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child. As you know, our office has provided a written submission to the inquiry and I refer you to that. To summarise the pertinent points of the submission, the first key point is that the adoption of a human rights act in Queensland would not only buttress the rights framework for government decisions, including those of the Office of the Public Guardian, but it would help to educate public servants and the community more widely on how these decisions are made. It would provide another very important layer of accountability for government and for its partners in the non-government sector. It would also give us a common language to talk to our partner agencies in Disability Services, in the National Disability Insurance Agency, in Corrective Services, in Housing and in other government and non-government agencies.

My second point is that the Public Guardian supports the incorporation into any human rights act the full range of human rights in the Convention on the Rights of Persons with Disabilities. The following fundamental rights are not always enjoyed to the fullest extent by persons with impaired decision-making capacity: the right to legal capacity; the right to life; the right to health care; the right

to liberty and security of the person; or the right to social inclusion. The Guardianship and Administration Act was enacted following deinstitutionalisation for adults with impaired decision-making capacity. It was therefore developed to uphold the rights of these adults living in community based accommodation. However, it only incorporates some of the human rights contained in the UN convention and includes some concepts which are arguably inconsistent with a rights based framework. My third point is that it is imperative that any human rights act apply to decisions and actions not just taken by government but also by service providers funded by the National Disability Insurance Scheme. The National Disability Insurance Scheme is currently being rolled out in Queensland. Its philosophy of choice and control is designed to ensure that its consumers have the same opportunities as the rest of the Australian community, but if this taxpayer funded scheme is not administered according to a rights based framework adults with impaired decision-making capacity may not be able to reap the advantages of this otherwise progressive and desirable social initiative.

My last point is that the Public Guardian supports the unequivocal application of the human rights act to children. Any act should include rights specific to children as recognised in the UN convention given that children have a very different status in the legal system from adults. Under the UN convention, children do not have a right to total autonomy over their lives. However, they do have the right to an active role in the determination of their best interests. In particular, the convention enshrines the right of children to participate in decision making that concerns them, allowing for their voices to be heard and included in court and tribunal hearings. The Office of the Public Guardian is very proud of its visiting and child advocacy programs which help children and young people in the child protection system negotiate their way through a web of laws and processes which are so dense and so complex that the voice of the child at the heart can be lost. A number of human rights in the Convention on the Rights of the Child have been adopted into the Queensland Child Protection Act, but this legislation only applies to children and young people in that system and, even then, the children do not always have their rights upheld in a way which leads to the best outcomes. A wider rights platform for children needs to be recognised in Queensland laws and applied in practice.

In closing, the clients of the Office of the Public Guardian are people who constantly struggle to have their rights recognised and upheld. In our submission we quote from Geoffrey Robertson, who writes that—

> Many of those who argue against a bill of rights think we live in the best of all possible worlds, but they should think again. We live in the best of all geographic locations, but the way we live, the life that we allow our poor, sick and vulnerable to live is far from perfect. If the evidence shows that their lives can be measurably improved by a charter that draws on the best of our history and makes amends for the worst, surely we should embrace it.

Again, I would like to thank the committee for its invitation to me to attend today and I commend the committee on its inquiry on whether it is appropriate and desirable for a human rights act.

Dr Hardy: I am representing the Australian Association of Social Workers, Queensland Branch. I am delighted to be here representing the social work association in Queensland. We are the key professional body representing more than 10,000 social workers throughout Australia. Social work is founded on the principles of social justice, human rights and professional integrity. We aim to enhance the quality of life and support the development of the full potential of each individual, group and community in society through practices that are ethically accountable, professionally competent and transparent.

One of our core commitments is to promote policies, practices and social conditions that uphold human rights that seek to ensure access, equity, participation and legal protection for all. We believe that we are thus uniquely placed to provide a compelling and evidence based perspective on the criticality of human rights in our society. Philosophically, human rights is absolutely imperative to everything that we do and we constantly are faced on a day-to-day basis of working with people whose human rights have not been fully enabled.

The branch is in support of a human rights act, which is why we put forward our submission. We work very hard with our colleagues in Queensland in relation to that. We believe that it provides the legislative protection that is currently lacking to ensure that the Queensland community's basic human rights are upheld. We also believe that it would give Queenslanders an avenue of redress should their rights be breached, to reflect the gravity of human rights transgressions and to ensure that the people of Queensland have access to a full suite of justice options. We believe that it is necessary that the act provides a range of penalties available where human rights have been violated.

Whilst there is some protection afforded to people in Queensland through anti-discrimination legislation and the Australian Constitution, these are limited in scope. We do not believe that they provide the protection of all human rights and are subject to interpretation. Australia is bound by a number of human rights conventions and covenants. However, these are unenforceable at a domestic

level. We have seen that with the current asylum seeker policy, where we have seen the rights of people disregarded and contravened. We also believe that a human rights act will ensure that all rights are included, because currently they are not all covered. We believe that it is imperative to have them all in the one place

The branch is also supportive of an act for its propensity to impact our community through the active promotion of a rights focused culture, which has been discussed earlier. It is the view of the branch that a community that is more cognisant of how its activities impact on human rights will provide a catalyst for achieving a more socially responsible and cohesive community. We also endorse a recommendation that a human rights act in Queensland should bind the Legislative Assembly, the executive and the judiciary equally.

While the act will impact on all Queenslanders, the branch would like to highlight a few groups, as we did so in our submission. In terms of our Aboriginal and Torres Strait Islander peoples, we acknowledge the disadvantages that are often experienced by Aboriginal and Torres Strait Islander people. We are highly committed to reconciliation and advocating for their full protection of human rights. Queensland has failed to protect the human rights of its Indigenous population in a number of ways, both historically and presently. The continued overrepresentation of Aboriginal and Torres Strait Islander people, and particularly women, in our criminal justice system and children in our child protection system is testament of that. Whilst a lot of really great work is being done—and we commend the government on all of the work that is being done—we are still seeing the overrepresentation. The recent statistics from Closing the Gap is testament to that.

With these past transgressions and our commitment to reconciliation in mind, we recommend that a human rights act fully reflect the obligations contained within the United Nations Declaration on the Rights of Indigenous Peoples and provide for self-determination consistent with the UN common understanding of a human rights based approach to a development cooperation framework. We believe that these steps would not only entrench the human rights of Queensland's first nations people in statute but also provide some level of reassurance that past transgressions will not be repeated. Thank you very much for the opportunity to be here today and to participate in this really important process that the Queensland government has embarked upon. Thank you.

CHAIR: Ms Armstrong?

Ms Armstrong: I am the chief executive officer of the Queenslanders with Disability Network and I am sharing this presentation with Colleen Papadopoulos, who is also one of our board members. If I can give a bit of background quickly? The Queenslanders with Disability Network is a statewide network of people with a range of disabilities. We cover people with intellectual, sensory, social, psychosocial disabilities et cetera. We have over 700 members across the state and 500 supporters. The organisation is of, for and by people with disability and only people with disability can be voting members.

We appreciate the opportunity to be able to speak with the committee today. One of the key things that we see in relation to a bill of human rights is the fact that the bill has the potential to reinforce the rights that people with disability have. We are currently in an environment that is rapidly changing. We have the introduction of the National Disability Insurance Scheme across Australia and in Queensland. That scheme talks about economic and social participation and people having choice and control. It is a scheme that is designed to move people from being recipients of services to empowered customers who get to shop and choose services.

However, historically, disability has been seen from a deficit point of view: as an impairment, as something that is wrong, or an illness with a person and the supports that people receive are often viewed from a charitable approach. That has been the history of this industry. We know in the context of the NDIS that that is changing. We know that the NDIS is underpinned by the international convention of rights of people with disability through the United Nations. What we see as absolutely vital to bringing to life those issues that the NDIS underpins—of choice and control, of economic and social participation—is a levelling field, where all people are seen to have the same basic rights. That is a massive cultural change within our society. We strongly support the bill for this reason and for some other issues that I will pass over to Colleen.

Ms Papadopoulos: Making the point of legal capacity to make decisions for oneself is really at the heart of this, because what we are addressing, as people with disability, is the barriers of a social, or a perceptual nature as well as systemic barriers. Paige touched upon this a little bit when she said that quite often it is imbued with an assumption that people cannot make decisions for themselves, cannot have control of their lives, because they are unable to understand those decisions or they have an impaired capacity. While that may well be true, what we have found in practice is that most people,

even those with an intellectual disability, are able to step up to the challenge of understanding what they want and understanding how to make decisions. Sometimes they make mistakes, but so do we all. Being able to allow every single person to make decisions about where they live, with whom they live, how they participate and to be engaged in this society in ways that cultivate them as people of value and as citizens is what we are on about.

We want to see a human rights law and a human rights framework to have access to advocacy and assistance, such as has been talked about before, but be a practical and timely remedy, because most of these problems, most of these breaches, are of a systemic or cultural nature. As in the dialogue of human rights, you have to challenge that assumption and get people to think differently about how they engage the individual who is at the receiving end of the service and allow them to connect with their own lives and make their lives a rich and even ordinary experience. This is what we are after: practical ways to remedy that, not a High Court challenge that would be sitting around for years at a time, but something that could be addressed within three, to four, to six weeks that would solve the problem and then challenge the assumptions under which the problem was committed. Thank you.

CHAIR: Thanks very much. I might start with Dr—

Mr Chesterman: Before you do, can I say as an aside, our understanding—at least mine from the Law Society—is that Mr Potts would briefly explain the society's position and then Mr Rogers and I would speak in respect of the opposing views of the society.

CHAIR: Okay. I will give you a couple of minutes each, because there are a lot of questions from the members. I just do not want to exhaust the time. So please be brief.

Mr Chesterman: I am no longer a judge. I was once. I was on the society's working group by invitation and the group came up with two different opinions. I speak, if I can call it so, for the minority view, which is to oppose the introduction of a human rights act. We put our views as briefly as we could in a paper, which I am sure you have as the society gave it to you, so I will not repeat that. Can I say, having heard what has been said already, that our objection to a human rights act is that it is not the appropriate mechanism to address the problems that I accept are real and have been identified by the previous speakers. A human rights act is too broad and too far reaching in its scope and effect. It may address some of those problems, it may not, but it will have a more profound effect on society that is needed to address those problems.

Can I make two points? The rights that are set out in the Victorian charter, which is taken as the template, are already enshrined in our laws. I take three examples. The first is the right to life. There is a whole chapter in the Criminal Code that deals with homicide. There are other sections that define when lethal force is justified—self-defence, defence of the other, defence of the home and so forth. The code specifies what is murder, what is manslaughter. It separates the two. It provides different penalties. There is a whole plethora of laws dealing with the right to life. To express in general terms that right really takes us nowhere.

Secondly, there is a law in the human rights act of a right against slavery. What threat to our society is there from slavery? Thirdly, there is a right to movement. The Australian Law Reform Commission's working paper on this could not find the origin of that right. It is lost in antiquity. It is just accepted and undoubted. Why do you need a right in a human rights act to move? My point is this: making unnecessary laws brings law-making and the laws into disrepute. There is no respect for laws that are not necessary and it seems such an intrusion on people's lives.

CHAIR: Thank you.

Mr Chesterman: I was going to say something else. I will be as brief as I can. We had two points. One is such an act as a human rights act would be unnecessary. The second is that it would be inappropriate. It is inappropriate we say, because the sorts of rights that are being talked about are political rights; they are not legal rights. This act would convert political rights into legal rights. Political rights are best adjusted and fixed by our political institutions—parliament—and not by part-time members of a tribunal, or even full-time members of a tribunal.

Let me give you an example. There is a right in the Victorian statute for the protection of children. It says that every child has a right to safe protection as its interests require. We all know that putting fluoride in the drinking water is an effective way of reducing dental decay in children. It is a contentious issue. Could there be a suit brought under this section against a local authority, or even a state government, saying that the child's rights have not been protected because it was not given fluoride in the drinking water? Is that the sort of dispute you want resolved by QCAT, or even by a court? Is that not the sort of dispute that should be resolved by society through its representatives in parliament?

What you are doing with a human rights act is, as I say, converting political rights and disputes into legal rights and giving the tribunal member, or the judge, a power to express a personal preference, which no doubt will happen, that then becomes law. We think, for that reason, again, that there should not be a human rights act.

CHAIR: Thank you. Mr Rogers?

Mr Rogers: Thank you. I can be much quicker. The proponents of a human rights act, for which there are many within the society, support a dialogue model. We were pleased to see that a non-entrenched model was being considered and the society recognises the importance of parliamentary supremacy. This reform would not stop the pursuit of good policy by politicians elected to do that. It is simply about creating a conversation around the impact of rights, both at the point of laws being introduced, at the point of service delivery and, in a very limited scope, in the form of judicial interpretation.

The reform is not new and I would urge you not to view it with scepticism or fear that something disastrous would occur if it was introduced. No-one is suggesting that this state be the guinea pig for legislative protection of human rights. It has occurred in various jurisdictions and there is a reason for that and there is a reason why it has not been repealed in jurisdictions where it is an act of parliament and it could very easily have been repealed.

There is, in my submission, no need to reinvent the wheel. There is a great model that exists in other jurisdictions. There are lessons to be learned and I urge the comments by Professor Williams and Associate Professor Harris-Rimmer who were a part of the society's working group and are leading academics and have a lot to offer in this field. I was pleased to see that the New Zealand Attorney-General spoke to you and his point clearly was that this was not an impediment to pursuing good governance or good policy, it was a measure to ensure that consideration was given to the impact of rights at the point of new laws being considered. For those reasons I would urge you to consider this as a useful reform for all members of Queensland. Thank you.

CHAIR: I was interested in the submission from the QLS about different views. I found it quite interesting reading. You touched on, for the proponents of a human rights act, the gaps and, in fact, remedying the current gaps. I think you were in the room earlier this morning when I put to the first panel the situation of an Aboriginal man seeking to get a residence up in Cairns who was denied that as a result of being identified, in his view, as an Aboriginal man. Is that the type of situation you believe will be fixed and is that the type of gap in our society that presently exists?

Mr Rogers: We were fortunate to have a member of our group who is a principal lawyer at the Anti-Discrimination Commission and she provided an annexure to our submission that identified all of the gaps that we saw, but most of those gaps were in the sense of legal remedies. A human rights act can offer more than a remedy, it can offer a proactive approach to the consideration of rights at the point that a law is being considered so there is not a need to pursue remedies at a later point. That is where the real benefit lies. The example of the person in Townsville is a good one. Another member of our group was James Farrell who is the current president of the Queensland Association for Independent Legal Services but has worked for the Homeless Persons Legal Clinic in Victoria. He wrote, and this is included in our submission, that the charter has had a really clear and positive impact on the delivery of public services and the operation of public authorities for persons suffering homelessness. He gave the example of persons who need to contact public service providers are able to express their case for housing with a framework, and the framework is a rights based one which can inform that conversation and assure the person is treated with respect and dignity.

CHAIR: How do you prevent that discrimination from reoccurring, however?

Mr Rogers: It is not a silver bullet. It has been said in the last panel that it is just another part of the armoury of good government that can ensure that rights are protected as much as possible having regard to the public purse and all other competing considerations which inevitably arise when competing rights come into play.

CHAIR: You also go to the Young report and indicate that remedies should be introduced on an incremental basis following the Victorian lessons. What do you mean by that statement?

Mr Rogers: We support the idea of reviews. Obviously the reviews that have occurred in Victoria have identified lessons which place this committee in a strong position to pick up those lessons if a model is being considered. The idea of a remedy should not be interpreted as a desire for damages. In the majority of cases, which you will hear from experts in this field, persons are seeking a change in their life, whether it is an extra shower a day if they are suffering a disability, they are not seeking money. The cases in Victoria show that the pursuit of damages is just not sought, it is actual change in people's lives.

CHAIR: I can concur with that. In some of the very few cases I dealt with in a previous career before the Anti-Discrimination Commission, in many cases people just wanted an apology rather than some recompense for the injustice they were dealt. Dr Schoubroeck, you made comment quite rightly in your opening statement about the stigma in terms of mental illness in our society. My electorate covers many Defence housing areas and I have got to know over time a number of people who suffer from PTSD. I think that is an increasing level of mental illness in our society as people return from conflict zones. In my view they become locked in their homes, they have no place to go and in many cases it is their spouse who has to go out and seek help. How will the human rights act bring about a different set of standards and assistance for those types of people who are suffering from PTSD?

Dr Schoubroeck: I think when you read the reviews of Victoria and the ACT, it is very much that the bill can actually look at legislation but it can change culture and it actually makes people start from the perspective, as others have said, of 'people have a right to'. Obviously an externally imposed right cannot help a person come out, but if they know that at least the government structures that they come up with take you from a point of acceptance as opposed to a point of rejection they are more likely to come out. You are right, there is no point in having a piece of legislation that does not get implemented and does not change culture, but it would be encouragement. It is not going to affect the person, but it will affect the way in which society treats them so they are more likely to, and their spouses who try to bring them out, be coming to a more welcoming environment. It is not going to be easy, it is not going to fix it all. Stigma is a very multipronged approach.

CHAIR: I guess it becomes more complex if, for argument's sake, we end up with a human rights act in Queensland, when you are dealing with a specific case such as someone in Defence that is covered by Commonwealth legislation and going through the process of being retired medically unwell and how that conflicts with those sorts of matters in respect to Commonwealth legislation as opposed to a basic human right for assistance through a Queensland piece of legislation.

Dr Schoubroeck: That is the challenge that Australia has. Trying to get Commonwealth and state to have everything harmonised is a great ambition. The mental health laws show that. There has been an intent to harmonise the mental health laws for many years. They have not done it. They start to come together over time, but I think not to do something because you will be in conflict with the Commonwealth—with daylight saving we wouldn't get out of bed in the morning. You can work towards those things. If the principles are the same, they are consistent with the international obligations which the Commonwealth signs up to, then I think you can make slow and steady progress.

CHAIR: Member for Coomera?

Mr CRANDON: I see that Mr Chesterman was interested in your answers. Would you like to comment on what has just been covered?

Mr Chesterman: I am not as familiar with those topics as they are, but it seems to me that if there is a problem with discrimination, if the legislation does not, in fact, protect a black man who wants to rent or buy a house in Cairns, then amend the Discrimination Act. If the Mental Health Act is deficient in some way in looking after patient rights, amend the Mental Health Act. You don't need an overarching and overlay of human rights, many of which are clearly inappropriate, like the right to life which is already clearly protected by our laws; and the right to movement which is so well established you don't need an act to ensconce that. I would say address the particular problems by reference to the particular statutes that deal with that area.

Mr CRANDON: In your submission you talk about offering extra safeguards and protections for people experiencing compromised mental health. I am not sure that we have drawn that out yet. Where are these extra safeguards and protections that you are talking about?

Dr Schoubroeck: Having only been in Queensland for three years I am definitely not full bottle on everything that happens, but if I can use an example of when the Mental Health Bill went through parliament, there was significant debate about the oversight of people detained against their will. In terms of international conventions, there is a general expectation that if you are detained against your will there will be some external oversight. The external oversight that has been embedded in the legislation is an independent patient rights adviser that the minister has said he will review in two years. What is a standard for an independent patient rights adviser? This is a person employed by the hospital and health service. My view, as I have said to everybody, is you are not independent of your employer. When you are looking at something like the mental health legislation or legislation that looks at tenancies, for instance, for homeless people, there are some standards that will help a parliament, because you have a lot of legislation, you cannot read it all—I doubt that you can read it all. There will be some fundamental things that are given: how does this stack up in terms of some of those larger questions that you need to answer. That is how I see it picking up some of these very specific examples.

Mr CRANDON: Ms Duffy, in relation to your submission you talk about strengthening the rights framework for the Public Guardian's decisions with regards children and young people in care and vulnerable adults with impaired decision-making capacity. Are you suggesting that you are challenged often in your role? Do you lose often? Are you challenged often and do you lose often, because you are inferring that that is occurring. I thought you were pretty powerful.

Ms Duffy: Thank you. The decision-making as such is mainly in the sphere of adults with impaired decision-making capacity. Where we come in is we are a substitute decision-maker for those people. There is a presumption of capacity. If we get appointed by QCAT as a guardian we make decisions for people who otherwise cannot make decisions for themselves. There were references to the old charitable idea of people with disabilities or children as objects of pity. We have moved past that in Queensland, but there are vestiges. We stand in their shoes and we consider what their will and preferences might be. The act does say 'best interest', but really knowing this person's background, if they have an acquired brain injury for instance, what sort of thing would they have decided. Even though they have impaired capacity what are they voicing? If they are voicing opposition we need to hear that, we need to talk to their relatives and supporters. We make decisions on accommodation, on healthcare, soon on mental health issues under the Mental Health Act, we also instruct lawyers in criminal matters on their behalf because a lot of these people are criminalised because of their difficult behaviours. There are challenges there. I think we talked a lot about people's ability to make decisions for themselves ensuring their autonomy—one of my colleagues did—and we abide by that, but sometimes their autonomy might compete with someone else's autonomy: two parents with disabilities in the child protection system; someone might be in prison who will be trying to get out on bail but have they got accommodation that will suit and cater for their very complex behaviours? The sorts of decisions that my officers make are very complex and there are competing rights which need to be considered. It is not a simple 'my right over yours' or which is the best right on the day. We do have complex decisions with a lot of service providers. We might get Housing, Queensland Health and Disability Services in the same room trying to negotiate.

Mr CRANDON: Coming back to the question, are you challenged often and do you lose often? I am just going from your submission to us. The inference is that you are challenged and defeated, that there is a weakness there somewhere, and I am just looking for the weakness that is causing you to make those statements in your submission?

Ms Duffy: Without wishing to sound cagey, I suppose we are trying to put our position not in terms of win and lose; that rights are not in situations of win and lose. We get suboptimal outcomes for some of our clients due to the lack of resources, the lack of availability, the lack of rights and the funding pressures to get people out of hospitals, to get people in and out of prisons.

Mr CRANDON: Dr Hardy, you used Indigenous people in our prison system as an example through your testimony today. It reflects on something that I became aware of by looking at our prison system, both here and in other parts of Australia and New Zealand and, in fact, other parts of the world. In fact, I spent a little bit of time looking carefully at New Zealand. We know that New Zealand has a human rights act. In New Zealand, 15 per cent of the population is Maori and 52 per cent of the prison population is Maori. A significantly small percentage of the New Zealand population is Pacific Islander, but they are a significantly large percentage, in the order of about 15 per cent, of the prison population. Taking that as an example of what a human rights act fixes or does not fix, why would it be applicable to Queensland? How do you justify what you said, given what has happened and is happening in New Zealand?

Dr Hardy: I cannot comment on the New Zealand experience, because I am not au fait with that. As Dan said earlier, it is not a silver bullet. I guess the real goal here is about a cultural shift that talks about human rights as being absolutely fundamental. We know and the experiences are that some people's human rights are not considered to be as important as others. We have some that are lesser than: people who live with a cognitive disability, women, children, Indigenous Australians, refugees, asylum seekers. There are people who are lesser than. A human rights act is about us having an equal level playing field that says that people's rights are all important.

The other point that Dan made earlier was around consideration of rights to be considered at the point of policy making. I think that is absolutely essential, because if we put human rights front and centre, I guess it gives them permission to be able to treat all people equally and to ensure that we can address some of those other issues that require a policy response. Currently, the policy responses are limited by the fact that we still do not consider everyone to be equal. That is how I would say it.

It is not a silver bullet. It will not happen like that. We have a long way to go. However, it is about a cultural shift, as well. I am not an expert on Indigenous issues in Australia, but the overrepresentation of children in our child protection system, of young people in our youth justice system, of women and men who are incarcerated in Australia and in Queensland is testament that we have a real problem here.

Mr CRANDON: Have you made a comparison between jurisdictions? In the things that you have just talked about there, have you made a comparison between jurisdictions that have a human rights act in place and Queensland, which does not have one? Have you looked at the two and said that, in fact, there is a significant difference in the way people are treated and the representation of children—I think you said—in protection circumstances? Have you made those comparisons?

Let us we make the comparison that I picked on a moment ago because I had a particular knowledge of it. You talked about the Aboriginal and Torres Strait Islander overrepresentation in our prisons, and that is absolutely correct and we have to work on that. It is also the case in a jurisdiction—and it is a fact and I am happy to provide some statistics on that. I have been there. I have listened—

Mr BROWN: Chair, I rise a point of order. Obviously the preamble is one thing and I know we have a limited amount of time. The other thing is that, if we are quoting facts now, I would ask the member to table those, if he can.

CHAIR: In terms of time, we are going to go through to 1 o'clock. This will be the member's last question. Please get to your question.

Mr CRANDON: Just before you said that, I said that I will bring the information to the committee. That was my example, because I knew of it. My question is: have you made a comparison between what you are stating is a deficiency in Queensland and jurisdictions that have human rights acts in place and is there a difference?

Dr Hardy: I have not. I do not have that information with me to be able to give you that information, no.

CHAIR: Thank you, Dr Hardy.

Ms PEASE: Dan, what do you think a human rights act might look like? Would it be general or would it be very specific?

Mr Rogers: I think the Victorian model is a great starting point and the International Covenant on Civil and Political Rights is a starting point. There have been recommendations in Victoria and the ACT that some social and economic rights could be incrementally included, but as a starting point the ICCPR rights would be a start. The dialogue model clearly works best. You heard earlier this morning that the UK is considering adopting the Victorian dialogue model, because it ensures that parliamentary supremacy remains a paramount feature and that the scope for judicial interpretation is extremely limited such that the ordinary and plain meaning of a statute must be interpreted by judges. They can have regard to human rights jurisprudence, but with that primary focus still being on the statute.

I would certainly recommend the Victorian model. The Young review gives some good lessons. Professor Williams's submission to your committee provides three good recommendations in terms of improving that Victorian model. I certainly feel that the bones of this draft bill are before you. It is just a question of whether or not it will be recommended.

Ms PEASE: Dan, this might be outside the scope, but given that everyone here today has been discussing that a human rights act would bring about a cultural change, would you agree that that is what is required?

Mr Rogers: I think so. I am here in my capacity with the Law Society, but I am also the secretary of the Caxton Legal Centre and I deal with marginalised groups all the time. I hold a strong view—I am not speaking on behalf of the centre—that those marginalised persons who have the most interaction with government services will benefit greatly from a human rights culture in which there is greater respect and dignity and for members of parliament conveying that to the electorate should be an easy task. Professor Harris-Rimmer gave a great example to your question this morning, in terms of how you would actually articulate it. It is just about being treated with greater respect, fairness and dignity. It is not about the legal remedies. The fact that 60 per cent of Australians do not realise that there is no bill of rights is a basis in itself to consider seriously actually introducing what people think is already in existence, and 90 per cent of people are in support of it. Therefore, I urge it.

Ms PEASE: Ms Duffy, you spoke specifically about the cultural change. How do you imagine we can bring that about? If a human rights act did come in, how do you bring about cultural change?

Ms Duffy: In my time in government, QCAT was established as a tribunal. I was in a jurisdiction where merit review was introduced for the first time. I could see a huge cultural change when that happened, in terms of government decision-makers really thinking about why they are making a decision, how it is being made and what it will look like when someone in the community—in a court, but from the community—sees that decision in the *Courier-Mail* or wherever and thinks about it. How will I justify it?

As someone said, people do not have to always ask for remedy, go to court or apply for a judicial review or merit review. As long as they know it is there, that imbeds a culture of decision-making in government that is very important. We have a lot of low-level decision-makers making these decisions who do not necessarily think about complexities and human rights. As soon as those sorts of review mechanisms and accountability mechanisms are there, I think it really affects the way that people look at themselves as bureaucrats and as government decision-makers, really impacting on people's lives. They are not friends with those people; they are bureaucrats impacting on them. It is very important that we do that in the most respectful way we can.

Ms PEASE: Mr Chesterman, would you like to comment on cultural change? Do you see that there is a problem with the way that we deal with human rights culturally in Queensland?

Mr Chesterman: My response is a philosophical one. Laws are enacted for the regulation of society, for the peaceful and good government of that society. It is a misuse of the law-making process to pass laws to promote respect between citizens or to change the culture of a society. That is done by leadership; it is not done by enacting laws. I think it is a misuse of the law-making process. That is my fundamental point.

Mr MANDER: Mr Potts, would you care to comment on Mr Chesterman's comments earlier when he talked about a human rights charter simply turning political rights into legal rights?

Mr Potts: The Law Society, which I represent as the president, stands for evidence based law. This committee has an evidence base in the sense that we have other models that you have seen at work and you have heard and seen reports surrounding that. I accept, certainly being a very lawyer-like person, both arguments in the sense that the political often finds its way into legal rights or to law. It is simply natural.

However, we are not here to legislate, with respect to many of the people here, about hurt feels. I am not trying to trivialise it by saying that. If an act is going to be passed, it must be something that will give a practical concrete betterment of laws for those who are most vulnerable. To simply talk about rights without remedies is, I suspect, also a misnomer. Whilst an apology might be something that is sought, it is still not a remedy. Money is clearly a remedy of this sort or a judgement that will prevent those types of decisions being made again, if you have a right.

The simple position is this: law often does change culture and it does so by either presenting punishments or results that may occur if people break a law. It has a secondary feature in that it reminds lawmakers of their obligations. To that end, this governments has the Legislative Standards Act 1992, which it can in fact breach itself provided there are reasons. It is a standard to which this parliament is supposed to have regard when it legislates. Therefore, there is a cultural change that has been in existence. I suppose it is up to this committee and this parliament to decide whether that cultural change has been effective down the years.

To answer the question more simply, it is literally both. You should not legislate to achieve nothing more than a statement of motherhood being good. It has to be something practical if it is to be done. It has to be something that has results, but those results may be measured over a substantial period by cultural change and by legal change. However, the simple point—and I hope I do not misspeak for the former justice, Mr Chesterman—but this parliament has to look very carefully at the models and decide whether this is something that, in fact, will achieve a concrete and measurable change, either of culture or of law, for our Queensland people.

Mr MANDER: Is your argument that targeted legislation is not as effective as a broad framework from which to begin from?

Mr Potts: Again, I do not speak on behalf of Judge Chesterman; he can speak for himself. His point, as I apprehend it, is that this parliament can, if it sees deficits in legislation, legislate for it and to strengthen it. If the Adult Guardian sees some failure, to take up the point of the member for Coomera, then that can be brought to the attention of parliament and legislation can be brought in to remedy that.

The two proponents is for targeted legislation to deal with issues that parties have raised, whether it is discrimination—we have discrimination legislation for that—or racism, which falls within the same. Guardianship, to a very large degree, falls before QCAT for its resolution. Quite simply, the

balancing argument is that what informs all of that legislative framework is a statement of human rights by which other legislation and decisions by courts can be measured in a way that is consistent across the whole gamut of managing public behaviour and expectations. I am not sure if that answers your question.

Mr MANDER: It does. I understand that. I am not trying to be cute with this question; it is a very pragmatic question. I was the former housing minister and one of the issues often raised was peace for neighbours and so on. It is a real issue. The housing department may take a resident to QCAT. Under a human rights charter what does the QCAT adjudicator do with regard to the competing rights—the right to shelter and the right to privacy? How do they determine which right has supremacy in that particular case? I do not know whether that question is too general. What criteria would they use when there are competing rights?

Mr Potts: Can I refer your question to Dan. You may or may not know that I am a humble criminal lawyer. I know Dan is too. Competing rights are always a difficulty. QCAT is a jurisdiction which is burdened with a massive amount of legislation. Before I throw to Dan, can I say that, quite frankly, I do have concerns when unelected people—which is essentially the members and senior members of QCAT, however well meaning and however well experienced and qualified—are telling the parliament what the human rights are and the primacy of one over the other. I suspect the exercise of the judicial discretion is always a fraught matter. It would be a very difficult task for this parliament to legislate to balance what are often very diverse and competing inferences and matters. I will throw to Dan on that.

Mr Rogers: I can answer that fairly quickly. If I were the QCAT member the starting point would be the specific matter in relation to housing. It is not my area of law, but whatever that says in terms of the considerations and guidelines for the resolution of the dispute is the focus. From there, the objects and purpose of that legislation become a secondary focus in informing that specific question.

The question of the competing rights between privacy and safety and security as against housing is really at the fringe. I do not think it would be necessary for it to become a focus in terms of the resolution of the dispute. There certainly could be some development over time of jurisprudence where judges make reference to those things in terms of informing the debate around the core legislation, but it is not a focus and it is not a starting point, and it should not be. That is not what a human rights act would achieve.

Mr MANDER: It does not limit the adjudicator's, the referee's or the judge's right to discern—

Mr Rogers: The adjudicator would have to follow the clear and ordinary language of that statute. The limited role for judicial interpretation would only become necessary if it were unable to be resolved in the ordinary sense. These are situations that arise all the time, as you say. It would not change in any fundamental way.

Mr Potts: I was going to say to the member for Everton that the only person in this room who has judicial experience is the person seated to my left. Perhaps he may be able to assist you in that question.

Mr Chesterman: The situation you describe is not one of conflicting rights if you use rights in any jurisprudential sense. It is a conflict between competing interests—the interests of the person to have a house and the interest of the neighbours not to be disturbed or worse. A human rights act that says to treat people decently is not going to afford any guidance at all to the tribunal member who has to decide whether that disruptive tenant stays in the house or is put somewhere else. There is no guidance in such broadly expressed legislation. It attempts to convert what are conflicting social or political interests into legal rights, which they are not.

Mr BROWN: My question is to Mr Chesterman and Mr Rogers. Victoria is held up as the model for human rights acts. It is easy enough to go back and see that we have had the review. The review was in 2011. Some 35 recommendations were made. Under a conservative government not one of those were followed through or amendment made. We saw the election of a progressive government in 2014. It instituted an independent review. There are now 52 recommendations. The recommendations will be reviewed and enacted. The right of Indigenous self-determination has been put on the backburner in Victoria and other places for 10 years when it could have been enacted by a progressive government.

Mr Chesterman: I am not quite sure what the question is.

Mr BROWN: What I am getting at is that a human rights act is an inflexible instrument to bring about change in rights. The example is that it has taken 200 years and a progressive government to maybe—we still do not know yet—accept those recommendations.

Mr Chesterman: My point remains that if there are specific problems in society they should be addressed by specific acts of parliament or other measures. A human rights act which, as you say, is broad, inflexible and general does not address particular problems. Particular problems need particular remedies.

Mr Rogers: I think your point is a good illustration of the time the political machinery can take to implement reforms, regardless of who is in government and the need for there to be reviews where changes are being sought to a fundamental piece of legislation. Committees such as yours consider a whole range of different types of legislation. Often it is very discrete. This is very different to that. It is for that reason that the Law Society created a working group committee to specifically respond to this committee. I think it is going to take time and any changes are going to be incrementally and slowly transitioned. Yes, it is unfortunate that the changes that were recommended did not occur sooner, but because of the significance of those changes it is inevitably going to take time.

Mr Potts: The ox is slow but the earth is patient. The other thing that the committee has to understand—and I am sure it obviously does—is that not every problem has a solution that can be solved by parliament or by legislation. There are some problems, often which are wicked and intractable, which are simply not able to be resolved no matter how much goodwill we as a people may have.

Mr KRAUSE: My question is to the three gentleman on the end, but others may like to contribute as well. A lot of what I heard from this panel and earlier panels this morning is about a desire to create a greater dialogue and discussion about people's rights within a human rights framework. I also hear concerns from Justice Chesterman and other contributors about the derogation of the power of parliament and the shifting of decision-making about what can be very opaque decisions to the judiciary.

My question is: is it not entirely possible that this dialogue that is being sought could be constructed through executive government this day and the same outcomes that you are all talking about in terms of greater respect for human rights and better outcomes in different spheres could be achieved through implementation of greater dialogue on these matters through executive government without getting the judiciary involved and keeping it within the ambit of the legislature and the executive?

Mr Chesterman: I would say yes.

Mr Rogers: I am conscious we have occupied a lot of time. Does anyone wish to add anything?

Dr van Schoubroeck: I think the dialogue is absolutely important. Just having this debate is important. It depends how you do it. Just going back to the housing example, I recall when the changes to the tenancy act were being made and I was making a submission. Had we had a human rights framework or some other thing it would have assisted the committee and certainly would have assisted people writing their submissions to have that guidance for that legislation in terms of where you define some of those competing interests. Housing tenancy is an intractable problem. It would have guided that process. You would have ended up with more consistency across government in terms of those sorts of issues. I think it does that. The dialogue is within the legislature and you make those laws. It informs it at that level.

Mr KRAUSE: Mr Rogers, I would be keen for you to have a few words.

Mr Rogers: This fear of judges striking down laws and assuming power that the separation of powers says they should not is not one that has been realised in other jurisdictions. You need to just look at Victoria in terms of the small amount of litigation that is either directly or indirectly referred to the act to see that the courts actually play a very limited role in the use of a human rights act. Justice Weinberg spoke to the committee and made the comment that if anything it is under-utilised.

In terms of the second part of your question, which was that there are other ways to create that dialogue, my view is that a human rights act more effectively enforces that that dialogue will actually occur. For example, if a new bill is introduced, there is a mandatory, say, 60 days that it gets referred to a committee so that there is a proper amount of time for debate and consideration to be had around the impact of rights.

Mr KRAUSE: I can tell you Mr Rogers that we would like 60 days sometimes.

Mr Rogers: I am sure you would—and not one. Those kinds of enforced criteria or processes just ensure that there is an opportunity for organisations, like the many that have written to you, to contribute to the debate and to make you aware of the impact of new laws. That does not occur if there is not a mandatory requirement. Government is busy. If government does not have sufficient time then there is a risk it just will not occur.

Mr KRAUSE: That somewhat answers my question in the affirmative.

Ms Armstrong: We deal with people with disability but also people with disability who are most marginalised, often people with dual intellectual and psychosocial disability, and people who are often marginalised and homeless. I suppose what we see with a bill of rights is that it actually reinforces the need for these people to be front and centre of discussions about their life. They interact and deal with numerous government agencies, other community groups, other community organisations et cetera. Often the discussion is around them at the individual level. It is about what they will get at a service level. When it comes to their active engagement in system level issues that change policy and legislation they are absent from the debate. They are often not seen as core and central to what needs to happen.

We strongly believe that a bill that reinforces the need for that active dialogue makes people sit up and think how we do this and reinforces the need to actually start from that basis. The closest example we could give you is the adoption of the Australian charter of healthcare rights that has been adopted in Australia. That has been adopted in a voluntary sense. One of the standards around consumer engagement has led to better engagement, especially in hospitals, with people as patients at the individual, at the service and at the system level.

We would like to see a bill that actually goes further and promotes engagement at the broader level. If it does not have a rights base unfortunately what we see is that, despite all the legislation that is in place, we are often at meetings with various government agencies and community organisations where either the person is absent or if they are part of the conversation they are sitting there as a token person in the room.

CHAIR: Before we close, the member for Coomera has a matter he wishes to correct.

Mr CRANDON: I just want to correct the record with regard to some statistics. I stated as fact that, according to the 2013 census at stats.govt.nz, 15 per cent of the population identifies with Maori ethnicity and according to the Department of Corrections at corrections.govt.nz, the ethnicity of prisoners is 51 per cent Maori. I did say 52 per cent, so I apologise and correct the record. I am happy to provide the web pages to the secretariat.

CHAIR: I thank all panel members for your attendance here today and for your submissions. The committee will now break for lunch until two o'clock.

Proceedings suspended from 1.00 pm to 2.00 pm

ALEXANDER, Ms Matilda, Lesbian, Gay, Bisexual, Trans, Intersex Legal Service Inc.

BROWN, Mr Simon, Endeavour Foundation

COCKS, Mr Kevin, Anti-Discrimination Commissioner, Queensland

McVEIGH, Ms Aimee, A Human Rights Act for Queensland Campaign

SHAH, Mr Kamil, Queensland Council of Social Service

CHAIR: Good afternoon. I declare open the last stage of the session today with representatives from organisations providing valuable services to people in Queensland. Thank you for attending today and thank you for the submissions that you have provided to the committee. We will allow—and I will put the clock on—a five-minute opening statement from each of you and then we will move to questions from committee members. I will give you a bit of a warning when we reach 4½ minutes. We might start with you, Mr Cocks.

Mr Cocks: Thank you very much, Chair and committee, for providing an opportunity for me, on behalf of the Anti-Discrimination Commission, to put forward a case why Queenslanders need a human rights act. My credentials for appearing today extend beyond my role as Anti-Discrimination Commissioner to my 35-year lived experience with disability and my 27 years as an advocate for people with disabilities, whose vulnerability is heightened because of the structural discrimination and stereotypes and belief systems that promote the reality that people with disabilities are conditional right-bearers and primarily deserving only of charity. Firstly, I can say from my personal lived experience that the rights I took for granted in my first 21 years were quickly eroded when I acquired my disability.

I have noticed that there has been much focus in the debate on the belief that as a fact our current common law protects people's human rights. Well, let me dispel that myth. Neither the common law nor anti-discrimination law fully protects, respects and fulfils human rights. It is very rare that legal advocates raise human rights in court cases, and it appears even rarer that courts consider the human rights that Australia is a signatory to. I will provide some examples of how both common law and anti-discrimination law falls short. I will draw upon a case study of domestic violence in England.

A woman and her children were fleeing domestic violence. The woman's husband was attempting to track the family down. Each time he discovered their whereabouts the family moved to a different area. The family eventually arrived in London and were referred to the social services department. Social workers told the mother she was an unfit parent and that by moving she had made the family intentionally homeless. They therefore told her that she was not eligible for housing and that her children would be placed into foster care. An advocate helped the mother challenge this claim using the English Human Rights Act. They argued that social services were not properly considering the rights of the woman and her children with respect to family life as protected by article 8 of the act. Under this right, social services need to consider the rights of the woman and her children and take actions where necessary and proportionate. As a result, the family were reunited and social services had to provide a bond once she found a private rental. If this scenario were to occur in Queensland, the woman would not be eligible to make a complaint under the Anti-Discrimination Act and it would not apply. If DV were an attribute under our act it might be indirect discrimination if the requirement not to move around was reasonable, but it is not likely to be direct discrimination because it is not less favourable treatment compared to someone who is moving around who did not have the DV attribute.

A Queensland citizen with physical disabilities who is incontinent and deemed to be deserving of only two showers per week: how could the common law protect this person's human right to be treated with dignity and not live a life that was degrading and inhumane? Many people with severe disabilities go into hospitals with very treatable conditions, yet they are automatically on a pathway to palliative care. This is a right to life. How does the criminal law and common law protect that right to life? An elderly couple married for over 50 years who have only spent a few nights apart in that time were not allowed to remain together in a nursing home. How could the common law protect their human right to family life?

A human rights act would provide a more accessible avenue for citizens to challenge decisions or service delivery that they feel denied them their basic human rights. It would provide clarity about what is meant by 'human rights', how they are to be applied in the context of the many facets of a citizen's life and to provide cultural change over time in the provision of government services by government agencies or their agents.

Ms McVeigh: I would like to begin by acknowledging the traditional owners of the land that we are meeting on and to pay my respects to their elders past and present.

Thank you so much for the opportunity to come here and talk to you today about the potential for a human rights act for Queensland. I would like to begin by addressing some of the things that have been said this morning. We have heard evidence from people who say that our current laws and government systems provide ample protection for citizens' human rights. We even heard Professor Jim Allan tell us that the main benefit that would be derived from human rights legislation would be for lawyers and academics like himself, who would then have an opportunity to write more papers and books.

When considering what weight to give to this evidence, I urge the committee to really think about what the purpose of human rights is. The purpose of human rights is to make sure that everyone in our community has the opportunity to live a life characterised by freedom, respect, equality and dignity, so when we are thinking about the evidence that should be given the greatest weight my view is that we should be looking to the people who do not have lives characterised by freedom, respect, equality and dignity. The committee has received hundreds of submissions from the community and from organisations who represent vulnerable people within our community that advocate for them and represent them, and those submissions overwhelmingly identify gaps in our law and in our current government systems and strongly support the introduction of a human rights act.

Human rights legislation at the heart is really about the relationship between the government and the people. A human rights act is part of the government's contract with the community. People give power to the government, and in return parliament requires the government to treat people fairly by acting compatibly with the rights that are set out in the act, with the aim of ensuring that our society provides every opportunity for all people to live lives characterised by freedom, respect, equality and dignity. Because human rights legislation is intended to guide and influence public administration, it should both persuade government agencies to perform duties consistent with human rights and provide real consequences when they have failed to do so.

When you look at the information that has been provided to the committee by members of the general public, it is clear that people are seeking a human rights act because they have experienced human rights issues and they feel there is no way to rectify these issues. They want to be able to go to a place where they can have these issues resolved. For example, for a disabled person who does not have access to a shower a day or a shower curtain or access to their own mail, the remedy that they are seeking is access to their mail, a shower curtain or adequate showers.

Existing protections of human rights in Queensland do not give ordinary Queenslanders the opportunity to understand and seek protection of their rights. They offer piecemeal protections that are not clearly articulated, are not comprehensive and are very difficult for ordinary people to access. I wanted to highlight a few of the similarities that are emerging from the submissions that have been made by organisations endorsing the campaign for a human rights act for Queensland. Those organisations are obviously seeking the introduction of a human rights act but with the following characteristics: meaningful and effective scrutiny of bills and subordinate legislation; a requirement that courts interpret and apply laws in a manner most compatible with human rights; a requirement that the decisions of public authorities be compatible with human rights; an accessible stand-alone avenue for redress for individuals whose rights have been violated, including access to remedies; and a human rights commission incorporating the current Anti-Discrimination Commission with functions to actively promote, protect and fulfil human rights; receive, filter and resolve complaints; provide training and leadership; and initiate investigations and report on systemic human rights issues.

In terms of the human rights to be protected, I would just like to highlight the submissions that have been made to the committee by the Aboriginal and Torres Strait Islander people and organisations that represent them; in particular, the call on the Queensland government to protect the right to self-determination. In saying that, I wanted to respond quickly to Mr Crandon's comments before about the overrepresentation of Indigenous people in prisons and a comparison with New Zealand. I encourage the committee not to take a superficial approach when looking at those statistics. We need to look at which rights were actually protected in that legislation. Was the Declaration on the Rights of Indigenous People incorporated? How were those rights operationalised at a policy level? I would like to draw your attention to the submission made by the Aboriginal and Torres Strait Islander Legal Service, which has some suggestions around operationalising human rights standards through the Change the Record campaign, which is underpinned by human rights standards.

Mr Shah: I would like to begin by congratulating the government for undergoing this process to place human rights and the principles and values which underpin them—participation, inclusion, respect, dignity, fairness, equality, non-discrimination and social justice—at the centre of our state's institutions of governance and engagement with the people of Queensland. Such principles resonate clearly with QCOSS's own work and are widely practised throughout community service organisations in Queensland.

The Queensland Council of Social Service regards the potential of a human rights act for Queensland to be of great benefit to all Queenslanders, for nobody really knows when or how they might become vulnerable. Properly crafted and implemented, it has the potential to foster a widespread culture of rights and respect for the dignity of all people within government community service organisations and the wider community. It should also compel parliament to consider the most effective policies and legislation so as to also protect individuals from having their rights abused by public authorities or third parties, and it should entail an obligation to provide for an environment conducive to the realisation of the rights named in the act.

In addition to these aspirational goals, a human rights act for Queensland ought to provide all people in Queensland with an appropriate instrument to ensure their rights are upheld including, we would expect, an avenue for people to seek effective remedies for human rights violations. The question of which human rights are to be enshrined is of course fundamental to understanding the potential impact of a human rights act for individuals, families and communities in Queensland. In line with legislation in Victoria and the Australian Capital Territory, QCOSS regards the respect, protection and promotion of civil and political rights as fundamental to a human rights act for Queensland; however, QCOSS also emphasises the importance of a broader range of rights—in particular, the rights enshrined in the International Covenant on Economic, Social and Cultural Rights—for taking positive action to ensure the enjoyment of basic human rights by all in Queensland.

As an organisation focused on the elimination of poverty and disadvantage in our communities, QCOSS is well aware that for too many people in our communities securing the basic necessities of life—an adequate standard of living, education, health care, income, employment and social ties—is of primary concern and is a prerequisite to the enjoyment of any other human rights. Indeed, it is the view of QCOSS that civil and political rights and economic, social and cultural rights are indivisible. Moreover, economic, social and cultural rights would seem to be particularly applicable to state governments, whose primary role is in service delivery.

QCOSS cautions that articulation of general universal human rights should not entail exclusion of the collective and cultural rights of Aboriginal people through exclusive focus on individual rights. QCOSS is keenly aware that exclusion is a key driver of disadvantage. As those who have historically suffered the greatest deprivation of rights in Australia, it is imperative that any human rights act for Queensland must be responsive to collective aspects of the rights of Aboriginal people and encompass recognition of Indigenous difference. We also support the explicit inclusion of a right to self-determination for Aboriginal and Torres Strait Islander people in a human rights act for Queensland. Importantly, inclusion of such a right and discussion over the scope of that right could offer an important tool for promoting dialogue as well as relationship building.

Let me also make just a few comments on what QCOSS believes will be some of the necessary actions to bring a human rights act for Queensland to life and to properly embed it in the life of the community. Government agencies and public authorities must work to build human rights frameworks and considerations into all of their key documents and strategic plans. Moreover, reporting on human rights and the progress made in embedding human rights throughout organisational structures should become standard practice. This should include periodic review, especially with regard to key portfolios, of whether a contemporary policy and program design and KPIs of senior officers reflect the principles underpinning human rights legislation.

Of course, successful operational organisation of a human rights act will require that the public is informed and educated in their rights. Important to this, resources and training should be devoted specifically to ensuring that vulnerable groups understand their rights and mechanisms available to ensure those rights are protected. The service sector would also have particular expectations of the government. Service organisations' shift to rights based practices would entail significant investment in participatory processes in order to promote human rights in the community, and the expectation would be that that shift would be substantively supported and reflected in KPIs, access to data and resources.

We applaud the government's effort in undertaking this process. It is an undertaking that has the potential to greatly benefit all Queenslanders and we look forward to working together with the government and the people of Queensland to bring such an act as is being discussed to life to make sure that the act is inclusive of all and that it is implemented in such a way that its potential can be fully realised.

Mr Brown: Thank you for the opportunity to contribute to the inquiry into a human rights act for Queensland. The Endeavour Foundation commends the committee for its work in examining this important issue that has a direct impact on all Queenslanders. However, of particular interest to the people Endeavour Foundation supports, whether they be carers, clients or family members, is the economic and social disadvantages that are often associated with disability. In a democratic society, the focus is often on the interests of the majority. The rights of minorities are often overlooked and can be infringed.

As highlighted in our submission and in a number of submissions that have been presented to the committee, Endeavour Foundation believes that a statutory based system for human rights would be a positive initiative. However, the continued development of human rights cannot solely rest on legislative means. Other measures may need to be incorporated to provide a robust human rights culture in Queensland and this may include, for example, leadership by government and the development of a consistent vision that highlights the importance of a human rights framework and legislation. Education is another key area. There needs to be awareness in terms of raising and providing information and training to enable all government officers or those people providing a public service on behalf of government or funded services in order to engage with the provisions under any human rights act or charter.

With regard to accountability, we need to be able to enforce these rights. Enforcement and review would allow the development of a culture that actively promotes human rights within the state. This could extend the current mechanisms that are already in place as well as provide the community with clear avenues in order to remedy breaches which may appear under an act or a charter. Again, Endeavour Foundation thanks the committee for the invitation this afternoon and I am happy to answer any questions as the committee sees fit.

Ms Alexander: I have a masters degree in human rights and am the president of the LGBTI Legal Service. Firstly I want to acknowledge the traditional owners of the land and particularly acknowledge the long history of LGBTI Indigenous people prior to colonisation and the role that contemporary Indigenous groups such as gar'ban'djee'lum, 2Spirits and Indigelez play in the ongoing struggle for equality in human rights. The Yogyakarta principles were introduced in 2007 in recognition that the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent. There are 29 principles, each containing about five different commitments. The opening principle reads—

All human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

I believe this statement to be true and I believe this statement to be important. I want this statement to be reflected in my life, in my society and in my interactions with government. If I am denied human rights because of my sexuality, I want to understand the reasoning behind this denial and to access a remedy where appropriate.

Do we already have sufficient human rights protections in Queensland? Certainly not to the extent provided in the Yogyakarta principles. The right to privacy in principle 6 protects the right to choose when, to whom and how to disclose information about sexual orientation and gender identity and protects against arbitrary threats of disclosure. We have no such coming-out law in Queensland. The LGBTI Legal Service has seen many clients who are struggling with domestic violence. LGBTI people experience DV at the same rate as heterosexual people but face a lack of research, a lack of support services and reduced visibility. The traditional gendered nature of family and domestic violence can hide and sometimes stigmatise domestic violence in our community. The Yogyakarta principles require domestic violence social and support programs to address sex orientation and gender identity.

Some of the ICCPR rights to non-discrimination have been reflected in our discrimination law, but there are exceptions which have never been adequately explained and continue to cause ongoing resentment in our community. For example, there are exemptions to the Anti-Discrimination Act that specifically target LGBTI Queenslanders. At its commencement, section 28 allowed discrimination for work involving children where that discrimination was based on a person's lawful sexual activity which, until 2002, was intended to cover gays and lesbians. In 2002 the effective changes to this act meant that lesbians and gays became free to work with children without discrimination, but discrimination

against trans and intersex people was actually added to section 28 and remains there today. Ironically, the explanatory notes to these changes say that the reforms increased human rights of gay and lesbian people. They do not address the reason trans and intersex people were added to section 28 and this reflects a lack of the understanding of the universal nature of human rights. A reference to the Yogyakarta principles would have assisted legislators in that instance, as the principles state that states shall—

Take all necessary ... measures to eliminate ... discrimination on the basis of sexual orientation and gender identity in public and private employment ...

Discrimination is still rife in our community and up to one-third of the advice that we provide at the centre is on this topic. Similarly in 2002, section 45A of the Anti-Discrimination Act was added to allow discrimination in the provision of assisted reproductive technology services on the basis of relationship status and sexuality. Again, a reference to the principles would have assisted legislators and the LGBTI community. A human rights act would have required legislators to address and explain expressly the infringement on the right to the highest standard of attainable health without discrimination on the basis of sexuality.

The absence of a human rights act does not stop governments from doing good things that advance human rights. In the last six months four substantial matters have been advanced—gay panic, expunging homosexual criminal histories, civil unions, the age of consent and also trans people in custody. All of these are provided for in the Yogyakarta principles and are welcomed but, for example, principle 5, The Right to Security of the Person, requires gay panic be removed but also that homophobic violence be vigorously investigated and awareness campaigns be instituted to combat homophobia. This reflects the trilogy of obligations to respect, protect and fulfil human rights. A human rights act will bring about human rights in a comprehensive rather than a piecemeal way and will ensure no-one is left behind. It will ensure cultural change on a legislative, departmental, policy and grassroots level. It will provide a framework for accountable and principled government that has been tried and tested throughout the world and in other Australian jurisdictions. It will provide a framework for LGBTI people and for all Queenslanders.

CHAIR: Thank you. Mr Cocks, I might start with you first. I have been consistent today with each panel on a line of questioning about anti-discrimination, in particular race. I refer to a particular gentleman who appeared before the committee in Townsville, an Aboriginal man, who alleges he was discriminated against on the basis of his race when he sought residence in an establishment in Cairns and was given more or less the understanding that everything was fine until he produced ID. I must say, I always held the belief that in particular the Queensland Anti-Discrimination Commission is a very useful avenue for resolution of discriminatory matters, and certainly in my experience in several cases in a previous career I have always been successful in getting resolution not before the courts but before conciliation. It has been put to the committee: why do we not just enhance pieces of common law legislation to fix that sort of issue that I just presented to you rather than produce a human rights act? I would be willing to hear your view on that particular point.

Mr Cocks: Thank you, Mr Chair. Yes, undoubtedly that situation is covered by the Anti-Discrimination Act—not easily, because you do have to have evidence of the reason for not getting the accommodation, but there have been successful cases brought before us and through conciliation. It is not only the Anti-Discrimination Act but the RDA, which was brought into legislation in 1975, which also covers those sorts of things.

The fact that it is still happening demonstrates the limitations of anti-discrimination legislation, and the work that a human rights act can do I believe is a better tool for raising an awareness over time. It is not going to be a panacea or a silver bullet to magic cultural change in the next few years, but over time I think cultural change will be generated because of a human rights act. I have heard a number of people talk about where conversations or dialogue can happen, and I think that is what a human rights act does—that is, it sets up that framework for dialogue and conversation, whether it is in a formal sense or an informal sense, where we can go to one place to point to what are the rights. Particularly when it comes to Aboriginal and Torres Strait Islander peoples here in Queensland, we know there has been systemic and structural discrimination over time, and that is commonly held within individuals but also within organisations, whether they be private or government. I think one of the real issues of the limitations of the anti-discrimination legislation is that it is a regressive or reactive act whereas a human rights act places positive obligations on all aspects of society to start to engage in change.

CHAIR: Thank you. Mr Brown, I note in your submission at recommendation 3 you say that a human rights act should cover residents not in Queensland. Can you elaborate on that? What is your intention there?

Mr Brown: Whether or not there is a service that was provided—I will give you an example. Under the NDIS at the moment, even though it is not operational in Queensland, we are providing services because someone has moved interstate. In that regard, state legislation has applied to them. It is whether or not the rights for Queenslanders are transferable if they are doing work in other states, whether for a government authority doing work or as a private citizen doing work on behalf of a funded agency in Queensland—so whether those rights can be transferable, or are carried with them with their work.

CHAIR: Thank you. Ms Alexander, in your submission you provide an example of access to superannuation and death benefits. Certainly when I was in federal parliament we addressed the majority of issues concerning matters associated with that. Is that not the case? There is still discrimination on the basis of LGBTI people gaining access to superannuation benefits?

Ms Alexander: This was looking at a state level. It is from Victoria. This case study, even though it is from 2006, I still think is quite illustrative, because it shows that the remedy that was achieved was when this elderly woman and her advocate wrote to the human rights unit at the department of justice and advocated for a change. It was not some big court case that came through. It is an example of cultural change and people being aware of their rights and being able to have a framework under which they can articulate them and create change.

CHAIR: Thank you.

Mr CRANDON: Just taking that up, I was in the financial planning industry until coming into this place. A huge amount of change has occurred. It was not about Victoria; it was about the whole of the country to ensure that there is some balance. I am pleased that the chair brought that up. Ms McVeigh, you made a point a short while ago in relation to my question. It was simply a question: what is the difference between the two? It would seem that people talk about a human rights act that is going to make things better for people, but no-one has brought anything to us, as far as I am aware, that shows in this country where there is a human rights act in place—and has been in place for some considerable time—and comparing its track record to Queensland, or Australia for that matter and saying, 'That is the difference.'

The specifics of the question related to, okay, I know these numbers from New Zealand, I know the numbers from Queensland and in fact other parts of Australia. Where is the evidence that, because it had been specifically referred to by the person who was giving evidence—talking about prisoners and so forth—there is a difference in New Zealand, as the example, because there is a human rights act in place? That is where I was going with that. The fundamental question in my mind is—and this is the one that I am trying to draw out: will a human rights act really make a difference or is it just that people believe that it might make a difference? I have been in this place for seven years and in seven years I have seen a whole raft of legislation come through. You have just quite rightly pointed out that even in more recent times there have been huge leaps forward in bringing equality. I would invite Mr Cocks—or anyone—to elaborate on my concerns. Where is the evidence that it makes a difference?

Ms McVeigh: Okay, sure. I am happy to respond to that.

Mr CRANDON: Thank you.

Ms McVeigh: First of all, in relation to where is the evidence, I know that in many of the submissions that you have received there are countless case studies that show the benefits from other jurisdictions. The Caxton Legal Centre's submission and the submission on behalf of the Queensland Association of Independent Legal Services provide many examples of the benefits. In our own submission, the annexures contain fact sheets that we put in that showcase examples from jurisdictions that have human rights legislation that show clear benefits to individuals. Another submission that contains some really clear evidence is the submission made by the Mamre Association, a disability service provider. In one of their annexures they have taken examples from their work with people with disabilities and they have found situations exactly the same in other jurisdictions where there has been a different outcome and they identified which right was the right that caused that change. In answer to that question, I think the submissions that have been provided to you provide many case examples.

Mr CRANDON: Individual cases, but I am talking about cohorts. I am talking about the cohort of Aboriginal and Torres Strait Islander people in our prisons relative to our population as opposed to Maori and Pacific Islander people in New Zealand's prisons as a cohort, rather than individuals.

Ms McVeigh: Do you want to talk about that specific example?

Mr CRANDON: No. We were talking in that previous session—and the reason I am talking about this is you brought it up—

Ms McVeigh: Yes.

Mr CRANDON: We were talking about cohorts—not individuals but cohorts of people: 'It would be better for this cohort of people,' and in one example it was children. Where is the evidence that a cohort—and I am looking forward to hearing from you—

Ms McVeigh: I think those comments that were made were about, 'Here are some clear examples of human rights issues that exist in Queensland,' not necessarily just in relation to cohorts. As I have said, there are clear benefits to individuals where there is plenty of evidence of cultural change within government in both the ACT and Victoria. I am not really sure what other benefits you could be looking for when we have both cultural change and outcomes for individuals.

CHAIR: Mr Cocks, did you want to comment on that question?

Mr Cocks: Yes, I will refer back to discrimination law. Before 1991 in Queensland, there was no protection against discrimination for anybody. In 1992, the Disability Discrimination Act was enlivened. Since then we have had a lot of structural changes. For instance, the convention centre—I took the case against the Queensland government—proved that the Australian Building Codes were discriminatory. Therefore, that allowed the Building Codes to be changed. Still today, if you wanted to invite me to your house for dinner, could you?

Mr CRANDON: Could I—sorry, in my house?

Mr Cocks: Yes.

Mr CRANDON: No, my house would not lend itself.

Mr Cocks: No, because in 99 per cent of houses I am still being excluded. Over time through discrimination law—and I am just using my personal experience—for people with disability as a cohort, there have been changes. Again, it has been in the negative. It has required an individual to take an action, a complaint, and there are limitations to that, whereas with a human rights act we have seen in Canada and other places they take more positive obligations. Once a decision has been made, you do not even need to get to perhaps the Anti-Discrimination Commission for a conciliation, or to QCAT for a decision, because the government agency realises that they have to comply to a specific right, whether that is access, or treating a person humanely, or allowing a person to live in the community in the place that they choose with whom they choose to live and who provides a service, which is article 19 of the CRPD. Where there are human rights acts existing, there have been advantages for cohorts.

My expertise is in disability. When we come to look at Aboriginal and Torres Strait Islander people, we are looking at over 200 years of structural exclusion and discrimination. It is going to take probably 200 years to get real equality. Where it will have an impact is in starting to build a basis of trust. Whether it is in the criminal justice system, for instance, it may be allowing cultural traditional practices to happen and allowing prisoners to participate as part of their rehabilitation in the community in doing cultural traditional dances and welcomes to country. It is about affirming their identity as valued citizens, not as second-class citizens. That is where I think the potential for a human rights act in Queensland provides for the beginning of breaking down some of those destructive relationships and institutional cultural practices that we have had that have positioned Aboriginal people to be treated as second-class citizens in Queensland and Australia.

Mr CRANDON: Just on that, it already occurs in our prison system.

Mr Cocks: But it is not uniform.

Mr CRANDON: It already occurs is the point that I am making. We are moving down the road. I understand what you are saying, though.

Ms PEASE: Mr Cocks, correct me if I am wrong, but in your opening statement you discussed that the current laws, the common law and the antidiscrimination law, do not necessarily give you protections. Could you perhaps give us some examples of where that might be the case?

Mr Cocks: For instance, as I said, there is a saying in the disability world—and within the broader society—that you are better off dead than disabled. There are many people who are denied health treatments under the guise of palliative care for very treatable conditions. You cannot make a complaint to the antidiscrimination law, because there is no comparator. Common law is not going to protect that person's right to life. That is just one small example.

I highlighted the domestic violence case in England, but there are a number of examples that really are about dignity and the humane treatment of people. When you have government agencies, or agents of government, which we are talking about a lot in this state, we are talking about service delivery. They have power. Vulnerable people do not have power. It is an unequal engagement between those who provide those services and make the decisions about what you get, when you get it and how you get it. There is a very unequal power imbalance and a human rights act will start to restore some of that disempowerment.

Ms PEASE: There was discussion earlier—and anyone might like to answer this question—that those human rights are political rights rather than legal rights. What would your position be on that comment?

Mr Cocks: Sorry?

Ms PEASE: There has been discussion that the right to have a greater value are political rights rather than legal rights.

Mr Cocks: Human rights are couched in the terms of civil and political rights, economic, social and cultural rights. Unfortunately, when those covenants were developed they were separated. As we know, civil and political rights are immediately realisable and in Australia we have many of those. It is in the economic, social and cultural rights, which are progressive rights, that often cover the areas of human services that we engage.

As I think one of my colleagues on the table said, human rights are indivisible and I think we need to keep them in that context of a human rights framework because it explains what it means civilly, it explains what it means politically and it explains it economically, socially and culturally—how they apply to you as a citizen across the many facets of our lives—whereas legal rights under the law I think are also interrelated. I am not a lawyer, so the lawyers on the panel might be able to answer that a bit better than me, but these are just stating your rights in the context as you go about your everyday life.

Ms Alexander: I have a reply to that as well. For years the LGBTI community has been in the position where our loves and our bodies have been considered moral issues, ethical issues or political issues and the human rights framework takes it out of that sphere and gives us back the ownership and the control of those issues.

Mr MANDER: You might have just answered my question. I just wanted a broad statement first. What I am trying to get a handle on is the difference between the human rights framework and the antidiscrimination framework and trying to work out where the gaps are. Mr Cocks, your explanation is very helpful with regard to a different framework—a positive framework versus a negative framework. That is quite helpful, but I am still trying to work out these gaps. You partially answered it then, I think, Ms Alexander. Particularly in the LGBTI community, where are the gaps still that are not being covered by antidiscrimination legislation that you think a human rights charter would pick up on?

Ms Alexander: There was a very comprehensive report produced by the federal human rights commission that looked at all the issues that LGBTI people are facing in Australia at the moment. It is very comprehensive and it addresses many of the gaps that are still there. Some gaps are addressed by antidiscrimination laws, but there are those exemptions that I talked about and there will always be some kind of exemption when we are talking about a moral based system rather than a human rights based decision-making system when you make exemptions to acts of who can be in and who cannot be in in a particular circumstance.

I think there are gaps in the discrimination law but also there is a raft of other different laws in terms of guardianship, domestic violence—a whole lot of other areas of law where there are gaps that human rights will pick up. A human rights act will comprehensively pick up a lot of pieces from a lot of different areas. Discrimination law is only targeted at stopping discrimination on the basis of certain attributes in certain places.

Mr MANDER: Is it a reasonable argument to say that if a human rights charter were in existence 30 years ago in Queensland a lot of the issues in the LGBTI community would not have been picked up at that time because of the community standards and different viewpoints? Is a human rights charter not similar to antidiscrimination legislation where it is an evolving process as people's viewpoints widen and are enlightened and so on and so forth? Aren't we still going to have that problem with the human rights charter that we are going to have to continue to update it just the way that we do with the antidiscrimination laws the keep up to date with general community standards?

Ms Alexander: Yes, and to that extent human rights documents are referred to as living instruments because they can reflect current standards. Certainly if the Yogyakarta principles had been in place 30 years ago and they had been some kind of binding or influential decision-making tool we would not have had the kinds of decisions that we are now having to reverse. I think the fact that human rights can change and reflect contemporary times is one of the strengths of a human rights act. It gives us a framework other than our own morality or other than political will, which can vary a lot. It gives us something that we can rely on to make good and principled decision-making.

Mr Brown: To add to Matilda's comments, it does provide, as we have seen in the UK and in Victoria, a framework for development of policy and legislation where maybe previously we have not had to consider that as a human rights question. We have broken it down to separate issues. If you

have a human rights act that is mandatory, policymakers in government have to consider in each piece of legislation, or amendment to legislation, that increased consideration of human rights. In Victoria and the UK they have noted an improvement in public service delivery and design by virtue of having that. I think that is the added benefit as well as, as I think everyone has said, that cultural mind-think.

Mr BROWN: The Victorian model still has an overriding provision that allows parliament to declare if their act applies. I am guessing that there is still a political fight on discrimination on a number of issues down there because of this provision. Are you stating in your evidence that if Queensland were going ahead with the model there would be no overriding provision?

Ms Alexander: I assume the provision you are talking about is the provision that says that exceptions to rights must be lawful, necessary and proportionate. That is a fairly standard test in international human rights documents as well as in domestic ones. Is the change that you are proposing going to be explicit in law and if so has it been through the parliamentary scrutiny process with a human rights lens on? Is that exception necessary, as in is there a legitimate aim—the right to free speech versus vilification on the grounds of sexuality, for example—and is it proportionate to that aim? That is the kind of test. That test to me makes a lot of sense and it reflects the fact that there are sometimes competing aims and perspectives and it just gives us a good way of phrasing and articulating that debate.

Mr KRAUSE: Ms McVeigh, I understand that you have had a fair bit to do with the A Human Rights Act for Queensland campaign. The proposal here is for a non-entrenched statutory form of a human rights act or bill of rights for Queensland. Have you ever advocated or supported a type of constitutionally entrenched model of human rights?

Ms McVeigh: No. Thank you for the question. Right from the beginning of the campaign, when organisations came together in response to the commitment that was given by the Palaszczuk government in those letters of exchange between the Palaszczuk government and Wellington, the first thing that was agreed upon is that no-one was seeking a constitutionally entrenched model.

Mr KRAUSE: Have you yourself ever supported that type of set-up?

Ms McVeigh: No, I have not.

Mr KRAUSE: Would you prefer it to be entrenched?

Ms McVeigh: No, I would not.

Mr KRAUSE: I look at some of the examples on the back of your submission, submission 470, and note that some of the examples given, in my view, could have been resolved or deliberated upon within the realm of existing law in Queensland—and resolved well. In particular I refer to the one about the young girl protected from giving evidence and non-discrimination in schools. I wanted to ask you a question about the example given about right to housing in Victoria. One of the things that we all struggle with in government, in particular in public housing, is having enough public housing for everyone. Indeed, I think there are about 20,000 families in Queensland waiting for public housing.

Under the charter in Victoria the example says that, in terms of the right to a family life under the charter—I do not quite have that wording right but it is something like that—a family right was relied upon by the Victorian Civil and Administrative Tribunal to overturn a decision of a department to have that premises vacated. It does not say here but I assume they would have been doing that in order to provide another family with access to that public housing. That is something we deal with all the time in government. We have the former housing minister sitting next to me. I am sure he would have dealt with that quite often. How do you think the two rights—the right of one family to have access to public housing when they are in need and the right indicated in the Victorian charter—are being balanced upon each other and why is it that an administrative tribunal should be making that decision and not the government, who are the providers of that public housing and are the ones who have ultimate responsibility for providing that housing?

Ms McVeigh: Which case example are you talking about?

Mr KRAUSE: The right to housing.

Ms McVeigh: There are a few case studies.

Mr KRAUSE: It is the second-last page. A young lady who is 23 years old who is a guardian of her siblings. It is a general question using that as an example.

Ms McVeigh: It is not an example of competing rights; it is an example of the decision-maker, in this case the Department of Housing, making a decision to evict this family. She was challenging that decision on the basis that the decision-maker did not consider her rights in the decision-making process. If that decision-maker was able to say, 'Yes, we did consider your right to family; however,

this is the justification for limiting that right,' then that decision would have been legitimate. Clearly in this case, when the tribunal has looked at it they have seen that the department did not follow the legislation and therefore did not consider the person's right to housing—and it is not the right to housing; it is the right to family—when making that decision. That is what the case turns on: did the public authority consider the rights in their decision-making process and, if they chose to limit the right, can they justify it?

Mr KRAUSE: A failure of administrative process only?

Ms McVeigh: That is what the case is about.

Mr KRAUSE: How do you contend that decision-makers should weigh up the rights of other families to have access to that housing when other people have failed to pay their public rent?

Ms McVeigh: I am not aware of any case where a particular decision is made to evict one family because another family needs that particular house.

Mr KRAUSE: I am not saying that that was the basis for the decision being made, but governments always face pressure to house people who are in need of public housing and we set out policies for how housing is going to be made available, one of which relates to the payment of rent. Why is it that VCAT and not the government is the one making a decision about whether that policy should be complied with and how, which deprives someone else of the opportunity to be housed?

Ms McVeigh: I guess the government made the decision to introduce human rights legislation that says that public authorities need to consider human rights in their decision-making processes and in this case the public authority failed to do that.

Mr KRAUSE: I understand that, but we are talking about in the Queensland context and the possibility of it being introduced in the Queensland context.

Ms McVeigh: Sure. My answer would be the same.

CHAIR: I thank everyone for their attendance here today and also for your submissions. That concludes this hearing. We thank you for your evidence here today. Thank you to the Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course once approved by the committee.

The committee is to report to parliament by 30 June 2016. I now declare the public hearing for the committee's inquiry into a human rights act for Queensland closed. Thank you.

Committee adjourned at 2.58 pm