LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP
Mr JJ McDonald MP
Mrs MF McMahon MP
Ms CP McMillan MP

Staff present:

Ms R Easten (Committee Secretary)
Ms K Longworth (Assistant Committee Secretary)
Ms M Salisbury (Assistant Committee Secretary)
Mr G Thomson (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE HUMAN RIGHTS BILL 2018

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 4 DECEMBER 2018

Brisbane

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The committee met at 10.00 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Human Rights Bill 2018. My name is Peter Russo. I am the member for Toohey and chair of the committee. With me here today are: James Lister MP, the member for Southern Downs and deputy chair; Stephen Andrew MP, the member for Mirani; Jim McDonald MP, the member for Lockyer; Melissa McMahon MP, the member for Macalister; and Corrine McMillan MP, the member for Mansfield.

On 31 October 2018 the Attorney-General and Minister for Justice, the Hon. Yvette D'Ath MP, introduced the Human Rights Bill 2018 into the parliament. The parliament referred the bill to the committee for examination, with a reporting date of 4 February 2019. The purpose of today is to hear evidence from stakeholders as part of the committee's inquiry. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence.

These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that under the standing orders the public may be admitted to, or excluded from, the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. 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 by the media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode.

The program for today has been published on the committee's web page and there are hard copies available from committee staff. If any questions are taken on notice, responses will be required by 12 December 2018 so that we can include them in our deliberations.

BALL, Ms Julie, Principal Lawyer, Anti-Discrimination Commission Queensland

HOLMES, Ms Neroli, Deputy Commissioner, Anti-Discrimination Commission Queensland

McDOUGALL, Mr Scott, Commissioner, Anti-Discrimination Commission Queensland

CHAIR: I invite you to make a brief opening statement, after which committee members may have some questions for you.

Mr McDougall: Good morning, committee. The commission has provided a written submission in support of the bill. As expressed in its preamble and main objects, the bill represents a profound development in the Queensland government's recognition of the essential role of human rights in a democratic and inclusive society that respects the rule of law. Through its objects the bill aims to protect and promote human rights, to help build a culture in the Queensland public sector that respects and promotes human rights and to help promote a dialogue about the nature, meaning and scope of human rights.

Under the bill, the commission will become the Queensland Human Rights Commission with responsibility for the performance of several additional functions, including: conciliation of human rights complaints; providing information about human rights to the community; providing education; preparing reports under various provisions of the bill; conducting reviews of policies and procedures; and assisting the Attorney-General in the review of the operation of the act.

In practical terms, the real value of the Human Rights Bill lies in clause 13, which provides for the relevant factors to establish whether a limitation on a human right is reasonable and able to be justified in a free and democratic society. The combined effect of clauses 13 and 58 is to require public entities to apply what is described as a proportionality test—in particular, to give proper consideration to a human right relevant to a decision and to weigh up the various factors, including whether there are

any less restrictive and reasonably available ways to achieve the purpose of limitation. These are the key operative provisions—the human rights culture builders, if you will—that will lead to improved decision-making by the executive arm of government.

In the commission's view, the bill establishes a version of the dialogue model that represents an improvement upon the Victorian and ACT human rights legislation. However, the commission considers that not all of the lessons learned from the Victorian and ACT experience have been incorporated into the bill. In particular, the commission is concerned that clause 59, which is closely modelled on section 39 of the Victorian charter, will unnecessarily and unduly restrict access to the Queensland Supreme Court, which stands to play an important role in the development of a high-quality human rights jurisprudence in Queensland.

That jurisprudence will be important in establishing the nature and scope of particular human rights and in providing guidance to public entities about how to act and make decisions that are compatible with human rights in the context of Queensland's prevailing contemporary standards. The commission has recommended amendments that would provide for a direct cause of action to the Supreme Court for a breach of clause 58 and by clarifying that a breach of clause 58 would fall within the 'otherwise contrary to law' ground for review under the Judicial Review Act 1991.

Finally, there are resource implications for the commission in performing the new functions and for public entities in educating and training staff on the obligation to give proper consideration to relevant human rights. In light of this, it would be appropriate that resourcing be included as a term of reference in the statutory reviews referred to in clauses 95 and 96.

CHAIR: Thank you, Mr McDougall. We will move to questions.

Mr LISTER: You just mentioned that you anticipate there will be a need for additional resources in order to play your part in the new landscape should this bill be passed. Have you a rough idea what additional resourcing requirements you foresee?

Mr McDougall: As you would be aware, there has been an initial allocation by the CBRC for the commission. They are continuing discussions through official channels as to whether Queensland will follow Victoria in establishing a human rights unit within the department of justice. As those discussions unfold the commission will have a clearer idea of the resource demands on it. No-one knows how many complaints the commission is likely to receive under this new jurisdiction. Queensland is leading the way in Australia in adopting a complaints process. It is uncertain the number of complaints the commission will receive. We will use the resources we have to implement our functions under the act as best we can.

Mrs McMAHON: As part of your submission you express some concern about the positioning of non-state schools and the definition of 'public entity'. You say that it should include all education authorities. Are you able to comment or provide further clarification on what issues or concerns this raises, from your point of view?

Mr McDougall: The explanatory notes do not have any justification for the effective exclusion of private schools from the operation of the act. That was the point we were making. There is a big question mark as to whether or not those private schools are providing a function for the state, which is the criteria that is set out in the act. I think there is an arguable case for the inclusion of private schools, definitely.

Mr McDONALD: I am a little perplexed with regard to this legislation. Every bill that goes through Queensland goes through the filter of fundamental legal principles, including human rights. I see this as another level of decision-making. I would look forward to you convincing me of the need for this. Perhaps you could outline the number of matters you deal with now that are not resolved and may have to go to this area or perhaps you could provide some other justification.

Mr McDougall: There are two separate limbs there. Firstly, with regard to the parliamentary process in Queensland I point out that in Queensland in years past we had the scrutiny of legislation committee looking at legislation and applying the fundamental legal principles. To some extent that offered a degree of protection of human rights in Queensland. However, it was very limited, to be frank. There was not a proper articulation of the human rights that were protected.

This bill will properly articulate those rights by listing them and provide an opportunity at the earliest possible stages of the drafting of legislation to meaningfully identify human rights that are going to be impacted by legislation and to take them into account and consider alternative ways of achieving the same purpose without impinging those rights. It is going to be an improved process at the parliamentary level.

The second point you made was complaints about the commission. In terms of the actual figures I would defer to my colleagues. The commission is on track to receive a thousand complaints this financial year under the Anti-Discrimination Act functions. Importantly, the human rights act will apply and be available to all people in Queensland, not just those who have a relevant attribute under section 7 of the act.

As I said earlier, we have no way of knowing exactly how many complaints we can expect under this jurisdiction. We have done an assessment of complaints that were found to be outside of the Anti-Discrimination Act jurisdiction in the last 12 months and found that only a handful of those would neatly fit within a human rights jurisdiction. Other than that, we do not have any clear indication of the level of complaints that we would expect to receive.

Ms Holmes: The complaints we receive every year we have to assess under the act. We do not accept every complaint because it may not come under the Anti-Discrimination Act. About 65 per cent of the complaints that come in are accepted. In terms of the conciliation rate—it varies from year to year, as does the acceptance rate—at the moment about 55 per cent of the complaints we accept are resolved within the commission.

Under the current Anti-Discrimination Act, the ones that are not resolved sometimes will be withdrawn or sometimes will go off to either QCAT or QIRC for a dispute resolution possess. Very few of them actually go to final hearing. If they go to QIRC or QCAT, they do get resolved. The complaint process is only contained within the commission in the bill that has been drafted. We would expect to be conciliating quite a number of those, because we have a very skilled complaints-handling team. We think that will be a successful way of resolving many of the issues that come before the commission.

Mr McDONALD: Do you know the number of those that are withdrawn and those that end up in dispute resolution?

Ms Holmes: I would not have the figures immediately on hand. If that is something the committee is interested in though—

Mr McDONALD: I would be interested.

Ms Holmes: From the Anti-Discrimination Commission's point of view, we can give you those figures. As to what happens at QCAT and QIRC, it is not always easy to obtain that information. Because they deal with so many other matters, not just anti-discrimination matters, when you try to drill down to find out the resolution rates and the withdrawal rates of our particular anti-discrimination matters, it is not always a figure that is readily ascertainable. We can certainly tell you about the commission's figures.

CHAIR: Unlike the Victorian charter, the bill includes a dispute resolution process for complaints that a public entity has contravened. Are you able to provide the committee with an overview of how the complaints conciliation process will work in practice for the commission?

Mr McDougall: Yes. The manager of our complaints section is in the process of developing a new process to deal with complaints under the new jurisdiction. Because there is a requirement that a complainant make their complaint to an internal agency before coming to the commission—although there is a proviso that the commission can receive a complaint in exceptional circumstances—we will be engaging with various agencies in the coming months about arrangements about referral of complaints and so forth.

We anticipate making adjustments to our existing complaint procedures. Given the factors that are referred to in the limitations clause—clause 13—those issues are going to be matters that will obviously come up in the course of the conciliation. One of the big issues will be looking at the scope of the particular right that has been engaged. There will be a requirement in some circumstances to look to the United Nations general comments and then international jurisprudence on those particular rights to determine the scope. Those issues would be fed into the conciliation so that it is an informed discussion within the conciliation.

The commission, I should say, has a very strong track record in efficiently dealing with complaints such that I think there is only one complaint a year that goes outside of what would be considered an acceptable range of time. We would certainly be wanting to maintain that record with human rights complaints and deal with them as quickly and as efficiently as possible. It is obviously very important that the complaint process works so that there is public confidence in the human rights regime in Queensland.

Ms McMILLAN: Thank you to each of you. The Palaszczuk government very much appreciates the work you have done. From your experience, are you able to provide some practical examples of how the human rights act may assist the people you represent?

Mr McDougall: In the course of my career, before I came to the commission I worked for a long time in the community legal service sector and I would have come across literally hundreds, if not thousands, of clients who could have benefited from a human rights act in Queensland. Obviously I am not at liberty to discuss those particular cases and nor is the commission at liberty to talk about the complaints that come before it. Neroli will talk about some case studies from other jurisdictions.

I think the important thing to remember when we are looking at the reasons we need to go to the trouble of introducing a human rights act in Queensland is that the existing protections in the Anti-Discrimination Act are limited to those people who happen to have the attributes in section 7—I think age is the only one that would apply to every person in Queensland—whereas a human rights act will apply to every single person. I think it is important that that is recognised—that it is extending the scope of protections to everybody in Queensland. I will let my colleagues address the particular question.

Ms Holmes: There are many cases that the people behind me will be able to speak to you about this morning. I will give you just a couple of case studies that we have been using in explaining how the legislation is a little different from the Anti-Discrimination Act. A case study from the UK involved a woman and her children who were fleeing from domestic violence. The woman's husband was attempting to track the family down and every time he discovered where they were they had to move to a different area. They were obviously quite frightened of being discovered by the perpetrator of the violence. They finally arrived in London and the social worker said that the mum, because of her constant moving, was an unfit parent and that she really should have the children removed from her care because she was making the family intentionally homeless. They said she was not eligible for housing and they intended to place her children in foster care.

Using the Human Rights Act that they have Britain, which has many of the same clauses that this proposed bill has in Queensland, they argued that social services had not properly considered the right of the woman and her children to respect for family life—one of the very important rights under this bill that we think is going to be a very well used right—which is protected by an article in their act. Under this right, social services needed to consider the rights of the woman and her children to take actions which are necessary and proportionate. As a result, the family were told they could remain together and that the department would assist them to find stable and secure accommodation so she could provide that stable family life.

If this scenario were to occur in Queensland before the introduction of this human rights act, if it comes in, for the woman to make a complaint under the Anti-Discrimination Act she would have to show that she was treated less favourably than someone else in similar circumstances on the basis of one of the 16 attributes that are covered in our act. The likely ones might be sex, parental status, relationship status et cetera. The circumstances as outlined in that scenario really do not come properly under our Anti-Discrimination Act. It would be a stretch for the commission to accept that complaint to say she has been discriminated against on the basis of her sex or parental status or relationship status, but it clearly will fall under this human rights act.

They are the sorts of cases that we think will be assisted. The Anti-Discrimination Act has been fantastic. We do think it is still a very good act in Queensland. It has done a lot of heavy work over the 25 years that it has been in place, but it does not cover every scenario where people's rights are being maybe abused or not thought about. I do not think social services were intending to breach that woman's human rights or the children's human rights, but they just had not considered it from that perspective. We know from so much of our work that it is so much better if you can to keep families together, to keep kids with their mums and to provide a stable and secure home for them. That is where this act worked very effectively.

Another case study from Victoria is where a man became homeless after his partner died. His house was repossessed. He spent a period moving between shelters, crisis accommodation and short stays with friends. He was finally accepted into transitional housing which was designed to help him into longer term housing—a good outcome for him. Upon moving in, the man was provided with a 120-day eviction notice—right from the word go—effectively creating a probation period for his tenancy. He was advised by the housing workers that this was the way to ensure he could be evicted if necessary. He had not done anything wrong yet, but they wanted to anticipate that something might go wrong and had already served the eviction notice. This was really unsettling to the man, who was seeking stability and certainty and who had not yet moved into the accommodation, let alone done anything wrong that would warrant eviction. The Victorian Charter of Human Rights and Responsibilities provides the right to privacy and reputation which prevents a person's home being unlawfully or arbitrarily interfered with. It was successfully argued using that right that the eviction notice was arbitrary—it was not based on anything he had done—and the notice was revoked.

These are very small actions. They are not substantial from the point of view of the state, but for the person who is involved with that particular activity these are very significant things to help people live a life that is dignified, to keep families together and to keep their privacy and self-respect. If that scenario were to occur in Queensland before the human rights act, for that man to make a complaint he would have to show that he was treated less favourably than someone else in similar circumstances on the basis of one of the attributes. His sex really does not come into it. His relationship status does not come into it. It was not apparent that he had a disability and that was not the reason he was getting the eviction notice. It really would not have come under the Anti-Discrimination Act, but he was a very disadvantaged person who was trying to improve his life circumstances and being assisted to do that. Again, it was a thoughtless action by the housing provider, not really thinking through all the issues about human rights before they put that eviction notice on him.

These are the sorts of cases that we anticipate we might get and that will be able to be dealt with relatively easily through a conciliation process to come to a good resolution, both for the person who feels that their rights may have been breached and for the service provider to provide a more thoughtful and better service to these people in Queensland who are seeking those services.

Ms McMILLAN: Deputy Commissioner, I am sure that all of the members can relate to those stories, so thank you.

Mrs McMAHON: Given that the process required through initial inquiries is a conciliation process and then further if conciliation does not work, are you prepared to comment on whether the powers contained within the bill are adequate and sufficient for the work or inquiries that will now fall under the commission?

Mr McDougall: I think the powers of the commission are adequate for the process of conducting the conciliations. Yes, I think they are. There is an information power. In circumstances where in order to properly prepare for a conciliation certain information is required from a public entity, the commission has the power to make a request for information. I think the powers are there. There might be a question mark about the resources.

Mrs McMAHON: There is the timeliness, too. I note the ability to lodge with a relevant court jurisdiction notices to provide information. Has there been any discussion about how that will work in practical terms?

Mr McDougall: It would be very unusual for that to happen. It is expected that public entities will cooperate with the commission. In discussions with my colleague at the Ombudsman's office, I think there has only been one occasion where he has had to use that similar power. We are not anticipating that that is a power that would be used very frequently, if at all.

Ms Holmes: There is a very similar power under the existing Anti-Discrimination Act and the commission very rarely has to even contemplate using it. Thankfully, most people in Queensland do try to abide by the rule of law and do not need that coercion.

Mrs McMAHON: The other aspect of that is that when someone makes a complaint to the commission, by and large, they will be on board with the processes that you adopt. I am interested in the respondent side of it—representatives from the public entity. Have you experienced any issues to date or do you anticipate any issues in terms of identifying the appropriate person within a public entity to be represented through these particular processes or would they be delegated as part of that public entity's processes and policies in response to this act?

Mr McDougall: They are technical questions that go to how the public entities organise themselves and train their staff et cetera. There is a fair bit of work to be done between now and the commencement of the complaints process.

Mrs McMAHON: And that will fall within your remit as well?

Mr McDougall: We are currently in discussions with the Department of Justice and Attorney-General to determine exactly the extent to which the commission will be responsible for educating those public entities to establish those processes.

CHAIR: The bill's preamble recognises the importance of the right to self-determination for Aboriginal peoples and Torres Strait Islander peoples. Your submission observes that the right is not protected under the bill. Could you comment on this issue and explain the commission's recommendation that the first review of the act, if the bill is passed, include—

Mr McDougall: Sure. I just happened to be reading Noel Pearson's Mabo oration the other day and saw his reference to the right to self-determination and basically that it amounted to a whole lot of work. I thought that was interesting, because to make that right meaningfully implemented in

Queensland would necessarily entail some very deep engagement between the Queensland government and the various Aboriginal communities and Torres Strait Islander communities in Queensland. Given that there is a statutory review in 2023, the commission thinks that it would be appropriate that that particular right be identified as a term of reference in that review and that this intervening period be used for an extensive and detailed consultation with the Indigenous community about what a right to self-determination would actually mean in practice.

CHAIR: There is also a recommendation by the commission that the Office of the Queensland Parliamentary Counsel be given specific functions. Could you expand on that, please?

Ms Holmes: Yes. One of the interesting differences between Queensland and Victoria is that we have the portfolio parliamentary committees, of which of course this committee is one. In Victoria they have the Scrutiny of Legislation Committee, and we previously had the scrutiny of legislation committee in Queensland. There are benefits to both systems. I think we can see a lot of benefits in portfolio committees, but I think if you have a committee that exclusively does work in one area and develops an expertise in human rights that is a great advantage as well because sometimes getting across all the nuances and the scope of human rights might be a fairly big ask for each portfolio committee to do.

In the absence of a scrutiny of legislation committee, and because we have the system here in Queensland of portfolio committees, we thought it would be helpful in the development of legislation if the Office of the Queensland Parliamentary Counsel—which is a great and unique institution in Queensland that has meant that very good legislation is drafted in Queensland—developed an expertise in human rights so it could alert departments, which also have a responsibility to identify human rights, early in the drafting process. It could alert the department to say, 'If you haven't noticed, you are touching on a human right here. Have you turned your mind properly to it?' We think that turning your mind to human rights issues in legislation at the very beginning is the best process, rather than way down the track when the legislation is passed, so that the drafting can be done in a very thoughtful and responsible way. Human rights issues are identified early; Parliamentary Counsel has the expertise to talk with departments that are doing the drafting; and then under the fundamental legislative principles act, which has been mentioned already this morning, the Parliamentary Counsel would have responsibility for identifying those in the explanatory notes to the bill.

Hopefully a lot of the human rights issues that might be underlying in the drafting of some bills would be identified and picked up. Maybe all of those issues in the bill in section 13 and elsewhere could be worked through. That is why we think Parliamentary Counsel, which we think is a fantastic and wonderful institution in Queensland which has brilliant legal draftspeople, could be given that responsibility in the absence of having a scrutiny of legislation committee or a human rights committee that develops specific expertise. It is just another part of the structures and pillars that are put in place across the democracy that we have in Queensland to ensure these issues are considered and thought about at each stage of the process, particularly before they come through parliament, and can advise the legislators on the issues that are involved in the bills that are coming before them.

CHAIR: Do you think the name change from the Anti-Discrimination Commission will impact on your—

Mr McDougall: Certainly the staff at the commission are looking forward to working at a place that is not called 'anti' something. We are aware that that will be an issue. However, we hope that there will be enough engagement with the public for the public to understand that there is a new commission and that it does hold functions under both the human rights act and the Anti-Discrimination Act. We will certainly be embarking on a strategy of targeted engagement with organisations that are most likely to come in contact with people who are going to be in need of accessing remedies under the act. We will certainly ensure they are aware of it.

Mr ANDREW: The act attempts to protect human rights in section 14 but only from being destroyed, not from being limited by the bill itself. Could you elaborate on that, please?

Mr McDougall: You are referring to clause 14, which states—

Nothing in this Act gives any person or other entity a right to limit to a greater extent than is provided for under this Act ...

I think that is a reference to the fact that human rights that exist are not in any way limited outside of this act.

Mr McDONALD: Commissioner McDougall, in your opening statement you talked about hundreds, if not thousands, of clients who would have benefits from such human rights.

Mr McDougall: Yes.

Mr McDONALD: I understand that they may have benefited from it—and I am not looking for you to disclose any privacy matters with regard to that—but are you aware of any breaches of human rights that have not been dealt with under other legislation in those matters?

Mr McDougall: Yes, absolutely.

Mr McDONALD: Could you quantify that?

Mr McDougall: I could not possibly quantify it. As I have said, I have acted for literally hundreds of clients and in many circumstances the respondent to those matters was a public entity—not in every case—and at the heart of the issues were limitations upon their human rights, so it is unquestionably an issue. Essentially, what this act boils down to is imposing an obligation on public entities when they are exercising a discretion that is going to impact on a person's human right to consider alternatives and to choose an alternative that is going to have the least impact on that person's human rights. That is really what it boils down to. There are perhaps tens of thousands of decisions made every day by public entities that may engage human rights. In most cases there is not going to be any problem. It is when there is a discretion and there is someone who is going to be impacted that they need to turn their mind to it.

CHAIR: I would like to thank the commission for coming in and briefing us.

MCVEIGH, Ms Aimee, Campaign Coordinator, A Human Rights Act for Queensland

CHAIR: Welcome and good morning. I invite you to make a brief opening statement, after which committee members may have some questions for you. This segment will finish at 11 o'clock.

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. I am really happy and excited to be here today to talk about Queensland's Human Rights Bill and I would like to thank you very much for the opportunity to do so.

I have been coordinating the campaign for a human rights act for Queensland for almost four years. I have been doing it in addition to my paid job and in addition to being a mum of two tiny children, one who was born during the campaign. The reason I have been doing this work is that after about 15 years of working in the community sector I have seen sufficient examples of people's rights not being adequately protected to convince me that Queensland needs better human rights protections.

Sometimes in the kind of work that I do you see things and learn things that you cannot turn away from—things that change the way you see the world. When you see an opportunity to make a difference and to change things for those people, you take it. It is that same motivation that has driven the over 40 community organisations and thousands of Queenslanders who have supported our campaign to work on this campaign. Our campaign has never received any funding. We have never received any large donations. Whenever we have needed money, we have crowd funded. When we have needed resources, we have used the resources that we have.

Organisations that have supported our campaign include Mamre Association, which has housed student volunteers from the UQ pro bono law centre; Caxton Legal Centre, which has helped in the coordination of the campaign; Queensland Advocacy Inc., which has assisted to auspice the campaign, ensuring that our governance and management of any money is transparent; Micah Projects, which has offered meeting spaces; Queensland Council for Civil Liberties, which has provided really important legal expertise, as has the Aboriginal and Torres Strait Islander Legal Service; and the Endeavour Foundation, which has provided really important media and public relations support.

These are just some examples of the support organisations have provided over the four years that we have been working on this campaign, but I raise them to demonstrate that this truly is a community campaign. This is a campaign of civil society of people who have seen instances of individuals not being treated with respect and dignity. Because of that focus, the campaign has always sought an enforceable human rights act. What we are focused on is making sure that the individuals we work with experience a difference because of this legislation. For that reason, it is important that the legislation is enforceable.

The campaign considers enforceability to mean that there is a complaints mechanism, meaning that people can make a complaint, that it is conciliated and that outcomes are publicly available, that people are able to then approach a court or a tribunal if their complaint is not resolved and they have a legitimate human rights issue, and then that that court or tribunal can order an appropriate remedy, including damages, if the claim is substantiated. As you all would know from considering the bill, this bill ticks some of those boxes. Notwithstanding that, our campaign is very supportive of this bill. We would like to see it passed as soon as possible. We do believe that it will make a difference to the lives of Queenslanders. We are certainly calling on both sides of parliament to support this bill. It protects our fundamental civil and political rights: things like freedom of association, freedom of movement, freedom of religion—things that are absolutely essential to a free and democratic society.

CHAIR: Your submission says that the bill will make a real difference—and you touched on that in your opening—to the way people are treated and make Queensland a fairer and more equal place. Are you able to elaborate on how the bill will make a real difference, especially to the vulnerable people that you represent?

Ms McVeigh: Certainly. I have jotted down a few examples of the type of work or instances I have come into contact with myself. I am sure there will be plenty of other examples from other service providers that you will hear from today. Obviously I am not at liberty to talk about the exact details of the cases. For example, this year I represented a woman with an intellectual impairment who was in contact with the child protection system. Her child was removed because of her disability; there were no other risk factors associated with her parenting. Her rights within the proceedings were never considered. There was no consideration given to that child's right to family, that mother's right to family or her right to equality before the law.

When I was representing that woman I found a very similar case from Victoria where a woman with disability had had her child removed from her on that same basis: because of her disability. I reached out to the advocate who represented that mother and had a chat to them about what was the

difference. I asked, 'Why did your client get to keep bub and my client did not?' She explained to me it was because of the existence of the charter. She was able to rely on the right to family and the right to equality before the law to argue that the department had an obligation to consider whether they could support this family to stay together. They did provide those supports then and that family stayed together and they have never been in contact with the child protection system again. That is just one example.

Other things I have seen recently relate to the way kids with disabilities can be treated in schools. Again, I had a case just this year with a little guy who has dyspraxia—real difficulties with his fine motor skills. The school was requiring him to go back and forth to his locker between classes, just like the other kids, to organise himself. He could not get his locker done up and they gave him the locker at the bottom. There were kids piling on top of him, hurting him and teasing him. He was late to class and getting detentions. The school saw no issue with that. Again, there was a similar case in Victoria where a little guy with similar challenges was able to use the charter to access his rights to education.

I have seen lots of examples in the housing area—people living in public housing where the housing is not appropriate to the characteristics of the person. For example, again just this year I had a client who was a survivor of child sexual abuse who had some really significant mental health issues that made him very vulnerable, and he was living in an environment where there was a lot of violence going on around him. His own particular needs were not being taken into consideration by the department of housing.

Other examples are women I have worked with who have been victims of violence and the way they can be treated by police and treated as also a perpetrator rather than the police actually looking into the particulars of the case or the treatment of women or children who are victims of violence in criminal justice proceedings. Other examples I see all the time involve the treatment of adults with impaired decision-making capacity. In some instances it could be a disability service provider: people are living in supported accommodation, they are not involved in decisions that are being made about them, they are spoken about even when they are there and not properly considered—even the way sometimes they are spoken to by people working in government departments or by service providers. The thing is that these are not necessarily instances where you would even need to make a complaint to a commission. It can be that an advocate simply needs to raise human rights in discussions or correspondence and the service provider or the public entity realises that they could do things better and the issue can be resolved.

As a final example, I have seen instances of older people not being treated with dignity. We have all seen that this year; the treatment of older people in aged-care facilities has been highly publicised. They are just some examples.

Mr LISTER: One of the essential parts of the bill is that it would empower the judiciary to decide whether something was compatible with human rights or not, as opposed to the parliament, which essentially fulfils that role now. Can you tell us why you feel the judiciary would be better placed to make those considerations than the elected parliament?

Ms McVeigh: Certainly. I do not hold that view; I do not hold the view that the judiciary is better placed to make those decisions. With respect, however, I think that is a misrepresentation of how the legislation works because parliament remains supreme, really. The judiciary is required to interpret legislation consistently with human rights but not in a way that deviates from the intention of the law-maker. That issue has been resolved in Victoria, where the court has been very clear in saying that an obligation on the judiciary to interpret legislation consistently with human rights would not allow the judiciary to change the meaning of the law that the legislator gave it.

Ms McMILLAN: Congratulations, Ms McVeigh, and thank you for your work. In addition to the change in dialogue and the creation of a discourse, can you please expand on why you believe the bill should include a stand-alone cause of action?

Ms McVeigh: Certainly. At the end of the day I think, 'What is a right without a remedy?' I absolutely think that a lot of the time human rights complaints will be resolved through conversations, through community education or through an exchange of correspondence, just like in any other legal matter. I think the existence of conciliation is very important, because we want to see people who do not have access to courts or lawyers still have an ability to make a complaint. There are going to be situations where complaints are not resolved and where that person still has a legitimate human rights complaint. In those circumstances those people should be able to approach a court or a tribunal and have that court properly consider their human rights complaint.

The existence of the piggyback provisions I think is unnecessarily complex. Certainly that was the feedback through the Brett Young review of the Victorian charter—that the piggyback provisions were actually preventing people from making proper human rights arguments. In the ACT they have a stand-alone cause of action. It has not led to a flood of litigation. It has meant that where there are real, significant human rights concerns they can be considered by a court.

Mrs McMAHON: That probably goes to your other recommendation to provide a full range of remedies. Notwithstanding that in clause 59 there is the ability for someone who has an unresolved complaint to take other legal remedy where there is one, where do you see a stand-alone cause of action fitting into that suite of remedies for someone who makes a complaint to the commission?

Ms McVeigh: In terms of remedies, I think it is really important to say up-front that most of the clients I have acted for in this type of area are not after damages; what they are after is for the problem to be fixed. For example, my client in the child protection proceedings wanted supports made available to her so she could keep her baby with her. People dealing with public housing issues just want a safe and comfortable place to live. In relation to the example out of Victoria where a woman with a disability living in supported accommodation was being showered in full view of all the other residents, all she wanted was a shower curtain. People are after practical solutions to the issues that mean that their lives are not characterised by dignity. I guess what I am trying to say is that it will be in some small instances that damages are the appropriate remedy, and that is where there is no other way of fixing the problem.

Mrs McMAHON: I guess you could potentially understand why there would be panic or fear that this is opening another avenue for litigation and, therefore, almost like its own cadre of legal personnel who will be there to fly in and support any person whose legal rights have been infringed upon to take this other step which would be pecuniary in nature.

Ms McVeigh: Certainly. I can completely understand that concern. Aren't we lucky here in Queensland to have the benefit of so many other jurisdictions that have already tested that out? In no jurisdiction have we seen that borne out. There has not been a flood of litigation, even in the UK where there is a stand-alone cause of action and damages available.

Mr McDONALD: I was really pleased to hear, through your answer to the chairman's earlier question, that on many occasions the circumstances may not require referral to the commission. Do you have examples from other jurisdictions perhaps of how this may play out in the Queensland context?

Ms McVeigh: Absolutely. In the case of the example I gave before about the shower curtain, that was a non-legal advocate who helped the woman to rely on her right to privacy to ask for a shower curtain. There was another example in a similar scenario where a man with a disability was living in supported accommodation and his service providers were opening his mail before it came to him. His non-legal advocates, again, explained to the service provider that this was a breach of his right to privacy—he should be able to open his own mail—and that resolved it. Certainly there is a great resource put together by the Human Rights Law Centre that has a whole heap of case studies from Victoria. When you read through them, it is really clear that a lot of the issues are being resolved without even talking to a lawyer because the people working on the ground with these people are able to help them to advocate for better human rights protections.

CHAIR: Thank you, Aimee.

KEIM, Mr Stephen SC, Barrister, Member of the Criminal Law Committee, Bar Association of Queensland

CHAIR: I invite you to make a brief opening statement, after which committee members may ask some questions.

Mr Keim: The first thing I want to say is that the association congratulates the government on introducing this bill into the parliament. The issue has been around for a long time.

I suppose these arguments cut both ways in some respects, but it is not the case that passing this law will change the world as we know it. It will make some important improvements. In many respects, the controversy that the discussion of human rights bills has created in different jurisdictions when the idea has been mooted, in my view, is fairly overblown. On the other hand—and I think Ms McVeigh's presentation is very informative in this regard—what human rights legislation does is significant in two ways. It does provide to the most powerless among us and the most disadvantaged among us—who are probably more than most of us very, very dependent on government services—with an option to look after themselves, to complain, to have themselves treated properly and decently and in accordance with human rights. I think that is one area where, if you are not actually reading about those examples which are so important to the human beings involved, the rest of us going about our daily work busy with our families and other interests might not notice the significance of those changes.

The other aspect that is very important is that public servants are very good people but, notwithstanding that, bad practices develop within the Public Service. Public servants are just like lawyers: people like to bag them all the time. Bad practices do develop in service delivery, and a human rights act provides a set of criteria which have been agreed since at least 1948—and probably a long time before that in many respects—by which the practices of government can be judged.

The impact that a human rights bill has is not only that impact that is achieved by advocates for people with disabilities, for people who are disadvantaged but also the internal changes that Public Service departments and public service agencies can achieve because they have a measuring stick against which they can measure all of their practices, especially the way in which they interact with other human beings outside the Public Service. They are the two very significant ways in which a human rights bill can make a big improvement in our society, but these improvements are not going to make the sky fall in. If we do not closely observe those sorts of interactions we may not even be aware of them, but that does not mean to say they are not important.

I will not go into the other things we have discussed in our submission. They are really the same two issues that Ms McVeigh talked about. The association does think that if you are going to make something illegal as it is not compliant with the requirements of the human rights act and human rights then it should be enforceable. You should not have this piggybacking provision. Secondly, the anti-discrimination jurisdiction of the commission referred to QCAT—and before that to the anti-discrimination tribunal—works very well, and I think that same model would work. In terms of having some form of compensation, in terms of having some ruling by an independent tribunal, that would work for complaints with regard to specific practices to be referred.

In response to somebody's question about lawyers' picnics and all of that, there is not a lot of money in acting for complainants in the anti-discrimination area. I have been there a few times. I am not sure that I got many overseas holidays out of it. I think it would be the same with regard to this jurisdiction if it were created. You are not going to find lawyers flying in from everywhere just to make a quid. You will find in the appropriate case somebody getting a small order for compensation. Money is not everything and money is not important, but sometimes money is the only measure by which your self-respect can be acknowledged by others, so we would urge the committee to recommend that a complaints process be able to go to QCAT.

Mrs McMAHON: This is now the second time we have heard the reference to 'piggyback'. For the benefit of all members of the committee and those following along at home, could you perhaps explain in lay terms what that means with respect to clause 59 and the remedies that are available?

Mr Keim: What we are talking about is essentially judicial review. Judicial review is something that is available to everybody. When a decision is made unlawfully, it is not about saying, 'The decision is wrong on the merits. I did not like the decision. It did not give me what I wanted, therefore it is unlawful.' It is where there are procedures laid down, where there are things that have to be taken into account and this is not done by a government decision-maker. You can bring an application to the Supreme Court to set that decision aside. It does not mean to say that you get the biscuits, because usually the remedy is to send it back to the decision-maker to be made properly.

Section 58 of the act creates another basis for unlawfulness of government decision-making. It says that if a government decision is not made in accordance with the human rights principles which are laid down in the legislation then the decision is unlawful and the same result would ensue. The decision would be sent back to the decision-maker to take extra things into account and to make the decision lawfully. Section 59 says that, even though the decision may be unlawful for being in breach of human rights, you cannot litigate on that basis alone. You can only litigate if you can find some other reason the decision is unlawful.

Often if a decision is an unconsidered decision by a government decision-maker—I think in the Judicial Review Act there are about 15 grounds and sometimes you might plead three or four of those such as mistake of law, failure to take into account relevant considerations and so on—it will not be that in every case you are prevented from bringing something because of the requirement that you have another cause of action. You may be able to identify that. It is just wrong in principle to say that if it is unlawful you cannot challenge the lawfulness of the decision unless you can find some other basis. As Ms McVeigh said, Mr Young, who looked at the Victorian legislation, recommended that it be changed. It just seems wrong in principle. Like all of these, on the odd occasion it will produce injustice because failure to comply with human rights will be the only ground, and it is those injustices that are so important as well.

Mr LISTER: I read some thoughts of the Hon. Paul de Jersey, when he was the Chief Justice of Queensland, who expressed concern about taking over the role of the parliament, as elected representatives of the people, in determining our human rights and considering that in the creation of legislation and giving that, to some extent, to the judiciary as in section 53 of the bill with declarations of incompatibility and so forth. He wondered aloud whether that could lead to public controversy and politicisation surrounding judicial appointments where judicial officers are being called upon to work in areas of high social policy which have traditionally been the preserve of parliament and politicians. What do you have to say about that?

Mr Keim: I will try and say something different to what Ms McVeigh said. The first thing to say is that the common law requires that legislation be interpreted in accordance with our obligations under international law. We are parties to the UDHR, the International Convention on Civil and Political Rights, the economic and social rights convention and the Convention on the Rights of the Child, so the common law has been using these tests in construing legislation for quite a while. You hear the jurisprudence being discussed in the Court of Appeal all the time. I often feel that I am slack when I go to the Court of Appeal because I do not actually raise these issues. I think the pudding has already been partially eaten, if I can use that particular aphorism.

The other thing is the point that Ms McVeigh made. We are saying as a society through our parliament that we want decisions made in accordance with human rights principles in international covenants. Most other countries do this automatically. We are saying that we are making the particular provisions of the conventions part of our domestic law, and then we are saying to the courts, 'Interpret that.' What we are also saying to the courts with regard to specific procedure is, 'Tell us if we ourselves are not complying with those things that we are imposing on our public servants and imposing on individual people such as the laws against discrimination.' What I am really saying is that, from a methodological point of view, the application of those principles to decide whether there is incompatibility is not very different from any other interpretive process that the court undertakes.

The third thing is really a corollary of that. You would not believe how boring human rights jurisprudence is when you talk about proportionality. If you read an Amnesty International report on what is happening in Sri Lanka, what happened in Rwanda or what is happening in Bangladesh, you see that they relate all the bad things that are happening and then they analyse them in terms of human rights principles. You would think that the answer would be pretty obvious: if you are killing people and burning their houses et cetera they are in breach. That is the most boring part of the report. I think Ms McVeigh made the point as well that it is different to Roe v Wade. It is different to the situation where the law of the United States has been developed since about 1801 applying the human rights amendments. That is the fundamental constitutional law of the land and that has led to some politicisation and a different role for judges, but this is very, very different. The parliament retains the ability to say, 'We don't care. The parties laid down the rules in the first instance that we want our legislation to comply with humans rights principles,' and is then asked to apply those two things.

I appreciate that it is a concern that has been in this debate all along and I have thought about it a lot. I just do not think there is any real danger of politicisation of our judges on that issue. With regard to the rubbish we hear about judges being criticised by people who do not know what went on in a sentencing case, those political attacks on judges are much more damaging to the rule of law and the judiciary. The interesting thing with regard to that—and now I am going completely off point,

Mr Chair—is that the Tasmanian jury studies show that ordinary people, when they know the facts of the case, agree that the sentences imposed by judges are either spot-on or too harsh. Of all the dangers to our rule of law and the independence of our judiciary, I think that is one of the least.

Mr LISTER: If, to use your phrase, the pudding is half eaten and there is not a great deal of difference in the way the judiciary is applying human rights principles now, why do we need this act?

Mr Keim: That was the point I was making earlier in that these arguments cut both ways. The changes are not something whereby we are going to wake up tomorrow and say, 'The sky's painted green and yesterday it was painted blue.' What a human rights bill does is put those principles front and centre in terms of the parliamentary process in having a committee looking at these issues, as the federal parliament has had for the last three or four years. It just says, 'Let's check what we're doing in terms of these fundamental principles that the world agreed to on 10 December 1948.'

For the judiciary, in terms of the common law principles with regard to construction they are already doing that. That is part of the principle of legality which the courts impose. What it does is allow an ordinary citizen to say, 'Look, this law really doesn't comply with the principles if it's interpreted in this way. I think you should interpret in this way. This is the real intention of the act, but if you're against me on that declare that so that the parliament can have a rethink about it.'

Yes, it is a change. I am contradicting myself in that respect. It is a change, but it is not a change that actually impacts on people's rights. It is really a procedural change which takes it back to the parliament and says, 'Have another think about that. What do you think about that? You're the law of the land. You're the source of sovereignty in this country. The people who interpret legislation say it's not consistent with this particular bill. What do you want to do about it?' It may come back to issues of proportionality, because with so many of the discussions—if you think of national security issues, for example—on the one hand you are seeking a very important social end and on the other hand you are imposing very stringent restrictions on people's free conduct. This parliament has wrestled with that at least since 2001 but probably for 20 years before that. They are important issues and I think they are a very important frame through which we should consider these issues as to what is the best law we can make. Thanks for your question.

CHAIR: That brings this part of the hearing to a close. Thank you, Stephen, for coming along.

Mr Keim: I could be a minister, Mr Chair; I have learned to filibuster.

CHAIR: Not as well as some.

Mr LISTER: And they are not just ministers.

CHAIR: Thank you, Stephen.

Mr Keim: Thanks.

MACKIE, Ms Kirsty, Councillor, Queensland Law Society Council

POTTS, Mr Bill, Deputy President, Queensland Law Society

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

TAYLOR, Mr Ken, President, Queensland Law Society

CHAIR: I invite you to make an opening statement, after which there will be questions.

Mr Taylor: Good morning. Firstly, I want to thank the committee for inviting the Queensland Law Society to appear at the public hearing on the Human Rights Bill 2018. The society is an independent, apolitical representative body and the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. In carrying out its central ethos of advocating for good law and good lawyers, the society proffers views which are representative of its member practitioners. As noted in our submission and the previous inquiry and in respect of this current bill, the society's membership is divided on the issue whether a human rights act is required in Queensland. Therefore, we make our submission on whether the bill achieves its stated objectives.

I want to thank the Human Rights Working Group for compiling the society's submission and our QLS policy committees and broader membership for their comments with respect to this bill. Appearing with me today is Dan Rogers, the chair of both the 2016 and 2018 human rights working groups, and Law Society councillor and chair of the society's Elder Law Committee, Kirsty Mackie. I would now like to hand over to our deputy president, Bill Potts, who also appeared before this committee several years ago on this issue, to outline our key issues in relation to the bill.

Mr Potts: Thank you very much. In our written submissions the society has provided commentary on several aspects of the bill. We do not intend to repeat those. We think they are detailed and we hope that they are of some significant assistance to the consideration of not only this committee but also the parliament. In our view, the key issues of note are as follows: firstly, the need for the inclusion of further rights in the bill, including the right to freedom from violence, abuse and neglect, the right to adequate housing and a further right for first nations people; secondly, support for the validity of the interpretation provisions in clause 48 of the bill which has been referred to significantly here by various members this morning; and, finally, uncertainty with respect to the validity and operation of declarations of incompatibility in clauses 53 to 57 of the bill, and again I note that that is something this committee has also expressed considerable interest in.

We are obviously keen to assist both the parliament and this committee, but I would also join with Mr Keim by stating this: we congratulate this parliament, not merely the government but the parliament, after 60 years to give significant and mature consideration to the bringing in of what we and many people in the community may regard as an important issue. Human rights are not things which are just like a chook kept in the corner and fed every now and then; they are live matters of great interest to the community and a means by which this parliament can assist the courts and assist our society in achieving a better and fairer outcome for many of our most vulnerable and dispossessed. Rights are for all and the primacy of parliament is of course important, but the way in which this parliament will measure the success of this legislation is the way in which it betters fellow citizens. I indicate to you that we are now ready to take your questions.

Mr LISTER: Thank you very much, Mr Potts and representatives of the society. We have already heard about the piggyback, and I am concerned that there may be a significant increase in workload in the courts. Have you considered that and the impact that may have not just on the resources required but also on the effectiveness of the courts and the speed of justice? I know you are all lawyers and potentially, to use that pejorative parlance, it is a lawyers' picnic in that there might be more employ for you guys, but in all seriousness have you given consideration to how this may affect the work of the courts and the speed of access to justice?

Mr Potts: I am concerned that the entire debate seems to be devolving to puddings half eaten and picnics. Could I ask Mr Rogers to address that?

Mr LISTER: You are talking to politicians.

Mr Rogers: Mr Lister, there are a lot of myths around this legislation. One of the myths is that it will cost too much. Victoria costed it as 50 cents per person per year to have the legislation in force, to administer it and to allow government departments to improve their delivery of services. There has not

been a flood of litigation. There has not been any concern about judges being occupied from their already busy workload to deal with these cases, so I say respectfully it is just not a concern and it is something that other jurisdictions have looked at.

Mrs McMAHON: Thank you very much for your attendance and input today. The submission considering the inclusion of the word 'expeditious' at clause 31 can mean many things to many different people. Would you be able to expand on whether you are aware of any jurisprudence that has considered the meaning of 'expeditious'? Human rights is a big elephant—one bite at a time, if we are going to go into the food eating again—but what would you be envisaging when you are looking at 'expeditious' when it comes to examining human rights?

Mr Potts: I am sorry to talk to the analogy, but it is a movable feast and the elephant is well and truly in the room. 'Expeditious' is something like the length of a piece of string. One would have thought that it was timely and appropriate but, as lawyers are fond of saying, in all of the circumstances—

Mrs McMAHON: Subjective.

Mr Potts: Absolutely. Perhaps Dan has a further view.

Mr Rogers: Just looking at the bill globally, it is really important to remember that, with all of these questions, all human rights have limits and often there are competing rights and interests. If, for example, there was the inclusion of the word 'expeditious', that does not suddenly become some stick which a lawyer can wave and seek a stay of proceedings that might be a little bit delayed because of reasons; it is simply a recognition that individuals who have to go before the court should face a system, as far as practically possible, that is expeditious so that they are not suffering the burdens of significant legal costs and delays. We have seen how busy the Family Court is and the kinds of delays that are occurring there. If, for example, that word was included, it would not stop judges of the Family Court doing their jobs but it would be a principle which would over time encourage courts and others providing assistance to people in litigation to try and get things moving, which will ultimately be a cost saving for the community and of great benefit to the individual who might be caught up in a tumultuous family breakdown.

CHAIR: In your submission and in your opening you talked about QLS members being divided on the adoption of a human rights act. Are you able to expand on that for the committee, please?

Mr Potts: We firstly adopt the submissions that we made back in 2016. Retired Justice Chesterman appeared effectively to give the concerns of the negative aspects of it and I think Mr Rogers appeared to speak to both of them. The fact that the best of all possible minds can disagree about fundamental things is an obvious statement. The objections or at least the statements made by Justice Chesterman remain adopted by us. However, we do not want to focus on Mr Lister's quote from His Excellency the former Chief Justice. There are clearly concerns about whether the common law is sufficiently robust and sufficiently armed to deal with the many questions that we as a society must face. However, what we are facing now is: it is not to argue both the positives and the negatives, but we have a live bill before us and the role that the Law Society sees is to assist the committee and parliament to make sure that this act is the most effective it can be should it be passed into law. How is that for deflection?

Mr McDONALD: Thanks very much for your presentation. Clause 34 talks about not having somebody charged for a second time. I know that the police in Queensland rarely do it but, with the advent of modern technologies and medical evidence, opportunities arise where, under these provisions, somebody who is definitely guilty may not be further charged.

Mr Potts: Presumably you are referring in the context of double-jeopardy legislation?

Mr McDONALD: Correct.

Mr Rogers: I think it is a really good question. No doubt, your question is fuelled by some of the commentary around this legislation. Can I say respectfully again that that is just a myth. A human rights act does not stop the government introducing legislation that allows someone to be retried. The Criminal Code already has exceptions for double jeopardy for murder and there is a process in place whereby if, as you say, there is strong evidence that a person ought to be retried they are. Recently, the Court of Appeal gave permission for police to recharge someone with murder as a result of fresh evidence. Nothing will change in that sense if this legislation is introduced and nothing will stop the parliament from introducing broader amendments allowing for a person to be retried if that provision is there. It is there as a principle that there needs to be finality to a person being prosecuted unless parliament decides that a person should be retried under certain circumstances and for certain offences.

Mr Potts: Our society supported the double-jeopardy legislation, because society's laws—and the government's laws—must reflect changing circumstances, including changing technology. A warning note that we made, and which has been maintained, is that such a power should be used rarely and then only with judicial oversight. That is precisely, we are very pleased to say, what has happened.

CHAIR: Thank you, gentlemen, for attending.

COPE, Mr Michael, Special Counsel, Queensland Council for Civil Liberties

CHAIR: I invite you to make a brief opening statement, after which the committee members may have some questions for you.

Mr Cope: Thank you very much. On behalf of the Queensland Council for Civil Liberties, it is a pleasure to be here to discuss this piece of legislation, which has been 60 years in the making and which we have sought in some way or another to have introduced for the 50 years that we have existed. As I note in the submission, this piece of legislation is not a revolution. It does not represent a threat to the basic structures of our government, including the separation of powers; nor is it a panacea. It represents a mechanism by which Queenslanders will be able to have their issues raised and heard. It will, we believe, as the Victorian experience demonstrates, result in better government decision-making but, at the end of the day, the parliament will have ultimate control over what is in the bill and what legislation is passed and not passed.

There are only three issues that we raise about the bill that I want to particularly mention. First, we remain of the view that the legislation is significantly weaker than it could be without a statutory cause of action for damages for those whose rights are breached. Secondly, we take the view that the definition of 'public entity' should be broader in light of the increasing outsourcing and privatisation of government services. Finally, in relation to the exemptions for corrective services and youth justice, our starting point is to acknowledge that the government has serious issues in that area but say that section 13 of the act already enables those issues to be addressed. Even if the government takes the view that that is not sufficient, the current clauses should be time limited by a sunset clause—three or five years, or whatever it may be that the government considers it will take to deal with the current overcrowding and related issues. Apart from that, I am happy to answer your questions.

Mr ANDREW: What are your concerns about the bill's definition of 'public entity'?

Mr Cope: We would say that the definition of 'public entity' should be extended to any entity that receives government finance or government funding. As I say, the effect of outsourcing of government functions is that functions that were once upon a time carried out by public servants are now being carried out in private places. If we do not extend it that way, the range of decisions that the act might cover will be restricted and, over time, with greater outsourcing, the range of decisions that might be covered will be restricted further.

Ms McMILLAN: The QCCL's submission suggests that the definition of 'public entity' should apply to all bodies. I am particularly interested in the inclusion of private schools. Could you talk about that in the context of non-government schools? Whilst they may not be funded by the Queensland government, they are funded by the federal government.

Mr Cope: That is true. It goes from the point that we have made in the past, which is that we have taken the view that the current provisions in the education act, which allow government students when expelled or suspended to have a right of review, should extend to private schools as well. From that point of view, if these rights are going to apply to education in government schools they should apply to education in other schools. In our view, the fact that they may be to some extent privately funded makes no difference. The question is: are fundamental rights being interfered with? From that point of view, because we have argued it in the past, we believe as a matter of principle that the same thing should apply here.

Mr LISTER: Thanks very much, Mr Cope, for your appearance today. I am looking at the Queensland Council for Civil Liberties' submission. You were very succinct in your dealing with three classic objections to a civil rights act.

Mr Cope: Yes.

Mr LISTER: You talk about the ability for the parliament to override this based on clause 43.

Mr Cope: Yes.

Mr LISTER: If a parliament is able to do that, does that not make the need for this act moot? What is the point of a human rights act if the parliament can override it whenever it wishes?

Mr Cope: The point is that, first of all, it will require the parliament to justify itself when it passes legislation that will interfere with it. Secondly, it will apply to government decisions. Government decision-makers will have to comply with it. As I said earlier, that will result in improved decisions.

Ultimately, as I in fact concede in the submission, the reality is that even constitutionally entrenched bills of rights like the American one have not been entirely effective over time. In fact, you could argue that the American Supreme Court, apart from the period between about 1945 and 1975, has been extremely conservative in its approach to the bill of rights.

None of these instruments are ultimately going to be effective in protecting anybody's rights unless there is a political culture in support of them. On the other hand, if you have them there, they are a peg by which people can take their complaint. I give the illustration of the desegregating of the schools. That was not done by politicians; that was done because black Americans could go to the Supreme Court and rely upon the 14th amendment and similar amendments to say, 'This is wrong. You need to change the law,' which is what that Supreme Court did. It overturned 70-odd-year previous decisions. It is not a useless device; it exists as a useful device to enable people to have a place to go where they could complain.

The council used to support a constitutionally entrenched bill of rights but, for a number of reasons, we abandoned that policy. Firstly, the matter of principle is that constitutionally entrenched bills of rights can, we accept, give too much power to judges. We have to have a mechanism that balances those issues, that does not disrespect the position of the parliament and does not transfer too many powers to unelected judges. This model attempts to do that.

Ultimately, in this model we have to trust politicians but, as I say, to some extent, we always had to, or we always had to trust the judges. There is every reason that you cannot necessarily trust judges either. You either go full bore and have a constitutionally entrenched model which, politically, is a dead letter—hardly anybody out there apart from David Solomon I see continues to make that case—or we just say that the current system for the protection of human rights is adequate, and we do not think it is because we do not think it is comprehensive. This bill provides comprehensive protections, which the current hotchpotch does not do.

Mr LISTER: Would you say that that hotchpotch includes the normal mechanisms for exerting pressure on the parliament—political considerations, the media, representations from individuals, petitions and so forth?

Mr Cope: No, I am talking about the legal mechanisms for the protection of human rights. Yes, in a sense, by arguing that it is a peg for people to go to, it is providing another mechanism that is not just your ordinary political process. At the end of the day, if somebody goes to court, gets a judgement in their favour and this parliament does not like it, this parliament can ignore it. It is not even like the situation in Canada where you have to get three-quarters of a majority to pass it. You can just ignore the decision of the court in relation to the interpretation of this bill. It does not even require a politician to be particularly active. As I say, it provides a place for people to go. At the end of the day, if somebody succeeds before a judge, it is for this parliament to determine whether they think the judge is right or wrong.

Mrs McMAHON: Clause 11 states specifically that only individuals have human rights and that a corporation does not have human rights. Your submission recommends that the bill be amended to provide for a 'situational model for determining whether or not a corporation is entitled to human rights'. Could you expand on that for us?

Mr Cope: It probably makes us a bit of an outlier, but the point is as was made in the submission. In this day and age, in order to have some rights, corporations have to have some rights. The classic example is free speech. Almost every time—unless you go out and stand in a park—you exercise your free speech right you are relying upon some corporation, be it Channel 9, the ABC, Google or Facebook. They are all corporations. The Council for Civil Liberties is a corporation.

There are no doubt other rights that, to some extent, will depend upon them being partially exercised by corporations. If you do not allow in certain circumstances for corporations to have access to these rights, people will not be able to exercise them fully.

CHAIR: Thank you, Mr Cope, for attending and addressing the committee.

FARRELL, Mr James, Director, Community Legal Centres Queensland

CHAIR: Good morning. I invite you to make a brief opening statement, after which the committee members may have some questions.

Mr Farrell: Thank you, Chair and committee members, for the opportunity to be here this morning. Each year, community legal centres across Queensland assist about 50,000 vulnerable Queenslanders with their legal problems. Often those legal problems relate to their interactions with government. Whether it is an inability to access services, eviction from public housing or accessing disability supports, our members are advocating for the human rights of everyday Queenslanders across the state.

In our view, the strength of these dialogical models of human rights laws is that it improves the way that community interacts with government, particularly with the executive arm of government. Certainly that is what I saw when I was the principal lawyer of the Homeless Persons' Legal Clinic in Melbourne, where the Charter was in force. That is why we think the human rights act is an important development. As others have said, it is not a panacea, but it is an important development in protecting and promoting the human rights of those vulnerable Queenslanders with whom we work. We have identified in our submission a number of improvements that we think can be made to the bill, but we really do strongly support the introduction of this legislation in Queensland and I look forward to discussing that with you now.

Mr McDONALD: I have expressed a couple of times this morning that I am a bit perplexed about the necessity for a separate human rights act. You mentioned the 50,000 people that you have represented through the community legal centres, which do a great job, I must say. Do you have some indication of the number of people out of that 50,000 who have had their human rights breached who have not been dealt with under other legislation successfully?

Mr Farrell: The short answer is that I cannot quantify that. What I can say is that the experience—and this is direct experience that I had in Victoria—is when you are negotiating with or having conversations with public authorities, as they are called in that state, having the tool of human rights with which to frame that conversation leads to better decision-making. We saw that particularly in the context of public housing, where being required to consider the human rights of residents and tenants, particularly the rights of the child and the rights of the family and the importance of those rights, sharpens the focus of decision-makers and improves the decision-making.

My view is that some of those improvements could be made through things like codes of conduct or other pieces of legislation, but a human rights act or a charter of human rights I think improves—certainly changes—the culture of decision-making within the executive arm of government. When people are forced to consider human rights because it is an obligation on them as public servants or in exercising public functions, their focus is sharpened. They make better decisions.

When we compared, in the context in which I was working, the experiences of families who were threatened with eviction and actually evicted before the Charter came in and families in almost identical circumstances where decision-makers had to consider human rights, in considering those human rights those families remained in housing and in our view would not have, before this culture of human rights, this language of human rights, this commitment to human rights. That is where we see the real value.

Mrs McMAHON: Thank you very much for your submission. You do spend quite a bit of time in the submission talking about the enhancement or the inclusion of and the promotion of the rights of Indigenous Queenslanders. Could you comment on where you find the bill does do work to support it and then where it stops and where you feel it could go further?

Mr Farrell: I will preface my comments by saying that I think this is a conversation that is best led by Indigenous organisations, community controlled organisations and Aboriginal and Torres Strait Islander peoples themselves. This bill does go further than comparable legislation in other parts of the country, including in the preamble, where it talks about the right to self-determination and other Indigenous people's rights, in pulling out, if you like, the cultural rights of First Nations peoples into a stand-alone clause. I think they are both commendable extensions of this legislation compared to the Victorian and ACT models. There are at international law—and we see it in communities across this state—significant human rights challenges and issues facing First Nations peoples. I think in a piece of legislation like this, talking to those communities and to the organisations that represent them about ways in which self-determination in particular but also other Indigenous rights, recognised in international law, and that play out practically every day in those communities particularly, we think is a body of work that could improve the bill.

Ms McMILLAN: Thank you for your great work. Your submission recommends amendments to the right to a fair hearing and the rights in criminal proceedings to protect the rights of victims. Can you expand on exactly how it is suggested that these rights be amended and what the impact on their interpretation may be, given the current rights are drawn from existing international instruments?

Mr Farrell: We are the peak organisation for 34 community legal centres across the state and many of our organisations are working with victims and survivors of family violence, other forms of sexual assault and other forms of violence. The feedback coming from those members—and you will hear from some of them this afternoon, including Women's Legal Service—was that in those rights in particular there seemed to be, on the face of the bill, primacy given to the rights of criminal defendants in those processes. We suggest that there are other ways in which this legislation or others could be used to strengthen the rights of victims of crime through the process.

I think you have outlined a couple of the suggestions and we have canvassed a couple because we think there are expert organisations like the Women's Legal Service that can contribute to that conversation more fulsomely. Personally, I am particularly drawn to a couple of those recommendations. One is to draw in a freedom from abuse and neglect. The Convention on the Rights of Persons with Disabilities includes that and particularly recognises the gendered issues facing people who are subjected to violence and abuse and neglect. That is one additional right that can be drawn from that international instrument, and I think your question goes to not 'making up' rights but making sure they do come from that settled international law.

Also, and this is not only around victims of crime, there are other pieces of legislation that include charters of rights for particular groups, including in child safety legislation, and there is a conversation happening at the moment in the context of disability services and potentially a charter of rights being included in disability services specific legislation, and particularly relevant for us is the charter of rights for victims of crime in the victims of crime legislation. Those codes of conduct—and I think it goes to a point that Mr McDonald raised earlier—can lead to gradual cultural change and improvement in services.

We see the value of a piece of legislation like this, though, having some accountability mechanism or enforcement mechanism at the end, is what makes the cultural change happen more quickly. If there is not the potential for some repercussions for poor decision-making then decision-making does not really change. If we can introduce some of those rights or at least the complaints mechanisms on those types of things where those charters exist in other legislation then that makes them a bit more meaningful and obviously leads to better outcomes for the people who rely on those rights.

Mr LISTER: Thank you, Mr Farrell, for your appearance today. Would your group or affiliated organisations seek government assistance to cope with an increase in caseload as a response to the advent of this bill if it were passed?

Mr Farrell: Potentially. We have not formed a view on that yet. Our sense would be that this is not going to, to borrow a phrase, open the floodgates of litigation. Certainly in the communities and with the clients with whom we work, this gives us another tool to advocate in their interests, but I do not think it is going to bring a whole heap of extra people knocking at our door for help.

If you are asking questions around resourcing, I think ensuring the new Human Rights Commission is properly resourced to support people through those conciliation processes and through its community education work will be vital to seeing this act enlivened and this culture of human rights built, but we do not expect to see significantly more clients knocking down our door alleging breaches of human rights and needing assistance through legal processes.

CHAIR: In relation to the bill's dispute resolution process, your submission indicates that it could be strengthened. What are your suggestions for improvement?

Mr Farrell: Like many other witnesses that you will hear from today, we think there is value in a stand-alone cause of action. Again, based on the experience that community legal centres have had in other parts of the country, and as I spoke about before in answering Ms McMillan's question, if there is not a stick at the end of this process for decision-makers, if there is not some enforcement or accountability, then it does not improve things at the front end. Where I saw huge improvement in the front end was in better supporting front-line decision-makers to make decisions about a person's human rights, particularly in decisions about providing services to them. Without those enforcement mechanisms you do not get the improvement at the front end and you do not get the better outcomes there. Strengthening those enforcement provisions, including a stand-alone cause of action and making sure that all remedies that are available for other causes of action are extended to these causes of action, we think will ensure that enforceability and front-load better decision-making.

CHAIR: There is an indication in your submission that there would be resourcing implications which may flow from the bill. What, in your view, would you say that the resourcing imperatives would be to ensure a successful implementation of the policy objectives of the bill?

Mr Farrell: As I alluded to in answering Mr Lister's question, the role of the Human Rights Commission in this process is incredibly important. In addition to an expectation around increased number of conciliations that the Commission will be required to hold, they have an important statutory function in community education and building the awareness and the culture of human rights across Queensland. Ensuring that they are properly resourced to do that work we would say is the priority. To the extent that there are resource implications, that would be the priority.

I will note, though, that in the first statutory review of the Victorian charter the then Department Of Justice of Victoria quantified the costs across all of government, including grants to community organisations, as 50 cents per Victorian to embed their charter of human rights. I think when we are looking at the resource implications, certainly the flagged investment in the Queensland infrastructure, if you like, is less than that, but even that is, we would say, a pretty paltry sum when we are talking about building a culture that better protects and promotes the human rights of all Queenslanders.

CHAIR: Thank you, Mr Farrell, for attending and answering our questions.

ARONEY, Professor Nicholas, Professor, TC Beirne School of Law, University of Queensland

CHAIR: I welcome Professor Nicholas Aroney. I invite you to make a brief opening statement, after which committee members may have some questions.

Prof. Aroney: Thank you to the committee for the opportunity to appear before you today. In our written submission Professor Richard Ekins of Oxford University, who has a lot of experience in the human rights field in the United Kingdom, and I made four central points. The first is that respect for human rights does not require enactment of a human rights act. Human rights, in our submission, are best protected by carefully drafted legislation which specifically addresses particular issues in a manner that gives certainty to all of those affected by the law.

Our second main point is that charters of rights distort the proper functioning of courts because they entangle them in politically controversial issues. The third point is that statutory charters of rights do not produce dialogue. All real-life political contests and litigated cases concern confrontations between rights, interests and objectives. The Victorian charter has not made any genuine dialogue more common there in that state than elsewhere in Australia.

The fourth point is that charters of rights are a kind of constitutional statute because they regulate the relationship between the courts, the parliament and the executive. As constitutional statutes, our submission is that they should not be enacted without bipartisan support because they set the ground rules for our political system.

In our written submission we undertake a close examination of the bill. We find numerous anomalies—several of which flow from these four central propositions. Let me sketch some of them out very briefly.

Firstly, the bill has been developed in consultation with an array of lobby groups, all of whom, the explanatory memorandum says, are very supportive of the bill. No dissenters were consulted, as far as I am aware.

A bill purporting to protect the rights of all Queenslanders has been drafted in consultation with only some sectors of the community. Let me be very frank here, and with all due respect: all of the interest groups consulted were strong supporters of the bill. Where were the more, shall we say, conservative groups that were consulted in the drafting of the bill?

Secondly, the explanatory memorandum says that the bill will maintain the existing relationship between the courts, the executive and the legislature. With all due respect, that is simply untrue. Again, let me be frank: the bill will undoubtedly change the role of courts, requiring them to wade into controversial political questions, undermining their ability to uphold the rule of law.

Thirdly, one of the objectives of the bill, as I have said, is to produce dialogue. However, as four justices of the High Court of Australia have said in relation to the Victorian charter, to describe the relationship between the three branches of government in terms of dialogue is—and I quote the High Court '"inapposite", "inaccurate" and "apt to mislead" because it misleadingly suggests that non-judicial functions are being conferred on courts in a manner that is unconstitutional.'

This is a serious problem with the bill.

Fourthly, the explanatory memorandum states that the aim of the bill is to protect the human rights recognised at international law. However, some important rights, recognised by the International Covenant on Civil and Political Rights, are just not included. For example, under article 18.4 of the international covenant Australia has an obligation to respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions. The bill does not include any reference to this right and, again, there is no explanation in the explanatory memorandum.

Fifthly—and this is the second last point—the explanatory memorandum acknowledges that human rights are not absolute but may be subject to limitation. However, rather than adopt the carefully defined limitations clauses that appear in the international covenant the bill adopts a vague and open-ended clause which allows the courts much wider leeway in determining where the balance should be struck.

Finally, clause 108 of the bill says that the bill will apply to all statutes. However, again, without explanation, some matters are arbitrarily excluded from the bill's application. For example, clause 106 says that nothing in the act will affect any law relating to termination of pregnancy or the killing of an unborn child. Why this particular area should be privileged in this way is not explained.

These anomalies are significant and illustrate just some of the problems that emerge when complex matters eliciting differing views within the community are addressed in the vague and abstract language of human rights. No-one knows what the results really will be.

Mr LISTER: You spoke of your concerns about the potential for the judiciary to be politicised. I will expand on that political context to some extent. In your submission you talked about the need for bipartisan support for a bill like this. Could you talk a bit about your reasons for that and the broader political context?

Prof. Aroney: I think Queensland has had a problem since the abolition of the upper house that has meant that the executive government has always been in a position to push legislation through the parliament using its majority in the Legislative Assembly. That has meant that, on both sides of politics during different periods of time in Queensland's history, governments that represent a certain proportion of the population and certainly have a majority mandate for that period of time are able to introduce any legislation they wish. Sometimes that legislation has been of a constitutional nature and has affected the balance of power and the operation of the democratic system.

I say this as an observation that can be made of all sides of politics through Queensland's long history. In my respectful submission, a human rights act is of that nature. At least in all the other states of Australia if such a bill comes before the parliament it has to get the support of both houses of parliament which ensures that it gets a wider degree of political consensus in support of the bill. That is not the case here in Queensland.

Mrs McMAHON: We have already heard this morning from a range of people who represent people at the coalface who are experiencing their rights being infringed. Your submission is that we do not need a human rights bill and yet we have been given a number of examples where there has been no other remedy for individuals to pursue their particular case. If it is not a human rights bill, where is the gap and what do you propose we put in place to ensure that all Queenslanders are not having their rights infringed?

Prof. Aroney: In my submission, what should be done is that in relation to every area where human rights are not being respected the parliament and its committees undertake very close examination of those specific matters and respond legislatively or in terms of policy as appropriate. When that is done it is possible to take into consideration all of the factors that need to be considered. It is possible to focus in on the issues and produce legislative or policy positions which carefully and clearly determine what shall be the policies going forward. A charter of rights presents very abstract rights and is for that reason uncertain as to its application in any particular case. In my submission, the first responsibility of a responsible parliament is to enact legislation that is clear and predictable so that people can know what their rights are.

Mrs McMAHON: I am thinking about the parliamentary committee process where we consider legislation. We certainly get briefings, particularly around consideration of the fundamental legal principles, on all bills. Are you saying that there is a gap in what we are currently doing which means we are seeing legislation pass that at the time it was drafted or was being debated in the parliament was not adequately examined in terms of the human rights of individuals?

Prof. Aroney: Let me give an illustration to make the point, I hope. Amnesty International has expressed concern about the bill. They say that clauses 33(3), 182 and 183 create an ambiguity. It is unclear whether the bill would allow young people convicted of offences to be incarcerated with adults, for example. They asked that the bill be clarified to resolve this issue. In my submission, this draws attention to a fundamental problem with the bill generally. That is, we have a wide array of rights, all of which bear on all of the legislation and all of the administration that occurs in Queensland, but no-one knows what the implications will be for every one of those areas.

Amnesty International recognised that risk and have made submissions to you along those lines. It would be possible to make submissions along those lines in relation to all the other areas of administration that have to be dealt with in the state. In my respectful submission, responsible law and policymaking would address this issue by issue, with the care that Amnesty International are saying needs to be brought to bear for these issues but in relation to all the others.

CHAIR: In your submission you talk about the opt-in provisions at clause 60 which may have unprecedented consequences on the law applicable to some bodies. Can you elaborate on exactly why that is and provide some examples that illustrate that?

Prof. Aroney: That was a point that Professor Richard Ekins drew when he analysed the bill in light of the UK experience. Could I underscore here that the time available to make comments on the bill was very limited. Professor Ekins and I tried to do the best we could, reflecting on and analysing the bill in the short time available.

CHAIR: Here is your opportunity to comment on the question.

Prof. Aroney: His point is that it would be unprecedented from an international perspective. Our point here is that private organisations are always free to commit themselves to standards but by bringing themselves under the act they would be bringing themselves under control of and regulation by the state and that is not a proper relationship that should be established between private organisations and state organisations.

It also underscores another difficulty in the bill when it refers to private organisations that provide public services. It is interesting that in the bill there is an example given to make clear that certain categories of private organisations—in this case private schools providing education—do not fall within the act. That need for specification says something very profound about the act. That is, if there is to be certainty the act needs to responsibly make very clear what sorts of organisations fall within the act and what do not. It is good that the act makes that clear, but then what about other organisations that are analogous to, say, schools providing education? Are they covered by the act or not? Again, in my submission, one cannot know with certainty.

CHAIR: There is another part of your submission where you say that parties to legal proceedings will attempt to frame their disputes in order to provide courts with the opportunity or responsibility to denounce legislation. Given the operation of the human rights acts in the ACT and Victoria—and the Victorian charter has been operating now for some time—are you able to offer any case examples where this has actually happened without a proper claim being raised?

Prof. Aroney: Yes. An example that I analysed with colleagues in Victoria was the Cobaw and CYC case, which was a case of discrimination. It was argued at first instance that the charter of rights applied to the case. It was clearly a deeply politically, controversial question. The human rights charter was brought into the argument to bolster the debate in the case. That is one illustration of how questions that divide our community politically become litigated in the courts under human rights charters.

CHAIR: That brings this segment to a conclusion.

ANANIAN-WELSH, Dr Rebecca, Senior Lecturer, TC Beirne School of Law, University of Queensland

BURTON, Ms Bridget, Director, University of Queensland Pro Bono Centre

CHAIR: I welcome both of you to the committee's hearing. I invite you to make a brief opening statement, after which committee members may have some questions for you.

Dr Ananian-Welsh: Thank you for this invitation and this opportunity. Bridget and I are speaking to a joint submission from 10 academics at the TC Beirne School of Law at the University of Queensland. We have a whole variety of different areas of expertise ranging from constitutional law to administrative law, international law, homelessness, domestic violence, criminology and criminal law. Bridget and I will assist you as much as we can, but we are happy to take questions on notice to draw on that broader field of expertise should that assist the committee.

CHAIR: It will.

Dr Ananian-Welsh: Our primary submission is that we support this bill and that it should be enacted. Queensland here has the opportunity to build upon a wealth of experience with exactly this form of bill, particularly in Victoria and the ACT. This bill, the Queensland Human Rights Bill 2018, promises to be the clearest and most effective form of human rights legislation in Australia. That is something that this government and this state has every reason to be very proud of. The bill is no panacea—and we have heard that today—but it is an important step forward in positive decision-making and accountability in this state.

Our submission makes 14 targeted recommendations about how this bill might be strengthened. Our support of the bill and recommendation that it be enacted is not contingent on any of those recommendations being accepted though. These recommendations fall into four categories: complaints, reporting, resourcing and court proceedings. The court proceedings aspect of these kinds of acts tends to receive the most attention, so that is where I will start today, but we want to emphasise that this is not where the real impact of the bill is going to be felt. This human rights legislation impacts how parliament makes decisions and how public entities deliver services and interact with the community. The human rights act has the capacity, therefore, to impact the lives of everyday Queenslanders on an everyday basis, not just those who are prepared to litigate and go to court.

We do recommend that the role of the court be abundantly clear in this legislation. Our three recommendations go to further clarifying what the court's role is. First we say that more guidance is needed over interveners and amici curiae, or friends of the court, in court proceedings. We make two recommendations as to the interpretive provision in section 48. One is that it be amended to clarify that this gives courts a role that goes beyond what they already have in applying the common law principle of legality. The second concerns section 48(3) of the bill. We propose that that section be strengthened to clarify that human rights should be interpreted in light of materials from outside Queensland borders including what is going on in Victoria, the ACT and internationally.

Turning then to complaints, we have five recommendations on the complaints mechanism but first we commend the inclusion of a complaints mechanism in this bill. It really sets the Queensland Human Rights Bill apart from what is going on in other states and makes it stand out as a leader in this country in human rights protection. There are ways it could be stronger, though, and more effective—and here you will hear me repeat a lot of what has been said throughout the morning. Our first recommendation is that there should be a stand-alone cause of action and our second is that remedies should be available and provided for.

Our third recommendation is that the complaints mechanism be extended to Queensland's existing charters of rights some of which Mr Farrell mentioned in his evidence earlier—for example, the Charter of Rights for a Child in Care and the Charter of Victims' Rights. Our two further recommendations at paragraphs 1.3 and 1.4 of our submission are more technical but important amendments around settlement agreements and mixed human rights and anti-discrimination complaints.

The final two sets of recommendations that we put to the committee concern reporting and resourcing. To an extent, the success of this framework depends on how much we know about it—if we are going to comply with it and be able to monitor how it is going. For a host of reasons we recommend that reporting by the Human Rights Commission be mandatory and involve some sort of follow-up on how the complaints are responded to by the parties involved.

As to resourcing, whilst costs associated with the human rights act might be expected to neutralise or near neutralise—and we heard about this from the Law Society this morning—we submit that the initial outlay should include specialist lawyers in community legal centres who are skilled up to

handle the human rights work that they will be dealing with and the development of practical resources. We mention a searchable database of all human rights act cases, policy documents, a bench book, and judicial training. These kinds of resources could be worked on and developed in partnership with experts. Our submission provides a couple of real-life examples of how this is currently being done in a very cost-effective way—the University of Queensland working with government and also stakeholders such as schools. We welcome your questions on any of those topics.

Mr McDONALD: Thank you very much for your presentation. We heard Professor Aroney talk about the importance of a bipartisan approach to the adoption of this bill. I was interested to know whether you were consulted in the initial process in the development of the bill. Certainly going forward, even supporters of the bill recognise that there are some deficiencies there. I would be interested to understand if you were consulted in the development of the bill and I would appreciate any feedback you might have.

Dr Ananian-Welsh: I do not know whether the TC Beirne School of Law was consulted. This being a joint submission of individuals, I personally was involved in the early stages of the movement towards a human rights act in Queensland.

Ms Burton: I also work at the Caxton Legal Centre, but I am seconded at the moment. No, I do not think we were consulted in relation to the bill as you see it. Some of our colleagues may have been, but it would have been through their engagement with organisations that were consulted.

Dr Ananian-Welsh: This is, however, something that is dear to the hearts, you could say, or central to the areas of expertise of a whole range of people at the university. We have been providing, I guess, advice in the form of what we write and what we are saying to media on an ongoing basis well before this campaign even started.

Mrs McMAHON: We have heard from a range of lawyers this morning—practitioners—and we have made comment on the legal processes from people representing complainants all the way through to commentary on the judicial system, the parliamentary committee system and all of those kinds of things. I want to take it back to how this impacts on the people that the bill's objective is to protect. In your submission you made reference to the existing Queensland charters of rights and specifically say—and this is in relation to a complaint mechanism—

> The lack of any complaint option undermines the intent of these various Charters of Rights and is a source of general frustration for practitioners and the public.

I understand that you all spend a bit of time out in the community doing various work. Could you give the committee some real-world examples of the impact that the intent and objective of this bill will have on the lay Queenslander who is currently not present or not represented in the legal mechanisms that we have at the moment? I want to go back to the people of Queensland that this bill purports to provide protections for. Do you have any experience or any examples you could provide to the committee of where having a charter or a bill like this is actually going to be of benefit to people, not just lawyers?

Ms Burton: It may be a good idea for us to take part of that on notice because our colleagues Professor Tamara Walsh and Professor Heather Douglas work in child protection and domestic violence respectively and have experience or direct experience with women and families who have ostensibly had the protection of those two particular charters of rights that we have extracted and who have found them unsatisfactory to meeting their needs. I would like to, if possible, talk with them about responding to those particular items.

Mrs McMAHON: I believe we have Professor Walsh appearing this afternoon.

Ms Burton: You do have Professor Walsh appearing this afternoon.

Dr Ananian-Welsh: There is a written submission from Professor Douglas as well.

Ms Burton: Professor Walsh and I worked together on the submission that she will be speaking to this afternoon in relation to education. I think that a real tangible advantage will come from people within the education system. For a group of people who have not otherwise had any other way of dealing with problems that arise—we have seen suspension rates for children go up considerably, particularly at prep and at grade 7, so their first year in primary school and their first year in high school—having a way of bringing people around a table and talking about what their child needs will make a huge difference in their individual lives. I think you will find that that will be the case for a large number of people, if you are looking for an example.

Mrs McMAHON: Yes. As I said, we have been talking almost esoterically about the legal side of things. I wanted to bring it back down to the ground and try to find examples of why there is a gap and why there is a need.

Ms Burton: Very briefly, in relation to child protection—the Charter of Rights for a Child in Care—one of the things that those of us who work in the community sector have noticed over a long time is that some of the things on that charter are very well respected. The right to information, which exists in that charter, is one that is very well engaged with by government, but some of the others are roundly ignored. I think that is where the frustration has come in relation to those charters that do not have any options for bringing people around a table and do not have any complaint options—where it is really up to government to decide what bits they do and do not want to focus on—whereas giving people a right to make a complaint is giving the individual person who is affected the ability to choose what is important to them.

CHAIR: In your submission you talk about the strong likelihood of an overlap in matters arising under the human rights act and the Anti-Discrimination Act. Are you able to outline for the committee what you think the potential ramifications of this overlap are and how you propose they should be addressed?

Ms Burton: I think that is something that can either be clarified within the bill or be clarified by the Human Rights Commission in terms of being very articulate about its practices. I think the bill at the moment leaves it a little open. I would imagine, having practised in the anti-discrimination jurisdiction for a long time, that everybody making an anti-discrimination complaint will add a human rights charter argument to it if they can and vice versa. As anti-discrimination actions have better application in terms of remedies and ongoing proceedings, if you have a human rights action that can be an anti-discrimination action it would be tempting to double them up.

It is not so much a matter where we think there are going to be huge problems either way. I think it is just something that we have recommended be more clearly articulated, particularly as we are looking at a jurisdiction which I understand will largely encourage self-represented people. I think it needs to be a lot clearer so we do not find people who would otherwise have a straightforward way of dealing with things having to jump through the hoops that are in place under the human rights regime.

CHAIR: That brings this part of the hearing to a conclusion. In relation to the question on notice, are you able to provide that to the secretariat by Wednesday, 12 December?

Dr Ananian-Welsh: Yes, of course.

CHAIR: Thank you for your attendance and thank you for addressing the committee.

ANTON, Professor Don, Director, Law Futures Centre, Griffith Law School, Griffith University

HARRIS RIMMER, Associate Professor Sue, ARC Future Fellow, Griffith Law School, Griffith University

WILSON, Associate Professor Therese, Dean, Griffith Law School, Griffith University

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which committee members may have some questions for you.

Prof. Wilson: I am pleased to provide the opening statement to this committee and to be part of this historic debate. I am the Dean of Law at Griffith Law School. I note that Griffith Law School is the highest ranked Australian university for law in the 2018 academic rankings of world universities, which is a testament in part to our research, much of which is in the area of social justice and human rights.

Our law school is dedicated to social justice and helping students learn from award-winning teachers and researchers who practise what they teach such as our former dean, Professor Penny Mathew, who recently addressed the United Nations on the topic of refugees; Zoe Rathus, who founded the Women's Legal Service; and Kate van Doore, who this week helped change Australian laws associated with child trafficking through orphanage tourism in the new Commonwealth Modern Slavery Act. We are very proud of our colleagues also including Associate Professor Sue Harris Rimmer, who is here, who has been a strong advocate for human rights and for this human rights act and who coordinated the Griffith Law School submission to this committee.

At Griffith Law School we believe in law as a powerful instrument of change and we aim to produce graduates creating change for good. That is the reason we are proud to support this human rights act. We support many of the submissions from Queensland's community legal centres and also submissions by our colleagues at the Griffith School of Criminology and Criminal Justice. We host the Griffith Innocence Project at Griffith Law School which is a collaborative pro bono project which brings together academics, lawyers and law students to work to free innocent people who have been wrongfully convicted, and we do so working to correct failures in our criminal justice system and to help protect the marginalised and oppressed. Part of our submission addresses this issue of wrongful conviction.

Queensland has many black spots in its history of times and places where the human rights of citizens were violated. We are in strong support of the introduction of this bill, and we would dedicate our resources to the successful implementation of the act as educators and policy influencers. With reference to the submission and statement made by Professor Aroney and his concern about legislation passed in the absence of an upper house in Queensland, we believe having the legislative context of a human rights act would ensure dialogue about human rights and legislation that might impact on human rights, which is particularly important in a context of fixed four-year terms and a parliament that does not have an upper house.

We believe that this bill, if passed, would improve the protection of rights and provide an accessible statement of the rights that are fundamental to a life of dignity and value. The development of a culture of human rights and adherence to the rule of law would be greatly assisted by this legislative protection of rights, and we note that Australia is the only western democracy without a national human rights instrument. Specifically we think that introducing the act would enhance Australia's democracy; provide a yardstick by which to measure government, the courts and the community; assist disadvantaged people; and require government departments to consider the impact of their day-to-day operations on human rights.

By building on the model provided for in Victoria and the ACT, a Queensland human rights act can retain parliamentary sovereignty and provide individuals with direct means of redress for overt breaches of civil and political rights. Respect, protection and fulfilment of economic, social and cultural rights can be pursued without exposing government to liability for its allocation of scarce resources. We recognise that the intention and premise of this proposed Queensland human rights act is to foster a conversation between the three branches of government, on the one hand, and the public, on the other. The bill is an important step forward in Australian bills of rights in addressing these concerns. It is well behind some newer constitutions such as South Africa and Kenya, but the potential for further improvement during the further review is welcome. However, the initial bill and the next review could address the above concerns more fully.

Our submission also has a strong focus on economic and social rights and the right to a healthy environment. Those are matters which my colleague Professor Don Anton, who joins us, is able to address. The majority of matters in relation to which you may wish to raise questions I think can be very ably addressed by my colleague Associate Professor Sue Harris Rimmer. We are pleased to be of service to the committee and stand ready to answer your questions.

Mr ANDREW: Good morning and thank you for your contribution. Could you please elaborate on your submission that the bill includes cultural recognition of Australian South Sea islanders including what rights you contend should be included in the bill for protection?

Prof. Harris Rimmer: Yes, indeed. The bill deals with the cultural rights of Aboriginal and Torres Strait Islander people, which is extremely welcome, and you will be hearing from some of our Indigenous community legal centres more about that this afternoon, but what it leaves out is the recognition of one of the very original human rights violations in Queensland—the importation of South Sea islander labour—which has ongoing issues today with that community.

Under the Beattie government there was some recognition given to South Sea islander Queensland residents who are now Queensland citizens. I suppose the idea was that, in recognition of Aboriginal and Torres Strait Islander cultural rights, we cannot forget we have a forcibly removed but now Queensland population of South Sea islanders as well. It was really to remind the parliament that there is another lasting human rights issue in the state.

Mr ANDREW: That would be good, thank you.

CHAIR: You submit that the bill should recognise the right to overturn a wrongful conviction and receive compensation for wrongful imprisonment. Could you outline your proposal concerning this right and what you consider should be included in the associated compensation provisions?

Prof. Harris Rimmer: As we said, we are the host of the Innocence Project in Queensland. My particular experience is with the ACT bill of rights project, which was led by Hilary Charlesworth in the ACT. The ACT act does allow for wrongful conviction, and you will see that that has been a very interesting part of the David Eastman trial and so spectacularly this week. We have provided the text of the ACT provision. It is very clear. It is a rarely used but extremely important piece of legislation. We have also included section 23 of the ACT act which allows for compensation. There is very little jurisprudence, as one would hope, in Australia but basically the compensation is decided by the Supreme Court. The amount of the compensation is not legislated. We will see what happens in the Eastman trial.

CHAIR: There is provision already for people to take action for wrongful conviction.

Prof. Harris Rimmer: According to our Innocence Project experts, it is not strong enough and not comprehensive enough.

Ms McMILLAN: Further to the rights included in clause 28 of the bill, you suggest extra provisions to achieve distinct cultural rights rather than simply their recognition. Can you comment on suggestions for resourcing greater Indigenous representation and consultation and an appropriately funded redress scheme?

Prof. Harris Rimmer: Again, this is part of the submission drafted by our Indigenous professor colleagues. Essentially, the concept of the protection of cultural rights for Aboriginal and Torres Strait Islander people is extremely welcome in the act. The problem that remains is the concept that recognition is not the same as control or the ability to have more agency. This is in the context of the Uluru Statement from the Heart and ongoing conversations in Australia about Indigenous representation. We have heard this morning from Mr Farrell from Community Legal Centres that they also think the bill could always be strengthened in relation to Aboriginal and Torres Strait Islander people.

I think this is a question for the review phase as to whether the recognition of cultural rights could lead to some more active protection and redress, but it is an ongoing issue. Again, it is dealt with under a patchwork of legislation but there is no easy entry point for Aboriginal and Torres Strait Islander people. You have to look at native title legislation, you have to look at cultural heritage laws, you have to look at right of resale—you have to look at a whole range of different types of legislative protections for Indigenous rights.

Our submission goes through all the submissions that Aboriginal and Torres Strait Islander people made to the 2016 inquiry before this committee which said they were asking for increased voice in politics about decisions that affect them as well as for protection. That is something we have not quite managed to achieve with this bill but it is still a very good start. That was the concept. When this

bill comes to be reviewed, when the bill hopefully becomes legislation, that should be a key part of the review process. Again, as our colleagues have said, we defer to our Indigenous led community organisations on this point.

Mr LISTER: Professors, if I may collectively refer to you as that, thank you very much for coming today. Professor Wilson, thank you for your opening statement. I notice you mentioned a 'dialogue', I think was the term you used. Can you tell me what you are referring to there? Was it the dialogue that is mentioned in the explanatory notes to the bill between the executive, the parliament and the judiciary?

Prof. Wilson: I think it is about opening up opportunities for members of the public to prosecute their rights. Did you want to add to that, Sue?

Prof. Harris Rimmer: Yes. As Professor Aroney discussed, this is a dialogue model where the courts speak to the parliament, the parliament speaks to the courts and so forth. It retains parliamentary sovereignty, though. As Professor Aroney was discussing, a lot of the issues that he raised would be very salient but for the fact that we have many, many examples of these types of acts now in many jurisdictions and we have not seen a politicisation of the judiciary in Canada, New Zealand, the UK, the ACT or Victoria to any extent. We have not seen a flood of litigation. We have not seen lawyers' picnics. We have not seen any of these problems arise in very similar jurisdictions to our own. What we can be very confident of is that those jurisdictions have had all the teething issues, and the current bill before the parliament has benefited from those jurisdictions' experiments in this area. Now what we have is a very sophisticated and tested model of a human rights bill.

Mr LISTER: In the context of tests, the Victorian law was tested in the case of Momcilovic v the Queen, and my understanding of it is that four justices of the High Court expressed doubts about the constitutionality of that dialogue and said that it was misleading and potentially unconstitutional. Were you aware of that?

Prof. Harris Rimmer: Yes, we were, but at the moment the Victorian act stands. The High Court did not strike it down. It did not say to the Victorian parliament that what it was doing was unconstitutional and so there you have it. It was a judge having an opinion about that particular issue but it was not law. I think Professor Aroney is quite right to say that these are always live issues and in the particular case it could be a particular live issue, but at the moment we have not had any particular problems with politicisation. There is a lot of politicisation in other areas of the law—social security law, criminal law, parliamentary entitlements. There are endless political issues involved in what our High Court deals with and what our Supreme courts deal with. I do not see this as an order of magnitude different from the current issues that the courts deal with all the time.

Mr McDONALD: I am interested to know whether you folk were consulted throughout the development of this bill.

Prof. Harris Rimmer: We made a full submission to the 2016 inquiry. I was a member of the Queensland Law Society's exciting working group that you heard about earlier. No, we were not consulted on drafts of the bill. It was not really necessary, in a sense, because it draws on such established jurisdictions in Victoria and the ACT; we all knew what the bill would roughly look like.

CHAIR: Thank you for your attendance. Thanks for your contribution.

BOUGHEY, Dr Janina, Senior Lecturer, University of New South Wales (via teleconference)

CHAIR: I invite you to make a brief opening statement, after which committee members will have some questions.

Dr Boughey: Thank you so much to the committee for the opportunity to appear today and to speak to my and Professor Williams's submission. If it is all right with the committee, I would like to focus my comments on the provisions of the bill which relate to the obligations of public entities, meaning government departments and agencies, and some private bodies making public type decisions. The reason for that focus is in large part a reflection of my expertise, which is in administrative law. More importantly, it also reflects the fact that numerous reviews of the Victorian charter, on which relevant provisions of the Queensland law are modelled, have said that it is most effective where it succeeds in creating a human rights culture within the government. That is a culture in which rights are considered and prioritised in government decision-making. The fact that government decision-makers have obligations to consider human rights has been a great tool for advocacy groups negotiating with government to improve policymaking and decision-making in Victoria.

In several respects the Queensland bill improves on the Victorian and ACT human rights legislation in relation to public entities. It clarifies some of the language in those acts that has been problematic. Most importantly, as I know others have mentioned today, it provides for a complaints process to the Human Rights Commission. We think this is an excellent feature and it overcomes a major weakness of the Victorian and ACT legislation, where there is no accessible, affordable and effective complaints mechanism for people who allege that government action or decision-making unlawfully infringes their rights.

However, the Queensland bill also replicates the most problematic provision of the Victorian charter, which has been almost universally criticised, and that is section 59 of the Queensland bill which replicates the effect of section 39 of the Victorian charter. The provisions require that a person who alleges that a public entity has acted in breach of its obligations to consider an act compatibly with that person's rights can only seek a remedy in the court if the person would otherwise have been entitled to that remedy on the grounds that the action or decision of the public entity was unlawful. If that sounds convoluted, that is because it is.

The equivalent provision in the Victorian charter has several sorts of difficulty. For one, it means there are likely to be certain public entities which have obligations to make decisions and act in accordance with rights that are not subject to any remedy. For example, while the Queensland bill applies to private entities with public functions such as outsourced service providers, there is probably no way of remedying human rights breaches by those entities.

A decision of the Victorian Court of Appeal that was released yesterday in AB v CD, which was part of the shocking situation involving the police informant barrister, highlights this. The court said that the prosecutor's decision to disclose details of the informant and the information she had provided to police could not be challenged on human rights grounds because there was no remedy otherwise available for the actions of the prosecutor in those circumstances. In other words, section 39 prevents anyone from challenging the prosecutor's actions no matter how egregiously those actions impinge on a person's charter rights.

Secondly, the interaction between the Victorian provisions and common law judicial review remedies has meant that one of the most difficult and confusing common law concepts has been imported into charter litigation, and that is the concept of jurisdictional error. I am very happy to explain that at length, but my experience with my students is that they do not particularly like that and I am assuming you will not either. The practical effect is that there is a very limited range of remedies for people who successfully argue that the government has breached its obligations under the Victorian charter and making charter arguments in Victoria is unnecessarily complicated and difficult. Those complexities might be even more pronounced in Queensland in some respects due to the presence of the Judicial Review Act.

Our recommendation is that section 59 of the bill be redrafted along the lines of section 40C of the ACT's Human Rights Act, and that is to provide for an independent cause of action for a public entity breach of its obligations to consider an act compatibly with human rights. The presence of an independent cause of action has not caused a great flood of human rights based litigation in the ACT, so in our view there is really no good reason to adopt one of the worst and most criticised aspects of the Victorian charter rather than follow the much better approach taken in the ACT.

Mrs McMAHON: We have heard already—and no doubt you have been following—some comments about the role of human rights scrutiny in the drafting of legislation and, from a selfish point of view as a committee member, looking at how we can best ensure that bills do incorporate human rights. We have had a bit of feedback on what some people think are weaknesses in the drafting of bills and alternatives. I note there is a comment in your submission that Queensland may be able to learn from the Victorian experience. You go on to say that parliamentary debate about human rights has been disappointing and that the reports by the relevant briefs on human rights impacts are rarely raised in parliamentary debates. Are you able to expand or provide comment on whether this incorporation of human rights or declarations of compatibility will actually be utilised in Queensland, based on the Victorian experience?

Dr Boughey: I think that is in large part a question of practice. I do not think there is anything inherent about the legislation—the Victorian charter itself—that necessarily means that dialogue has been disappointing. I think it is more a matter of practice. That is, the studies by others have shown that some governments have used deliberate tactics to minimise debate—for instance, controlling the legislative timetable to ensure there is limited time between a bill being introduced and its enactment or deliberately providing unhelpful statements of compatibility. I think those are largely questions for parliamentary procedure and practice and the control of the parliament. The only thing that we suggest could be done in the legislation itself to counter those problems is to enact a provision along the lines of what the ACT has done, which is to require that bills not proceed to debate until the committee has reported. That alleviates some of those concerns. As I said, to some degree it is a question of the practice of how things work in the parliament itself rather than legislating necessarily.

Mr ANDREW: Could you explain your recommendation that clause 59 of the bill be redrafted along the lines of the ACT's approach, please?

Dr Boughey: Yes. Basically, the ACT and Victorian legislation take different approaches to remedy. In Victoria, in order to get a remedy a person needs to demonstrate to some degree—it is not clear to what degree—that they would otherwise be able to get that remedy. Basically, that means they have to have a judicial review; they have to be able to seek judicial review of the decision in order to then get the same remedy for the breach of the charter. It is really convoluted and it acts as a significant barrier. By contrast, the ACT legislation provides for an independent cause of action. That is, all a person needs to do to get to court is say, 'This government authority has breached my rights in the following way. They have failed to consider my rights in decision-making,' or, 'This act breaches my rights,' and the ACT court can issue a remedy. There is no need to demonstrate that some other cause of action would have been available with respect to unlawfulness by the public authority. It is a much simpler remedial model and does not have the drawbacks, nor has it resulted in the ACT being involved in a great deal of litigation on human rights grounds. The remedies are still limited; the remedies the court would issue are still limited, for instance. The ACT act still says that damages are not to be pursued.

Mr McDONALD: I am interested in the same topic. I am a bit confused with regard to having somebody refer directly to the court, which many people are entitled to. One of the benefits that has been described as a result of the introduction of the bill is education and resolving it at an earlier opportunity. That seems to contradict your recommendation in relation to changing clause 59 of the bill.

Dr Boughey: No, I could not say it is a contradiction at all. We make clear in our submission that ideally we would not have any litigation about human rights because it would not be necessary because the government would respect human rights and any disputes would be resolved at an earlier stage. I think the real strength of the Queensland legislation is that it does provide an early, affordable, effective and accessible dispute resolution mechanism. I suspect that because of that there would be very little litigation in Queensland because most of it would be resolved through the Human Rights Commission. Our point is simply that if there is going to be judicial involvement and if there is going to be judicial oversight then it should be effective. There are strong arguments that clause 59 will have the same effect as section 39 of the Victorian charter and preclude it from being effective.

CHAIR: That concludes this segment of our hearing. Thank you for your contribution.

DEBELJAK, Dr Julie, Associate Professor, Faculty of Law and Castan Centre for Human Rights Law, Monash University (via teleconference)

CHAIR: I invite you to make a brief opening statement, after which committee members may have some questions.

Dr Debeljak: Thank you very much for your time and for the invitation. I do not need to say a huge amount by way of introduction because you have my 2016 and 2018 submissions in front of you. I do want to make a couple of points about the interpretation provisions and the way they interact with limitations in particular. The first thing I would like to say is that I am really delighted you have clause 8, which defines compatibility with human rights to include the limitations provision. The Victorian jurisprudence is still stuck on the issue as to whether or not limitations are part of the interpretation. Quite frankly, just from a doctrinal point of view, they need to be, because you do not have absolute rights. All rights can be limited by other competing rights and other important interests in society. I am pleased to see that you have that right in your draft bill. On page 3, however, I do maintain it could be of use somewhere in your extrinsic materials to insert some kind of flowchart as to how you think your interpretation provision, limitation provision and declaration provision might interact, because in my opinion, although it was quite clear how the Victorian charter should interact, the courts have not interpreted the provisions to interact in the way that I think the statute clearly promotes.

The other point I want to make, which is not in my submission because it has just come to my attention, relates to clause 48(2). I think it is fantastic you have explicitly stated that if the provision cannot be interpreted in a way that is compatible with human rights the provision should, to the extent possible, be interpreted in a way that is most compatible with human rights. I say this because in a recent decision of the High Court in Craig William John Minogue v State of Victoria [2018] HCA 27 the majority of the High Court could not get their heads around the idea that legislation may still violate some human rights when it is more literally constructed even though that construction would infringe fewer people's human rights, if you like. They kind of saw the issue as all or nothing. We have to either interpret the law to not violate any person's human rights or keep the law as is and it violates the rights of a category of people that it violates. They could not see the middle path and say that you can more narrowly construe that law so that fewer people are impacted by the human rights violation. I think, again, that is a great addition to your bill and I hope you are able to keep that in your document.

My last point really goes to the fact that your interpretation provision, clause 48, really is your remedy. I have not been able to get this point across to the courts in Victoria, but, frankly, the only remedial provision you have in this document is clause 48. If the law is going to be interpreted to be rights incompatible on a plain reading, that violation can be remedied by giving the law a rights-compatible interpretation. That is something more and different to what you might get with the principal of legality. My main concern for you is that, even though there was ample evidence of parliament's intent in the Victorian charter for the fact that section 32 is a remedial interpretation provision, the Victorian Court of Appeal and then half of the High Court dismissed, if you like, the extrinsic materials that pointed to the fact that section 32 should operate like the UK and New Zealand bills of rights. They preferred to characterise section 32 as merely the codification of the principle of legality.

I suggest to you on page 4 and pages 8 and 9 of my submission that you somehow strengthen the evidence of parliament's intention behind your human rights act. Even though we had strong evidence in our extrinsic materials to the charter that we were intending to codify the UK's Human Rights Act and the Ghaidan model, it has not turned out that way. I thought it was explicitly in there, but the courts were able to pick out other elements of the extrinsic materials in order to justify the codification of the principles of legality.

I have one more point, but I am not sure if Janina Boughey has already brought the committee's attention to this. Overnight some decisions that had previously been suppressed were released in relation to public authority. It is the AB v CD case. I think this committee should have a quick look at that case, particularly paragraphs 180 to 185. Essentially, a police informant's right to life is not going to be protected under our public authorities provisions because the remedy she was seeking was not a remedy that was linked to lawfulness. If we had a freestanding cause of action, that remedy would be forthcoming. I think it is a really good current case to draw the committee's attention to the weaknesses of not having a freestanding remedy.

Mr LISTER: Can I ask you about your view on the role of parliamentary committees. I know that you have proposed a specific standing committee for human rights considerations with legislation. You have made some observations about the Australian experience in parliamentary committees tending

to focus on technical details rather than outcomes and motivations. You also suggest that the committee should perhaps see draft legislation in private before it is put before the parliament. Can you elaborate on that, please?

Dr Debeljak: Yes. I have done a fair bit of research. I am looking for the flaws in the Victorian parliamentary committee system, so I have really focused on instances where there has been a stated incompatibility or a finding within SARC that there might be a problem about compatibility and seeing how that plays through the parliamentary process. My findings have indicated that not much gets changed by the time the legislation is on the floor of the parliament being debated. In terms of fixing the process and technical details, some of my suggestions are driven by the concept that laws are very much shaped in the policy development stage and the legislative drafting phase, and it is nigh on impossible to get an amendment on the floor of the parliament. If that is the case, it could be very helpful to include SARC, for example, or your parliamentary committee, in that policy development and legislative drafting phase.

One other idea that has been floated and does happen in the ACT is that the Human Rights Commission also becomes involved in policy drafting and the legislative drafting phase. Obviously that cannot happen with every piece of legislation, but those pieces of legislation that are arguably rights incompatible or close to being arguably rights incompatible would really benefit, I think, from earlier interventions from a parliamentary committee and a Human Rights Commission.

Ms McMILLAN: Would you like to elaborate on certain rights you identify in your submission classified as non-derogable and what impact that would have on the operation of the bill?

Dr Debeljak: Do you mean in terms of the limitations provisions?

Ms McMILLAN: That is right.

Dr Debeljak: Basically, international law documents are drafted differently to our documents in the domestic setting in the sense that they look at each right and decide whether or not they are going to qualify the scope of the right or whether they are going to allow a right to be limited. For example, freedom of expression and freedom of religion in international documents do have internal to those provisions the capacity to limit rights, whereas there are a lot of provisions, and they are the ones I have listed there in my submission, that do not allow limitations to them at all, for example genocide, torture and slavery. It has become practice with domestic instruments that, rather than going right by right to decide whether or not you want to have a limitation within that right, they impose these general limitation provisions that apply to all rights.

Technically in international law that is potentially unlawful, because we know there are a handful of rights that under no circumstances are able to be limited. My opinion is that if we are bringing rights home from the international to the domestic, we ought to reflect that in the document that we have. I strongly believe that limitation provisions should explicitly exclude those sorts of rights that are absolute at the international level. I guess the flipside of that is that with a limitations provision it is always a balance, and the importance of a right is balanced against the importance of the purpose behind the limitation. If you have one of these absolute rights you could always argue that, under limitation balancing, you would never be able to justify a limitation because the importance of the right is so high, but technically we should not even be having that debate. Some people would say it is fine to have a limitations provision because under the balancing act you could not imagine a scenario in which an absolute right would ever be justifiably limited. That is one view. In my view, I do not think we should even be having the debate. Those rights and limitations should not be subject to that debate at all.

CHAIR: That brings to a conclusion this part of the hearing. The committee would like to thank you for your assistance.

Proceedings suspended from 1.15 pm to 2.00 pm.

RANGIHAEATA, Ms Rachael, Information Commissioner, Office of the Information Commissioner

SHANLEY, Ms Susan, Principal Policy Officer, Office of the Information Commissioner

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which the committee will have some questions.

Ms Rangihaeata: Thank you, Mr Chair, and good afternoon, committee members. I want to thank the committee for this opportunity to speak with you today. As the committee is aware, my office forms part of the integrity and accountability framework in Queensland. We have a statutory role under the Right to Information Act and the Information Privacy Act to facilitate greater and easier access to government held information. We also assist Queensland government agencies, which include local government, to understand their obligations under the IP Act to comply with the privacy principles and safeguard the personal information that they hold. My statutory functions also include dealing with privacy complaints about Queensland government agencies and external review of decisions by such agencies about applications to access information held by government. The Right to Information Act and the Information Privacy Act form part of a suite of administrative law obligations and oversight mechanisms that support greater government agency accountability.

As outlined in our submission to the committee, my office welcomes the introduction of the Human Rights Bill as an important mechanism to strengthen human rights protections, including the protection of privacy and the right to seek information in Queensland. I note that the bill is modelled on the Victorian Charter of Human Rights and Responsibilities Act 2006 and seeks to protect 23 human rights drawn primarily from the International Covenant on Civil and Political Rights. These rights include the right to privacy and reputation and the right to freedom of expression. The right to freedom of expression also incorporates a right to seek and receive information and in particular includes a positive right to access government held information.

The Human Rights Bill acknowledges that these human rights are not absolute and may be subject under law to reasonable limits that are justifiable. The Right to Information Act and Information Privacy Act also provide a legislative framework within which to balance privacy and information rights with other legitimate rights and public interests. Both of these acts provide exceptions to the right to privacy and access to information with clear overriding public interests, many of which relate to law enforcement and public safety and provision for consideration of the public interests of the circumstances of others.

As noted in the explanatory notes, the bill aims to ensure that respect for human rights is embedded in the culture of the Queensland public sector and public functions are exercised in a principled way that is compatible with human rights. The bill also aims to ensure human rights are given proper consideration in public sector decision-making and in the development of policy and legislation in Queensland. The information rights and responsibilities and the Right to Information Act and Information Privacy Act are narrower than the proposed new human rights. However, they have established a good foundation for the proposed rights, including cultural change. In Queensland the RTI Act and the IP Act have had a significant impact on cultural change in relation to information rights and responsibilities for the public sector since 2009.

The experience in Victoria has highlighted that, while the charter has helped to build greater consideration and adherence to human rights principles within the Victorian public sector, parliament, courts and key areas, for the charter to be effective work to build a stronger human rights culture must be prioritised by government. The Victorian Equal Opportunity and Human Rights Commission recently noted that there has been significant progress in implementing recommendations designed to build and strengthen a human rights culture in Victoria arising out of the 2015 review of the operation of the charter.

In addition to promoting a human rights culture in the Queensland public sector, my office considers that the bill will assist in embedding a privacy-by-design approach to the development of policy and legislation in Queensland, allowing for early identification, assessment and engagement with stakeholders. Early identification in consideration of the implications for human rights will help ensure better outcomes, including privacy-enhancing features in legislation and significant technology projects affecting the broader community. My office is regularly consulted by agencies on the privacy aspects of policy in legislative initiatives, including the collection, use and disclosure of personal information. At times, privacy and right-to-information implications are not fully considered until the introduction of a bill into the Queensland parliament, limiting opportunities for public debate and consideration.

We have raised issues with parliamentary committee consideration about bills where we were not aware of the proposed legislation prior to introduction, where agencies had not engaged with us for advice about the privacy implications of the legislation and we were concerned about the apparent lack of consideration of implications. This is not an ideal situation and it is not efficient or effective. It is also more difficult to build privacy and information access enhancing features into a bill once a bill has been drafted, approved by cabinet and introduced into parliament. It is preferable that issues are identified, assessed, managed and consulted on during development of drafting instructions on the bill to achieve an optimal outcome. The same principle applies of course to projects, policy and procurement. A privacy-by-design approach should be taken with privacy impact assessments at commencement and at key points as appropriate.

I would also like to note a further issue for the committee's consideration from our experience in administering our statutory functions. It is important to provide as much certainty and clarity of scope and application to agencies and other public entities and the community as possible. With any new legislation of course there can be uncertainty and also the need to provide guidance and promote awareness about the operation of the legislation. Certainty about scope will be important given the definition of the functional public entity. It is also likely that agencies and the community will need assistance to understand the scope of the rights themselves. The highest level of certainty and awareness that can be provided will, I think, reduce the amount of work and advance the effectiveness of the legislation.

The Human Rights Commission will be critical in raising awareness and providing advice of course, particularly in the first few years. We will work with the Anti-Discrimination Commissioner to support greater awareness about information rights and responsibilities in our jurisdiction, including clear arrangements for seeking assistance and review or complaint mechanisms. In fact, we have already started preliminary discussions with Scott McDougall.

In summary, the Human Rights Bill establishes principles for better practices and decision-making in legislation in Queensland, particularly in the context of an evolving landscape of community expectations and technological opportunities and challenges. The successful implementation of this legislation would require clear guidance, advice and a comprehensive awareness campaign to reach the community and all relevant entities to which the bill applies. Importantly, the bill will facilitate cultural change which will only be established by strong and clear leadership across all relevant entities. Thank you.

CHAIR: In your submission you referred to emerging and existing technology intruding into the privacy of individuals in Queensland. Are you able to provide the committee with examples where such intrusions are occurring and advise whether you believe this bill will address such intrusions?

Ms Rangihaeata: I think one recent example that has been discussed by other committees is in the area of transport technology, and there is quite a lot happening in that space at all levels of government, including smart city technology of course as well. The opportunities are essentially endless and the benefits that they can provide are strong public benefits, but there is the potential for agencies to see the benefits and not necessarily stop and pause long enough to think carefully about all the implications that need to be carefully considered, addressed and managed in this space. That is something that we have worked with a lot of agencies on and provided a lot of submissions at the federal and state levels. We are talking now with people about different projects involving AI, and that is a huge space that is evolving. I know that there is quite a bit of work happening in the human rights field in relation to AI, and yesterday the Human Rights Commissioner was, I understand, overseas talking about AI at the G7 and there is a big report coming out next year on that.

It is an area where there are golden opportunities for government to provide real efficiencies and smarter services and so on for citizens, but they can come at a cost and sometimes there needs to be informed public debate about those costs so that the community can really weigh in as to what they are willing to offset in relation to those opportunities. We do not always know best what the public's views are and it is not always a homogenous view amongst the community. We really do need to have that level of public engagement. Certainly where people are informed about the public interest in providing their personal information or secondary use of their personal information, sometimes they can consent to having that use of personal information.

Mr LISTER: Thank you both for coming today. Commissioner, in your particular field you have a real flux of evolving technology, social attitudes and all those sorts of things that have to be contended with. It has been a feature of the common law that it has been able to respond to changing circumstances. Judgements are made where the judicial officers are trying to interpret the intent of the existing framework or existing law and apply it to a new situation. The Mabo case is a great example. With regard to terra nullius, it was the beginning of the end for that. Would you not be better off with

the common law framework that we have now? We have 20-odd definitions of rights here which are fixed in time and have to be attended to through the parliament. Would your office not be better off dealing with the common law rather than a bill of rights through the House?

Ms Rangihaeata: I can speak to the experience with another legislative framework which is the one that I deal with and which sets out other information rights and has led to cultural change, and I think that public servants and agencies do respond to legislation. They do look to legislation more than they are aware of the common law. When you are a public sector agency you are far more familiar with what is in the legislation that applies to you whereas it is quite difficult to get across what is in case law, which is evolving and so on, unless you are advised specifically of that.

I think with specific complaints rights it is probably easier for the community as well. We can ensure there are referral provisions set out in this legislation that ensure a smoother experience for clients in the community who seek to make complaints. Sometimes having a legislative framework helps guide both agencies and members of the community in a smoother way than would the common law. Although I appreciate your arguments, that is just something that I can comment on from the experience of our position in implementing this legislation.

CHAIR: Thank you for attending and thank you for your submissions.

LANG, Ms Cassie, Vice-President, Indigenous Lawyers Association of Queensland

TARRAGO, Ms Avelina, President, Indigenous Lawyers Association of Queensland

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which the committee members may have some questions for you.

Ms Tarrago: Good afternoon. My name is Avelina Tarrago. I am a Wangkamahdla woman and the President of the Indigenous Lawyers Association of Queensland. I would like to acknowledge the traditional owners of the land on which we are meeting today—the Jagera and the Turrbal people—and I pay my respects to their elders past, present and emerging and acknowledge them through traditional law that they were the first lawmakers in the area on which we meet today. The Indigenous Lawyers Association is grateful for the opportunity to address the committee this afternoon. The ILAQ was established in 2007 with the objective of supporting Aboriginal and Torres Strait Islander legal professionals and students within the legal profession in Queensland and, where appropriate, nationally.

We applaud the introduction of the bill and, in particular, the recognition of Aboriginal peoples and Torres Strait Islanders in the preamble and within clause 28 of the bill. It is our view that further adoption of the United Nations Declaration on the Rights of Indigenous Peoples should be included in the bill to fully recognise those unique human rights of Australia's first peoples. In particular, the bill should adopt article 3 in the body rather than solely in the preamble—that self-determination is at the core of our human rights and, as such, should be adopted.

Further, article 2 should be specifically included in clause 28 of the bill to ensure proper protection of Aboriginal peoples and Torres Strait Islanders. This would ensure that our people, collectively and individually, are free from any kind of discrimination in the exercise of our rights and, in particular, those based on our Indigenous origin and identity. Including the sentiment of article 2 of the declaration would assist in counteracting any abuse of clause 21 of the bill by another who wishes to exercise their right of expression in a manner that would be offensive, insulting, humiliating or intimidating to our people. We do not believe that section 124A of the Anti-Discrimination Act provides adequate protection or deterrence from such behaviour and there is a growing view among those that even the protections of section 18C of the Racial Discrimination Act should be repealed. At the moment, that is what is being relied on by many of our people with the Anti-Discrimination Act being a higher threshold than the Racial Discrimination Act. Should that ever be repealed, it would leave limited redress for our people in that regard.

We also submit that articles 14 and 18 should be adopted as an important step in any future treaty negotiations between the state and Aboriginal peoples and Torres Strait Islanders. It is that right to autonomy and self-government that our decision-making is conducted according to traditional laws and Ailan custom. This has been reflected in the Uluru Statement from the Heart and would assist in facilitating the voice to parliament. At the moment, the federal government is seemingly more open to developing that space since last month's release of the final report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples.

Lastly, the bill should adopt article 19 to ensure that the states consult and cooperate in good faith with Aboriginal peoples and Torres Strait Islanders and that all interactions with our people are with their free, prior and informed consent before adopting legislative or administrative measures that may affect them. For too long our people have been subjected to important decisions and have been left out of the process. It is very important that any decisions from community are occurring with free, prior and informed consent. That is our submission.

CHAIR: Thank you. In your opening statement you touched on clause 21(2), relating to freedom of expression, in the context of Aboriginal people and Torres Strait Islanders. Could you elaborate on your statement?

Ms Tarrago: In regard to what has previously occurred nationally and, in particular, journalists who make derogatory comments about the dilution of Aboriginal heritage and that European heritage would provide the intelligence of those people, someone could exercise their right under clause 21(2) to express those views. As it stands, the court has determined that to meet the threshold under 18C but, should that be removed, we do not have the protection of such comments that are derogatory and offensive. I do not believe that section 124A has the necessary deterrent effect. Because of that, the articles from the United Nations Declaration on the Rights of Indigenous Peoples in respect of discrimination should be adopted within clause 28.

Mrs McMAHON: In relation to your submission that the UN Declaration on the Rights of Indigenous Peoples be adopted in full, clause 12 refers to this bill not being limited by other international declarations that we may be a signatory to. Would ratifying that United Nations declaration go some way towards more broadly in Australia providing some cover that this bill does not address specifically?

Ms Tarrago: I might have to take that one on notice.

CHAIR: Your submission states that the right to self-determination should be included in clause 28 of the bill. How do you think such an inclusion would marry with the federal legislation, in particular the native title legislation?

Ms Tarrago: From what I understand, there is already an exclusion of native title within this legislation that would not have that consequential effect on that particular issue.

Mr McDONALD: Were you consulted in the preparation of the draft bill?

Ms Tarrago: No.

Mr McDONALD: That is disappointing. Your submission calls for the bill to adopt the United Nations declaration in full. Can you outline the deficiencies in this bill?

Ms Tarrago: Besides what I have already outlined specifically and those articles that I have previously referred to in my opening, it is more just the position of Aboriginal and Torres Strait Islander people to see some sort of affirmation and not just support for the UN declaration. It does not hurt to ask.

CHAIR: In your opening statement you also spoke about treaties. If the bill is passed, does it enable the government to move forward in relation to ratifying treaties with first peoples?

Ms Tarrago: From what I understand, steps are already being taken between the state and individual traditional owner groups. The member for Algester has already announced it in parliament with the support of the Deputy Premier. I think these mechanisms, in particular articles 4 and 18 of the United Nations Declaration on the Rights of Indigenous Peoples, provide better safeguards and guidance for policymakers on how to address things in a culturally appropriate and sensitive manner. I think that is where the deficiency is. It makes lawmakers alive to the issue, as prior witnesses mentioned, when it is in text and can be interpreted by those in their day-to-day lives.

Mrs McMAHON: Going back to your example of where you believe freedom of expression may disadvantage an individual—a journalist's or artist's right to freedom of expression may impinge on the rights of an Aboriginal or Torres Strait Islander person—and that clause 13 may not provide sufficient balance, noting that clause 13 refers to human dignity, do you believe that there should be a strengthening of clause 13? What would you propose to include in clause 13 that would strengthen it?

Ms Tarrago: It could be addressed in a number of ways but, definitely, it is the strengthening of acknowledging not to diminish, particularly those who come from vulnerable communities such as Aboriginal and Torres Strait Islander communities, where everyone sees the scale rather than the stepping stones that have been taken out from underneath you to achieve that equilibrium. I am not a legislative drafter, so I do not have the answer at my fingertips at the moment, but definitely strengthen that in some way to acknowledge what diminish would mean.

Mrs McMAHON: Clause 13 is about determining that balance between freedom of expression for one person and the protection from vilification of some description on the other hand and that particularly the vulnerability of one person as opposed to the other should be taken into account.

Ms Tarrago: Yes, and acknowledging the gaps between the federal platform and the Anti-Discrimination Act, in particular those two sections that I have previously referred to—so counteracting the possibility that it might not meet the threshold within the state if using this legislation.

CHAIR: That brings this part of our hearing to a conclusion. In terms of the question you took on notice, are you able to provide the answer to the secretariat by Wednesday, 12 December, please?

Ms Tarrago: Yes.

DUFFY, Mr Shane, Chief Executive Officer, Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which the committee members may have some questions for you.

Mr Duffy: Thank you, Chair. G'day to you and the other committee members. I acknowledge country and whose land we gather on today. The Aboriginal and Torres Strait Islander Legal Service has existed in one form or another for 46 years, delivering services at this point in time from the borders of Papua New Guinea all the way down to Goondiwindi and out home on my country, the Kalkadoon people, and Mount Isa in North-West Queensland. As a part of that we deliver criminal, civil and family law representation, coronial inquests and community legal education to our people and, if time permits, Chair, an opportunity around education and passing comment in relation to bills before parliament.

I want to particularly welcome the inclusion of section 28 in addressing the cultural rights of Aboriginal and Torres Strait Islander people which were drawn from the provisions in the United Nations Declaration on the Rights of Indigenous Peoples, which provides firstly that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Secondly, Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of the community, to enjoy, maintain, control, protect and develop their identity and cultural heritage including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expression; to enjoy, maintain, control, protect and develop their kinship ties; to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, its territories, waters, coastal seas and other resources with which they have connection under Aboriginal tradition or island custom; and to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. It is important to note that Aboriginal and Torres Strait Islander people have the right not to be subject to forced assimilation or destruction of their culture.

If I may give the committee just a brief background without boring you with the data, we have the highest imprisonment rate in history. Aboriginal and Torres Strait Islander people make up over 30 per cent of people in incarceration. The fastest growing population of those imprisoned is Aboriginal and Torres Strait Islander women. They make up over 30 per cent—that is, juveniles, women and men. Prior to the forced assimilation and forced removal of our kids under previous legislation in Queensland, at this point in time over 40 per cent of all kids on child protection orders in Queensland are Aboriginal and Torres Strait Islander. Things are not working well.

We welcome the opportunity to discuss the bill and in turn one would think and hope that it becomes law where the legislation, and I talk in the affirmative, will be used as a litmus test to look at all legislation across government, irrespective of what department or agency it represents, but also looking at the public policy or any regulations that drop out of that legislation.

What we do see, and just talking around incarceration and child protection, is poor legislation, one would suggest, looking at the incarceration rates of our mob in prison at this point in time and the adverse and disproportionate impact that legislation and/or public policy is having on Aboriginal and Torres Strait Islander people—more importantly, Aboriginal and Torres Strait Islander people who are from regional and remote Queensland and very remote areas, those areas where there are no services, either drive-in drive-out or fly-in fly-out.

Mrs McMAHON: Thank you, Mr Duffy, for coming in today. We have heard a couple of speakers make mention of the resolution process or the conciliation process by way of people accessing the Human Rights Commission to try to remedy issues without them turning into bigger spaces involving courts and lawyers more broadly. Do you see a role for yourself or for your organisation in enabling and assisting people who would otherwise themselves probably not feel comfortable even approaching an organisation like the commission? Do you foresee a role for your organisation there?

Mr Duffy: I do not so much from a legal perspective. We have over 100 lawyers in the organisation, but I see our role around our community legal education and how we work with other legal assistance providers in Queensland—with the Bar Association, the Law Society, Legal Aid Queensland, private lawyers, community legal centres and ourselves—in really being able to provide that legal education to community about the benefits of such legislation when and if it comes into place and how they can utilise it as a mechanism to sort out the challenges in their lives. We do not have the capacity at this point in time. We are under review from the Commonwealth in relation to how much we get funded to deliver services in this state. With one hand they giveth and with the other they taketh away. Legal education is paramount, and we provide community legal education in language and in creole, depending on where we are across the state, to mob. I think the education is not only from

ourselves but particularly around the bureaucracy and the public servants and how they are educated internally in their own agencies around what the Human Rights Bill means to them in the carrying out of their day-to-day Public Service responsibilities.

To be honest, from our own people's perspective, I think the threshold question is: what does it really mean to us? Will a human rights act change anything? As you move out of this south-east corner—and I am not too sure where half of these electorates are; I do not know if any of you come from out bush way—they are just struggling to survive, so how is a human rights act going to benefit Aboriginal and Torres Strait Islander Queenslanders?

The resolution process in the hopefully newly established Human Rights Commission will be another remedy for people to actually sit down and be able to share their experiences of the challenges they face in their day-to-day lives. I suppose a bit of a litmus test, if I may, looking at the legislation—I referenced incarceration rates, the amount of Aboriginal and Torres Strait Islander people who are sitting in prisons at the moment because of health issues. Because you have a health issue you are incarcerated. That is particularly relevant in relation to foetal alcohol spectrum disorder, FASD, where people with disabilities are being incarcerated because they have a disability, but particularly around mental health—psychological, psychiatric and cognitive impairments that impact upon our people that are bringing us into the criminal justice system. I would suggest it is cheaper to provide rehabilitation services and facilities in regional, remote and very remote communities than it is to spend money and lock people up and build jails. It just does not make sense.

Mrs McMAHON: I note through the process that has been earmarked in the bill that it obviously does allow, with the commission's discretion, for people to have assistance when attending conciliation matters. I would imagine, in line with a lot of our other legislation, that people from Aboriginal and Torres Strait Islander backgrounds may generally be people who might have a support person in the process with them. Do you have any advice on who they would actually have as a support person to help them negotiate if it is not going to necessarily be a lawyer from your organisation?

Mr Duffy: I am not a lawyer and I acknowledge that. Going back to one of your comments earlier in the day, you have had a lot of lawyers—and I acknowledge the absolutely fantastic work that lawyers do. It is up to the individual to decide who the support persons are. I think more importantly, to make it more inclusive and applying access to justice around rights, equity, access and participation, we need to be conscious and mindful that we need interpreters involved within these mediation processes as well. That is a big challenge, irrespective of what we are talking about. Nevertheless, it is another compounding challenge for what may be a Human Rights Commission in making sure that what is being understood is actually what is being said.

We use the term 'gratuitous concurrence', where people agree because of authoritative power, where we think we have to agree because we are here—I know you cannot record that—and there is that imbalance of power and particularly authority. We need to make sure it is a culturally safe environment, when and if needed that interpreters are involved, and that the commission, when and if it is established, has the right amount of resources to fully accommodate those specific needs of Aboriginal and Torres Strait Islander Queenslanders and other minority groups that need assistance, such as refugees. I suggest the minorities or the small people in the community are going to be the people who are impacted upon more and more every day, so it is not just blackfellas or our mob; we need to make sure there are systems in place for support and, where possible, not removing people from their local environment and communities and bringing them into a foreign environment. I know my old girl had never been on a boat until about a month and a half ago, and she is nearly 80. If you are bringing people out of their community and comfort zone, I do not think it supports or lends itself to a conducive communication scenario to get to the bottom of what the issues are on that day.

Mr McDONALD: Thank you, Mr Duffy, for your presentation. I appreciate the comment you made about the difficulties people have in outback areas and surviving. Could you suggest to us what mechanisms might be available to address that issue through this process? Have you turned your mind to that?

Mr Duffy: One thing that is a glaring omission in the Queensland government, irrespective of what political party is the government of the day, is that there is no voice for Aboriginal and Torres Strait Islander people to advise government at a very high, strategic level that is not just focused on one agency—Housing, Health or Education—but more broadly has experience across all sectors, particularly social sectors, from an experienced, expert advice level in relation to any intended bills before parliament, public policy and so on. That is not in place and it has not been in place for a long time.

The proviso I place on that is that government is not getting it right. The bureaucracy is failing in delivering what government gives them to work with, but we have to be closer to more tangible, cost-neutral or cost-effective solutions because it is not all about money. By having Aboriginal and Torres Strait Islander people front and centre when these key decisions are being made, surely we have to be closer to the right solution by being there together right from the outset and taking the time to get it right. After all, once it is in and it is gone we do not normally come back and revisit. We call that the definition of insanity.

It is important that we have a voice at the highest level within government—and I would suggest with government, not so much the bureaucracy, because the bureaucracy is quite challenging at times. We have plenty of issues with the Department of Aboriginal and Torres Strait Islander Partnerships. We now have a new director-general who is an Aboriginal man, an educator. That is supposedly our lead agency in the bureaucracy in guiding government policy across the state and I can tell you it has not worked. There are many challenges, but may I say there are a lot of people with a helluva lot of solutions and collectively we can sit down and flesh it out together.

Mr McDONALD: Were you or your agency consulted in the development of this bill?

Mr Duffy: Absolutely. As I said, we have been providing Aboriginal legal services for 46 years and we have worked as part of the campaign group with other legal assistance service providers. We have been front and centre. I know from an Aboriginal and Torres Strait Islander perspective we were consulted by the Deputy Premier in an Aboriginal and Torres Strait Islander leadership group as a part of DATSIP in relation to this as a separate, away from the campaign group. We have worked on it collectively. In the end, you might not get happy campers all the time, but I think the right stakeholders from my perspective were in there. It is good to see people giving evidence today from other sectors and other organisations in relation to their views and their aspirations on where this legislation will take this great state of Queensland.

CHAIR: You were outlining the gap in the consultation process in relation to other legislation that impacts on the first peoples. What is your suggestion on how to address that?

Mr Duffy: I have not seen Aboriginal and Torres Strait Islander child protection peaks. I have not seen Aboriginal shire councils. I can think of a whole range of issues, particularly around local government—I am not speaking on behalf of local government—where they are now shire councils but they do not have the revenue to raise to provide basic municipal services. How do you develop an economic base as a local government authority when you do not have the ability to generate revenue?

We can look at the recent decision around affordable housing. Sometimes federal politics and federal policy impact on the Queensland environment. We saw the removal of funds for the regional and remote housing program. There are issues around affordable housing, access to schools, making sure transport is available to kids who have to travel a long way, and local government. We have thriving and prosperous communities. Consideration needs to be given to the law reform agenda in terms of legal assistance. That might seem a bit from left or right field, but if we work collectively we have to be closer to the truth.

It is about looking at the Family Matters campaign and looking at how we deal with our kids in child protection. Disability, with the NDIS coming in, is going to be a challenging area for all of us. Nevertheless, how do we apply an act to that legislation and/or policy to make sure we get it right, not just for Aboriginal and Torres Strait Islander people but all Queenslanders? The Aboriginal and Torres Strait Islander Legal Service is up for the challenge. I know that my colleagues and peers behind me are up for the challenge as well. We might talk about problems, but we are armed with solutions.

CHAIR: Thank you very much for your attendance and input.

PHILLIPS, Dr Emma, Senior Lawyer, Law Reform and Systems Advocacy, Queensland Advocacy Inc.

CHAIR: I now welcome Emma Phillips from Queensland Advocacy Inc. I invite you to make a brief opening statement, after which committee members will have some questions.

Dr Phillips: Good afternoon. I too would like to acknowledge the traditional owners of the land on which we are meeting and pay my respects to their elders past, present and emerging. I would particularly like to acknowledge the Aboriginal and Torres Strait Islander people with disability and mental illness who continue to be amongst the most vulnerable Queenslanders insofar as breaches of their human rights are concerned.

Queensland Advocacy Inc. is an independent, community based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to protect, promote and defend, through individual and systems advocacy, the rights, needs and lives of the most vulnerable people with disability and mental illness in Queensland. We see the Human Rights Bill as really important and greatly needed law reform. We strongly support the passage of the Human Rights Bill 2018. The bill is well drafted and provides a strong and workable human rights framework for Queensland. The passage of this bill will make a powerful difference to many Queenslanders, particularly the most vulnerable and disempowered Queenslanders, including people with disability and mental illness. We see this every day at our community legal centre.

We consider the key strengths of the Human Rights Bill—and there are many, so I will focus on those that we consider the most significant and landmark for Australia—are as follows. The first is the protection of the economic, social and cultural rights to education and health. These are fundamental human rights that are not equitably enjoyed by many people with disability and mental illness in our community. The inclusion of these rights, along with the cultural rights of Aboriginal and Torres Strait Islander peoples, is a significant and important step forward in addressing harm done and in protecting people who have historically been subject to some of the most grave human rights breaches. We strongly support the inclusion of these rights.

Another key strength, in our view, is the inclusion of an accessible, inexpensive complaints mechanism which allows those whose human rights have been breached to lodge a complaint with the Queensland Human Rights Commission. We consider this mechanism makes this the strongest model of human rights protection in this country. This complaints mechanism will be really important in enabling people who have experienced a human rights violation to have their complaint heard and responded to.

There are a few areas where we feel the bill should be strengthened. We would like to see clause 15 of the bill amended to establish the right to reasonable adjustments to ensure that all people, including Queenslanders with disability, can enjoy equitable access to justice. We would like clause 33 amended to require that all children who are detained be separated from all detained adults, irrespective of whether the child is an accused child, a child detained without charge or a convicted offender.

As I have already mentioned, we strongly support inclusion of the right to education, but we would like to see clause 36 amended to reflect the human right to an inclusive, quality and free education without discrimination, to require the provision of the support required to facilitate this and to require that school discipline is administered in a manner that is consistent with every child's human dignity.

We do support the inclusion of private schools within the definition of public entity in clause 9. We think the bill would be significantly strengthened by the inclusion of a stand-alone cause of action—that is a comment that has resonated very much throughout the submissions made this morning—with the right to commence proceedings in a court or tribunal in cases where the complaint is inadequately resolved through conciliation at the Human Rights Commission and with a full range of judicial remedies available.

We do not think that proposed clause 126 of the bill is either appropriate or necessary. We disagree with the bill sanctioning a breach of the human rights of a prisoner detained on remand or without charge in circumstances where this is justified on the basis of consideration of the security and good management of the corrective services facility. We would like to see clause 126 omitted from the bill. Further, and supporting the submissions made by Community Legal Centres Queensland earlier in the hearing, we would support the inclusion of the right to freedom from abuse and neglect in the bill.

I will now give a few very brief examples which illustrate the positive impact we see a human rights act having, all of which come from our casework. The first one resonates very strongly with some of the issues Mr Duffy was just speaking to you about. A human rights act would protect the rights of families and the cultural rights of Aboriginal and Torres Strait Islander peoples. We think it will mean that Aboriginal clients from North Queensland who are detained in Brisbane under a forensic order disability or a general forensic order could use the act as a basis for seeking a transfer back to their community. This is something that would be of great importance to these clients and their families. It would also aid their therapeutic rehabilitation.

Another example is that the protection of the human right to education and equality will help to ensure children with disability are given access to an inclusive education, have their support needs met within the state education system and are protected from the application of restrictive practices such as restraint and solitary confinement. A final example is that the human rights act would provide protection against cruel, inhumane and degrading treatment. It will help to protect people confined in the forensic detention service or in an authorised mental health service from solitary confinement, which is presently an all too common experience for many.

Overall, we are really excited about this proposed law reform. We think the enactment of the legislative protection of human rights will initiate a significant cultural shift in Queensland towards greater respect for and protection of human rights in making decisions in a way that will be for the benefit of all Queenslanders.

Mr McDONALD: In your submission you talk about clause 36 and the ability equality disability human rights paradigm. Can you explain that?

Dr Phillips: That is picking up on the very learned scholarship of Paul Harper from the University of Queensland, who I understand has contributed to a submission and whose scholarship on disability rights I have a lot of respect for. The way the clause is drafted it has two limbs. The first limb says that 'every child has the right to have access to primary and secondary education appropriate to the child's needs'. The second limb says that 'every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all'.

In the explanatory notes to the bill it is noted that this clause is modelled on article 13 of the International Covenant on Economic, Social and Cultural Rights, which we strongly support. With due respect, we do not consider the way in which this clause has been drafted properly gives effect to the expression of that international human right which is problematic insofar as how that right is going to be interpreted.

I have listed in our submission at pages 5 and 6 a significant body of work that has been done at both a state and federal level in Australia supporting an inclusive approach to education. Working in the disability context, we strongly support an inclusive approach to education. We think it is one of the most fundamental things to give children with disability a good start in life and the opportunities that children without disabilities have. We are very concerned that there is no way in which that clause could be read to not be consistent with, and in fact not compel, an inclusive approach to education.

It is only the second limb that links it to abilities. The first limb, where we are talking about primary and secondary education, makes the baseline that it is appropriate to the child's needs. We are concerned that it is not the language used in any of the international conventions—the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities or the ICESCR. We are concerned that it could be interpreted to support segregated schooling as opposed to inclusive education, which we think is every child's right.

The second limb is where they talk about abilities. I have in our submission proposed alternative wording which we think would help address those concerns, without in any way suggesting that that is the only or the most appropriate way to word it. I should add that concerns with clause 36 have been raised by a number of colleagues of ours who work in the disabilities context and have a concern about education.

Mrs McMAHON: Going back to your recommendations in relation to clause 15, you want to insert provisions around reasonable adjustments in terms of accessing equality before the law. Could you give some practical examples from your experience of what kind of reasonable adjustments we could make to the court system or courts physically to make sure they are accessible?

Dr Phillips: It was not a case from our centre, but there is a very publicly known case that you are probably familiar with—the case of Gaye Lyons, who wanted to do her civic service as a juror. That is a good example. She required, because of a hearing impairment, interpreting support to be able to do that civic service. That case went all the way to the High Court. It was not one we were directly involved with.

The right of a person to do something like fulfil their jury service or vote or be involved in public life is very meaningless without the provision of appropriate support to do that, because everyone is not on an equal playing field. For some people to enjoy those rights in an equitable way means they require additional support. That is what that proposal is aimed at addressing.

The majority of our clients are not people with a physical disability but people with an intellectual or cognitive disability or mental illness. The types of supports they may require may be different forms of communication or information provided in a way that is accessible to them. That might be different to the sorts of access requirements that a person with a physical disability, such as a mobility impairment, would require. We think for all people with disability having access to those supports is vital to make that meaningful.

Ms McMILLAN: You spoke about suspensions in relation to education. What are the other gaps in education that will be addressed by the Human Rights Bill?

Dr Phillips: In education we think that even without the inclusion of the rights specifically to education the Human Rights Bill is going to make some progress—the core civil and political rights. The protection from inhumane and degrading treatment is one that we think is going to be enlivened a lot for our clients. I have given a case study in our submission about a client who was locked in a dark room during school hours and denied access to any form of education during that time, isolated from peers because of the lack of supports that were provided in a state schooling system. There are some of those rights. The right to equality very broadly will have an impact.

We can see in some of these cases that we have—and we have a number at the moment which unfortunately I am not at liberty to speak about in any detail—where there is no basis in discussions with the department or with the educational institution to provide a firm argument for the provision of the supports that the child needs to enable them to enjoy an ordinary and inclusive schooling experience. When we look to both the Australian Capital Territory and Victoria we can see the way in which the human rights acts and charters have been used to bring into those discussions the legitimate right for the supports and services that are needed by children to enable them to thrive in a school system. I think this is particularly critical in Queensland. There was recently some data released on the number of suspensions and expulsions in Queensland schools which is really horrifying.

In my work we run four individual advocacy services: a human rights legal service; a justice support program, which sees people with an intellectual impairment who have come into contact with the criminal justice system; the mental health legal service; and more recently an NDIS appeals support service. Many of the clients we see through all of these services but particularly the human rights legal service and the justice support program have not had adequate educational opportunities and experiences. That has set in motion a sequence that will be very familiar to you all where it then prevents them from entering the workforce with appropriate qualifications. This is in Queensland. We have many students who are exiting school who are illiterate or who do not have very basic literacy and numeracy skills. We are starting them off in their adult life at a significant disadvantage. I see the right to education as fundamental. That is why we are so excited to see it included in the bill.

CHAIR: Thank you, Emma, for attending today. Thank you for your input.

MAYO, Mr John, Chief Adviser—Government, Spinal Life Australia

CHAIR: Good afternoon, John. I invite you to make a brief opening statement, after which committee members will have some questions.

Mr Mayo: We appreciate the opportunity to present. Spinal Life Australia has for many years been a leading provider of advocacy, therapy and supports for people with spinal cord damage and related physical disabilities, and we have long advocated for a human rights act for Queensland. I would suggest to you that for at least 25 years we have been an advocate waiting for this. We see the establishment of a human rights act for Queensland as an opportunity for the parliament to show leadership and guidance to support Queenslanders with disability, the aged and more widely and I will use the term people with diminished functionality. That takes in people with a medical condition, people with a disability, the over 60s, people with a temporary injury, parents with prams and those whose first language is other than English.

The percentages of population against some of these groups are quite significant. If we take the aged—the over 60s—they are currently sitting at 18 per cent of the population. They are predicted to rise to about 26 per cent of the population by 2031. We see that group as being a leading group in what it is seeking in terms of this particular act.

The international community is now setting global standards for communities seeking states and nations to become accessible, inclusive communities. Therefore, as much as it can, we hope that this parliament can ensure that human rights, at the end of the day, can actually deliver a fair go for Queenslanders and visitors to the state, that it can ensure their right to participate in public life and be a customer and that it can ensure they will be included in our community.

From our point of view, this is where we come to the difficult part in terms of our history, because the participation of people in daily life in Queensland depends very much on their access to that life. I would say that to date we have not made it possible for everyone to be a participant or to be a customer. If you would consider with me that there are seven requirements for any person to live in a contemporary Queensland in terms of accessibility, those seven requirements are, firstly, housing and then transport, education, employment, recreation, access to information and access to services such as health, government, financial, retail and daily living requirements. This is where we have struggled, particularly in terms of government decision-making around so many of these areas.

In terms of housing, we do not have any regulation whatsoever that supports successful housing in this state. We are absolutely overdue for it. In terms of transport, we have a Taxi Subsidy Scheme. The NDIS starts and we remove the Taxi Subsidy Scheme. Through very strong advocacy the government has to replace it again, but it is only in place until 30 June next year. We will have 93,000 Queenslanders who are recipients of NDIS funding, but we will not have a Taxi Subsidy Scheme to support them beyond 30 June next year. For those sorts of things this is a big question mark, and they are an enormous worry for those people who want to be a customer and who want to be a participant in Queensland life. Also, dare I say, the NGR debacle is another issue that says there were a lot of serious decisions taken that effectively were locking people out of using that system.

In terms of education, there are so many people looking and wanting mainstream education within the disability sector. In terms of employment, where are the government departments that have work experience programs for people with a disability? Brisbane City Council does and Spinal Life does, but where are they inside government?

In terms of recreation, how is it possible that we only have in this state one accessible, inclusive stadium? Government is the funder and the provider of most of our stadiums. The only one that we have which is accessible is Robina. We wonder in the outside land of government what the Townsville stadium is going to be like, because we have not seen a plan for it that denotes its accessibility. Suncorp has wonderful sidelines and atmosphere, but it is one of the worst places for people with a disability to attend. It is damn near impossible. They cannot go there with family and friends.

In terms of access to information, if we want to have, say, government websites accessible to all Queenslanders, we would have to have AA plus compliance—web accessible content guideline, AA plus. We do not have that. There is no government website that has AA plus. People with hearing impairment, people with vision impairment, people who require captions because their first language is not English, people who require easy English because their reading skills are not so good—all of those people are locked out currently.

Lastly, in terms of services such as health services, many of our finest health services are not particularly accessible venues. With hand on heart as an access adviser, I could only name one hospital that is really delivering in the sense that everybody is capable of being a customer or a patient at this hospital, and that is the hospital in Mackay.

Where we feel government has fallen down—and this is my final point—is, if you track all the bad decisions that have occurred for which the state is responsible and work your way back to the convention centre case in 1994—there were 27 steps at the front entry and if you could not use them you would be sent around the back—the government of the day said, 'We will put in an expensive lift, but most of all we will ensure that this never, ever happens again.' Then we come to 2018 and we have the NGR train debacle. When you track everything, the problem starts at the procurement stage. We are hoping that the human rights act will in some way take note of that starting point of procurement being so much at the root of the difficulties for people across those cohorts of diminished functionality to be able to participate in the life of Queensland.

Lastly, the human rights act is simply the way we hope that this state will stop locking some groups of people out of life. We are very excited about it. We would welcome any opportunity to partner the commission going forward. What we really hope is that ultimately not just the government but every member of parliament actually gets behind this act in order to improve both the social and the economic performance of this state.

Mr LISTER: Mr Mayo, thank you for your appearance today. You spoke about a number of issues such as the Taxi Subsidy Scheme, the NGR, the stadiums and so forth. That Taxi Subsidy Scheme was introduced 30 years ago or more. It suddenly disappeared. How is that likely to be addressed by this Human Rights Bill? How could the withdrawal of a subsidy or something like that be justifiable under the circumstances? I suppose I am putting to you: wouldn't you be better off under the way things are with the existing mechanisms?

Mr Mayo: I am not sure that we would. We believe that the human rights act will help shape state government decision-making. It will consider its populations and what they need in order to participate in the state in both a social and an economic sense.

Mr LISTER: In a legislative sense perhaps, but what about something that is within the executive's regulatory ability—the provision of a subsidy which can be cut without necessarily referring to parliament?

Mr Mayo: If that can occur through that mechanism, fine. We are concerned about the fact that we did not have a fallback position when in fact the system that you refer to was in place and then it suddenly stopped literally overnight. We are hopeful that this simply provides that opportunity for the government to think first in a human rights context and persuades departments to take on that thinking that says, 'How are our decisions going to impact the community? What will this do to the social and economic performance of this state?'

Mrs McMAHON: Mr Mayo, you raised a couple of issues particularly in relation to large infrastructure builds. You have spoken about the convention centre and football stadiums. Could you clarify your submission in relation to public-private partnerships—those projects that are in partnership with government? Could you comment on the impacts or the things that you believe should be considered?

Mr Mayo: I put this forward for those dealing with the bill to consider because what we have seen with PPPs is that, if the thinking has not been done around this issue of making sure that everybody is going to be able to be a user when the contract is signed and sealed, it is very difficult for government to make any changes. My example harks back to the NGR again. It is clearly the case that the PPP meant that the government had to continue building the trains in the 75-train set fleet even though it knew well before that it would have to have a rectification process. It could not alter that PPP contract. It had to allow all of the trains to be built effectively in an inaccessible state and have them delivered before it could then go away and rectify them. We sense that PPP agreements are extremely difficult. There are a lot of parties involved. They are legally watertight. It is really quite critical to note that up-front and say, 'We will have to be extremely certain.' We do not know what impact a human rights act might have on that, but we are asking you to consider it because it is a very expensive outcome for government when it goes wrong.

Mrs McMAHON: I acknowledge that. With the act, we talk about the statement of compatibility with our subordinate legislation. The human rights certificate must go along with subordinate legislation, which may include some regulatory pieces of legislation as well which I am hoping are designed to capture those requirements.

CHAIR: That concludes this part of the hearing. John, thank you for appearing today, for your submission and for answering our questions.

Proceedings suspended from 3.15 pm to 3.45 pm.

MITCHELL, Mr Bill, Principal Solicitor, Townsville Community Legal Services (via teleconference)

CHAIR: I invite you make a brief opening statement, after which the committee members may have some questions for you.

Mr Mitchell: Thank you, Chair. We acknowledge the traditional owners of the various lands on which we gather and their elders past, present and emerging. We support the bill and have made recommendations about how it can be enhanced and thereby improve the lives of older Queenslanders. We note the complementarity between the bill and the government's age-friendly Queensland strategic policy approach, and our suggested amendments will enhance this complementarity.

We acknowledge that the universal declaration and the twin covenants upon which the bill is based are fundamental enduring statements of human rights, but we also suggest that there are other more contemporary normative standards that this parliament has used and ought to continue to use to model our laws. These include the Convention on the Rights of Persons with Disabilities. We say that there are no constitutional impediments to amending subclauses 9(5) and 10(3) in the manner we have suggested in our submission. None of the usual inconsistency issues raised under section 109 of the Constitution are likely to apply here. We suggest that using the Aged Care Act 1997 to inform the application of state laws is not controversial. Rather, we say that it is essential to ensure that older Queenslanders are protected from practices that federal laws fail to regulate.

This parliament has an obligation to ensure that the bill is properly adapted to address older persons' human rights needs. For too long older persons have been ignored and invisible and our efforts to protect their interests have been ignoble and indifferent. Queensland's ageing population will treble over the next 25 years. By 2036 Queensland seniors will exceed 1.4 million—larger than the population of the city of Adelaide today. The committee will recall that Adelaide was home to the Oakden Older Persons Mental Health Service and the grave human rights violations that occurred inside that place. Oakden is a very timely lesson for state legislators to protect the human rights of older persons. We must own our responsibility to older persons, especially those who are at risk or vulnerable whether by virtue of their dependence on others, geographic or social isolation, cognitive impairment, frailty or other factors. We equally owe it to those who are healthy, robust and ageing well to honour their rights to continue working and participating, to rebut ageist stereotypes, to maintain autonomy and independence, and to access lifelong education, just a name a few examples. We suggest that clause 36 might be tidied up to reflect the rights of older persons.

Our analysis found that the bill should include additional rights to adequate housing and standard of living; freedom from violence, abuse and neglect; a dignified death; social protections; autonomy and independence; and support for independent living. We highlight the importance of two rights that the UN has said are central to a lived experience of older persons, and they are the right to autonomy and independence and the right to freedom from violence, abuse and neglect. Earlier this year I made an intervention to the UN on the importance of autonomy, and I quote—

> Autonomy is a central, underpinning human right. Its fundamental importance cannot be overstated. If we imagine human rights as steps in a ladder, autonomy is surely the bottom step, which if missing, essentially bars access to all others. Or at best provides a precarious and unstable footing.

This is not to say that the others that we have suggested are not fundamentally important. They are, but to leave out these two—that is, violence, abuse and neglect; and autonomy and independence—would be to be out of step with international best practice and the fundamental human rights needs of older Queenslanders. We are happy to discuss any of our suggested amendments with the committee.

Mr LISTER: Mr Mitchell, thank you very much for your appearance. What do you mean when you say a 'dignified death'?

Mr Mitchell: I understand that this is a matter that is going to be coming before a parliamentary committee possibly next year. It is a right that encompasses a whole range of concepts—from the sorts of matters discussed by the Victorian parliament and resolved in an assisted dying bill all the way back to people's treatment in care, their access to health services and their access to things like palliative care. I think the concept of a dignified death is a very broad one. It is not one that we have resolved ourselves as a particular right. It is something that we expect will be debated in some detail by this parliament in the coming year.

Mr LISTER: Thank you very much for your submission.

Mrs McMAHON: In relation to your submission regarding the inclusion of public ageing services, it was one of your recommendations for clause 10 to include public ageing services in the definition of 'public entity'. Public aged care and public out-of-home residential care providers are, depending on their circumstances, able to be captured as public entities under a human rights act. Do you agree that the bill will sufficiently allow for their inclusion in the definition of 'public entity' or do you still feel that they need to be specifically identified in the clause?

Mr Mitchell: Thank you for your question. We think these things should not be left to chance. The parliament has seen fit to include other groups in clauses 9 and 10. We suggest that it probably is not worth leaving to chance, which is why we have recommended amendments to clause 9 to include an approved provider under the Aged Care Act in the same way the bill calls out providers under the National Disability Insurance Scheme. Likewise, we have said that public ageing services might be used as a way of ensuring that we capture services from a range of places that assist older persons, whether that be with care or with accommodation services.

Ms McMILLAN: Your submission, like that of the QLS, raises the consideration that the word 'expeditious' should be included as part of the fair and public hearing right at clause 31. Could you expand on this, including whether you are aware of any jurisprudence that has considered the meaning of 'expeditious' in the context of human rights legislation?

Mr Mitchell: Yes. I should disclose that I was part of the Queensland Law Society's working group and in fact made that suggestion. It is certainly reflected in European human rights law that older persons should expect expeditious proceedings before courts and tribunals. It is part of the problems faced by older persons in their access to the legal system and to administrative procedures generally in that towards the latter stage of their life they may not have the same time or wherewithal to endure long delays or proceedings. This has been looked at in a number of cases before the European Court of Human Rights, where they have acknowledged the particular needs of older persons to have expeditious proceedings.

CHAIR: From your experience, are you able to provide the committee with some practical examples of how a human rights act may assist the people you represent?

Mr Mitchell: Yes. There is one very good example that highlights the failure of federal regulation, and that is the regulation of restrictive practices. At the moment, the federal system does not regulate the use of restrictive practices of any kind within aged care. It is incumbent on state jurisdictions to ensure that their human rights mechanisms are able to provide the same rights for those who are older as they already provide for those who are within what we might call workforce age. Our disability services laws regulate the use of restrictive interventions against people aged below 65, yet when we turn 65 and we enter aged care we enter a vacuum of regulation. This is just one example. There are many other examples.

The other example that I give in terms of the right to an adequate standard of living is that we have all seen the media show the quality of nutrition that older persons get in some places of care. It does not pass the mum test—we would not allow our mum or a family member to be fed like this. These very simple examples have very stark outcomes if we do not regulate them. Obviously, poor nutrition and restrictive interventions that harm or cause injury can have very serious ramifications for older persons, including injury and death.

Mrs McMAHON: I have a question about your recommendations in relation to clauses 50 to 52 relating to an intervention by others. You suggest to allow others to intervene in matters before a court or tribunal in what would be considered a matter of interest. Could you comment on the aim of that intervention and what that would look like?

Mr Mitchell: Yes. I thank you for your question on that, because this is something not mentioned, I do not think, by other submitters. It is quite typical in matters of high public interest to have subject matter experts intervening to give their views on the way laws might be looked at or to give information about the particular impacts on particular persons. Certainly, all of the courts and tribunals already have the power to allow interveners, but in cases such as human rights laws we think it is important not only that the Attorney-General and the commission have a right to intervene but also, where one of them has intervened, that there be an opportunity for other parties to be involved.

It is very important that we are understood that we do not recommend something that would allow for any kind of delay or complication of the proceedings. The role of an intervener is meant to be very brief—a subject matter assistant. It happens from time to time. We call them things like McKenzie friends or next friends. We are suggesting that there should be a broader intervention power than is there already.

CHAIR: Thank you, Bill, for your attendance this afternoon. The committee does not have any further questions for you.

GILLETT-SWAN, Dr Jenna, Lecturer, Student Engagement, Learning and Behaviour Research Group, Faculty of Education, Queensland University of Technology

WALSH, Professor Tamara, TC Beirne School of Law, University of Queensland

CHAIR: I invite you both to make a brief opening statement, after which committee members may have some questions for you.

Dr Gillett-Swan: The QUT Faculty of Education, Student Engagement, Learning and Behaviour Research Group members congratulate the Queensland government for introducing the Human Rights Bill 2018 and we are grateful for the opportunity to make this submission. As researchers and experts in the area of education, our submission focuses in particular on the wording of section 36 of the bill in relation to the right to education. In my opening remarks I would like to emphasise the points made in our written submission in terms of what we feel section 36 of the bill should incorporate, specifically the concepts of (1) freedom from discrimination, (2) equality of opportunity, (3) accessibility and (4) inclusive education for all.

Our concern is that the current wording in the proposed bill regarding the right to education does not adequately reflect the intent of two key conventions; namely, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. These two conventions in particular are more reflective of international developments in what is to be afforded by stated parties in the realisation of rights for all children to an education that also enables the holistic development of the individual through a specific quality of education which is available and accessible to all without discrimination of any kind and without caveats that may in turn inhibit or limit education or participation. These conventions explicitly recognise the importance of relevant and related factors that are necessary for the realisation of the right to education for vulnerable groups, including students with a disability.

It is our view that the proposed wording of section 36 may inadvertently undermine the right of vulnerable groups to education, especially students with a disability. This outcome may contribute to the continuation of human rights violations through exclusion and segregation of students with disabilities. For example, 'appropriate to the child's needs' is not present in the expression of the right to education under applicable human rights instruments, whether generally or in the context of specific groups or themes. Our strong concern is that this language is likely to encourage discrimination against students with disabilities in particular and undermine the realisation of their human right to education. In our view, it is not appropriate to adopt this language in section 36 of the bill as there is nothing in article 13 of the ICESCR or beyond that supports its use.

Also, the proposed wording 'appropriate to the child's needs' threatens to provide a qualification on the human right to education and thereby a justification of the adverse educational experiences of many Australian children, including children in Queensland, and a basis for the persistence and growth of segregated settings. This is further elaborated on by the United Nations in paragraph 17 of General Comment No. 4 from the Committee on the Rights of People with Disabilities which was adopted in 2016.

Our position is that the bill should also be able to guide conduct by laypeople and not have to depend on technical definitions. For this reason we feel that it is not enough to simply define certain terms such as 'access' and 'ability', as those words have too much baggage that is too often used to deny access to general education. It is important to note that people with a disability can succeed in education if provided with reasonable adjustments to curriculum, pedagogy and assessment as per the DDA and DSE. We recommend that section 36 of the bill be revised to reflect the intent of relevant international conventions and national legislation by referring to key terms including: discrimination (DDA); equality of opportunity (CRC); accessibility (ICESCR); and inclusive (CRPD).

The reality is that by redefining, as opposed to rewording, you cut out international understandings of human rights law and what they mean in human rights contexts. The current terms used are not consistent with international human rights law and serve to complicate what the bill intends to achieve. If the purpose of the bill is to protect human rights, in doing so it must also reflect the language of human rights internationally. Therefore, it is our position that the words that belong in relation to the right to education are as follows (1) every person has the right to education without discrimination and on the basis of equality of opportunity; and (2) to realise this right every person has the right to access quality early childhood, primary and secondary school education and further education and training that is accessible and inclusive of all.

Prof. Walsh: I would like to acknowledge the traditional owners of the land on which we meet, pay my respects to their elders past, present and emerging and recognise the special significance that this particular piece of legislation can, and hopefully will, have for Aboriginal and Torres Strait Islander Queenslanders.

There is much that could be said in relation to the bill, and I acknowledge the submission that was put forward by the UQ law school on more general matters, but today I will be speaking to clause 36 regarding a submission that was put forward by Bridget Burton from the law school, Rhonda Faragher and Dr Glenys Mann from the School of Education and me.

From what we ascertained, there is a lot of excitement in the community legal sector and amongst parents of children with special needs with regard to the right to education. Most of the concerns that I see in my work come from parents and schools who are concerned with children for whom a special school is not appropriate but who require additional educational supports in mainstream settings. Traditionally, if parents find themselves in a position where they feel they have no choice but to engage with some formal process in order to access an inclusive education for their child, the only option that is available to them is a discrimination complaint. This is problematic for a number of reasons, including the fact that it sets up an adversarial relationship between the family and the school. Most often parents do not want to argue that their child has been discriminated against; they just want to ensure their child has access to an appropriate, inclusive and supportive education. It is more appropriate that these discussions take place couched in rights based language rather than discriminatory language, because it is critically important that goodwill is retained between schools and families as well as the broader community.

This clause of the bill is particularly important and it is really important that we get the wording right. To that end, there were some recommendations in our submission that we made specifically with regard to the wording. First of all, we concur with our colleagues from QUT about the importance of the commitment to inclusive education. That has already been demonstrated by the Queensland education department, and we feel it should be reflected in the terminology that is used in the clause. According to the department's inclusive education policy, inclusive education means that students can access and fully participate in learning alongside their similar age peers, supported by reasonable adjustments in teaching strategies tailored to meet their individual needs. We propose, consistent with this and with current anti-discrimination law, that clause 36(1) read that 'every child has the right to have access to primary and secondary education that is appropriate to the child's age and inclusive of their needs'.

Secondly, we believe the words 'appropriate' and 'needs' require further explanation. This could be done in lots of ways: by inserting a note or an example. We have argued that these terms should be defined within the clause. They could also be defined within schedule 1, of course. We recommend—again, consistently with our colleagues at QUT—that those definitions are consistent with the terminology used in the Convention on the Rights of Persons with Disabilities. For example, we believe that 'appropriate' should recognise the importance of full participation and inclusion as well as support in the form of reasonable adjustments required under existing law. We believe that the definition of 'needs' should refer to the full range of a child's needs—not just educational but also social, physical, intellectual and emotional—and that these should be assessed with regard to the communities in which they live.

As for clause 36(2) regarding vocational education, we recommend that the Queensland act adopt the same terminology that is used in the equivalent ACT Human Rights Act provision. We believe that by adding the words 'based on the person's abilities' to the Queensland provision, the clause becomes internally inconsistent and also incompatible with existing disability discrimination law.

If you will allow me, there are two additional matters I would like to raise. First of all, it has been put to me that private schools should be included within the definition of 'public entity'. Since educating children is a public function, I see no legal impediment to that. I share parents' and advocates' concerns regarding the importance of inclusion for children with special needs in independent school settings, not just for the benefit of those children but also for the benefit of their peers.

I would also like to raise the links between child protection and youth justice involvement. That is something we have all heard a lot about lately. It is something that I am currently engaged in a study on. What I am finding in that work is the importance of school in terms of schools operating as an important protective factor, particularly for children who are otherwise having their lives disintegrate around them. I think any wording that is adopted needs to be supportive of the roles that schools play in that way and promotes restorative practices rather than exclusionary ones. It is really important that we keep our young people in education and training, yet the trend that we are seeing is that they are excluded more and more often, mostly for behavioural reasons.

Mr LISTER: Thank you both for coming today. I have particularly taken a great deal of interest in what you had to say, Professor, because I have an autistic son. When I was in the Air Force—before I was in parliament—he was enrolled in a small private school for prep. He was not able to progress there at all and we were asked to leave. I sympathised with the school because I could not expect them to have access to the resources that Education Queensland might, and in fact does, have. I wonder whether you have given any thought to whether the inclusion of private schools in this bill might have a detrimental effect on small schools without the critical mass of Education Queensland to cater for the very extensive needs of a child with associated very large costs.

Prof. Walsh: I also have similar lived experience with this issue. The issue you raise is something that I put to my education school colleagues at the University of Queensland when we were discussing this bill. I thought what they had to say was very interesting, and I am disappointed they are not here to say it for themselves. What they said is that actually our teachers are well equipped to include children with special needs and that, while often we are told that the resources are not available to include children, teachers need to be thinking creatively about the ways they accommodate students with special needs and schools need to be thinking collaboratively about how these children can be included.

My research on the inclusion of kids with special needs in schools has shown that the benefits are not just there for the individual child with special needs; the benefits are for the peer group as well. If we as a society are to take a more inclusive approach to everything that we do, it is really important that that begins in the school environment. I think that is necessary no matter where that child is placed. Whilst we are all very sympathetic to resource implications for schools and teachers, the view of the education specialists is that actually it is much more an issue of teachers being willing and able to change the way they do things in order to accommodate children rather than resources being as much of an issue as perhaps we are led to believe.

Mrs McMAHON: Thank you very much for your contribution. I have a copy of the recommended rewording of section 36. Section 36 is currently drafted to basically allow public entities, in this case schools, to caveat the support they can provide for a child. Put more bluntly, the way it is currently written it states, 'Your child does not or will never reach the same level as others; therefore, we do not have to provide the same level of support or education.' The proposed rewording we have from you combines the two because it takes out 'child' and it just says 'every person' has the right to education without discrimination. On the basis of equality and opportunity, do we not then sometimes fall into an even bigger hurdle about what 'opportunity' means?

Dr Gillett-Swan: I do not think so. If we look historically through the issues with the implementation of various international human rights treaties—for instance, in relation to the Convention on the Rights of the Child and any articles that mention capacity or along the lines of capacity—there is always this default position, which is erroneous in the eyes of the United Nations, that a child needs to prove their capacity in order to be eligible to receive or take their rights. I respectfully disagree with one part of what my colleague from the UQ says about definitions being sufficient because, as we have seen through the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities, the United Nations needs to provide elaborations on what each of these articles means through General Comments.

What I found in my research, and also I know more widely through the research of colleagues, is that very commonly people do not even know that General Comments exist, let alone the content. If the United Nations itself needs extensive documents in order to further elaborate, define and extrapolate key terms with direct relevance to the interpretation and implementation of key articles that it has mentioned or provided through various human rights treaties, then I think Queensland might experience a similar issue in relying on varied interpretations of a definition that could then be variably applied and adjusted based on who is deciding what a child's needs are and in whose opinion.

Mrs McMAHON: We have similar in terms of our explanatory notes. Legislation should be read in conjunction with the explanatory notes and amplifying comments to determine intent. In relation to section 36 it states—

The provision is intended to be consistent with *Education (General Provisions) Act 2006* and to provide rights in respect of the aspects of education service delivery ...

Is that not enough?

Dr Gillett-Swan: No, I do not think so, because even now in terms of the implementation of an individual's right to education it is commonly twisted, I guess, in order to justify further discrimination against children's actual access. There are a number of examples—and I have printed off part of the recent Deloitte review into education for students with disability in Queensland state schools—of ways

that an individual's right to education has been undermined and they have been directly discriminated against, without adequate resources or provisions in order to cater for that. I think relying on terminology alone is not enough, because then there is variability in how that could be interpreted and it really potentially then relies on a lawyer's ability to argue a particular case, more so than having that extra support through the terminology that is actually used.

CHAIR: That brings to a conclusion this part of the section. I would like to thank you for coming along. Thank you for your submissions and your answers to questions.

SCHETZER, Dr Louis, Policy and Advocacy Manager, Australian Lawyers Alliance (via teleconference)

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Dr Schetzer: Thank you. By way of introduction, the Australian Lawyers Alliance is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. We estimate that our 1,500 members represent up to 200,000 people each year in Australia. Of our 1,500 members nationally, 430 members are Queensland lawyers. At this point I would like to extend apologies to the committee that our Queensland state president, Mr Greg Spinda, is unable to attend. Unfortunately, he was otherwise engaged in a mediation.

By way of introduction, the ALA welcomes the opportunity to have further input into the committee's examination of the Human Rights Bill and to provide further explanation of the matters raised in our submission. At the outset, the ALA expresses its strong support for the bill. As indicated in the submission, the ALA considers that the bill provides additional protections and is a significant improvement on both the Victorian Charter of Human Rights and Responsibilities Act and the ACT Human Rights Act, and we particularly welcome the inclusion of economic, social and cultural rights and the inclusion of an accessible complaints mechanism for alleged contraventions by a public entity. As detailed in our submission, we have highlighted some specific provisions in the bill which we submit could be improved. We would be quick to add, though, that we do believe that the bill should be passed and we offer these contributions as an opportunity to improve the bill before its passage.

Before I refer to some of those particular provisions, I would like to draw the committee's attention to the fact that this bill has the significant benefit of the previous experience of both the Victorian charter of human rights and the ACT Human Rights Act. Both of those legislative instruments have been the subject of a significant number of reviews, analysis and assessments. In respect of the Victorian charter, since its enactment it has been subject to annual reviews by the Victorian Equal Opportunity and Human Rights Commission going back to 2007. It was also subject to a statutory four-year review in 2011 and a statutory eight-year review in 2015. The ACT Human Rights Act has been subject to a 12-month review in 2006, a five-year review in 2009 and a 10-year review in 2014.

Many of the concerns that have been raised in respect of the Queensland Human Rights Bill have been addressed quite significantly throughout those reviews, and I want to refer to a couple of those concerns particularly. One is in relation to the cost to government. In Victoria the statutory four-year review of the charter was commissioned by the Victorian coalition Attorney-General Robert Clark, who was specifically concerned about the budgetary cost of implementing the Victorian human rights charter, and a specific term of reference by the review undertaken by the Victorian Scrutiny of Acts and Regulations Committee included examination of the overall costs and benefits. That committee received a detailed submission from the Victorian government as to the cost of implementation and operations of the charter over the five financial years from 2006-07 to 2010-11. The total expenditure for that period was $13.5 million, or on average $2.7 million per year, and it is from that figure that we have heard the often repeated figure that the cost of the charter was 50 cents per year per Victorian.

In addition, the costings of the charter have been subject to annual estimates hearings before the Victorian committee for budget estimates and at no stage has there been any indication that the costs of implementing and operationalising the charter have been burdensome to the Victorian budget. Both the four-year and eight-year reviews of the Victorian charter noted substantial benefits in terms of improved quality service delivery and early dispute resolution through negotiation.

The Victorian charter and ACT Human Rights Act have been subject to numerous formal reviews. The issue of financial cost to government has not been highlighted or assessed as being problematic and there is no evidence from Victoria or the ACT that the costs have blown out or presented a financial burden to government. In addition, in respect of all of those respective reviews to which I have referred, there has also been no evidence of litigation floodgates or what has been colloquially described as a lawyers' picnic but in fact that the charter and the ACT Human Rights Act have facilitated early dispute negotiation.

I would like to then refer to some specific provisions that we have alluded to in our submission that could be improved. You will note that we have expressed concerns about clause 58(6) of the bill which would have the effect that certain decisions and actions of public entities are declared unlawful but are not necessarily invalidated on that basis. Obviously this is a legislative attempt to address the Victoria Supreme Court decision in Bare v IBAC in 2015. We would suggest that a far better way of

resolving this issue is developing or redrafting both clauses 58 and 59 by modelling them on section 40C of the ACT Human Rights Act, as has been raised by several other individuals and organisations that have presented before the committee already.

The ALA has expressed concerns in respect of clause 59 that there is an absence of a direct cause of action—a stand-alone cause of action—for a breach of human rights, and we would submit that this is a barrier to accessible, just and timely remedies for infringements of people's basic human rights. Essentially, if it is unlawful because it violates human rights, we submit that you should be able to challenge the decisions. We submit that section 40C of the ACT act is preferable as it provides an independent stand-alone cause of action which can be initiated, but we would also submit that, rather than commence proceedings in the Supreme Court, the Queensland Civil and Administrative Tribunal should have jurisdiction to hear applications for relief or remedy in respect of alleged unlawful conduct.

One aspect of the eight-year review of the Victorian charter concluded that, to embed a human rights culture, the remedies to protect human rights must be clear and those remedies must be accessible to people who need them, and we would submit that having the opportunity to bring proceedings in QCAT is a far more accessible option than bringing proceedings in the Queensland Supreme Court. I would now welcome questions from the committee in relation to the ALA's submission.

Mr LISTER: With regard to having QCAT involved rather than the Supreme Court, are you talking about the provisions that go to the interpretation and declaring a particular piece of legislation invalid?

Dr Schetzer: No. That is a very reasonable question. No, it is only in relation to the questions of unlawful activity by public entities. The interpretation questions and the questions of issuing declarations of incompatibility are appropriately dealt with in the Supreme Court.

Mrs McMAHON: Your submission goes into some considerable detail about what you would consider the vagueness of the meaning of 'public entity', particularly insofar as an example of an entity not performing functions of a public nature for the state. It has been brought up in a couple of submissions today, particularly in relation to the provisions of education and private education. Whilst I certainly understand that the reading of that particular subsection may be problematic, could you outline or clarify your position insofar as whether you believe entities such as private schools and certainly those that do receive some level of government funding should be included under the act?

Dr Schetzer: You need to break down the issue of performing functions of a public nature for the state into two parts. It has two essential ingredients. The first bit is the issue of whether the function is of a public nature, and there is particular guidance within the bill that has largely drawn on the experiences of the Victorian charter and the ACT Human Rights Act that give an indication of how that notion of what is a function of a public nature should be defined. I think where there is substantial confusion is the second limb of that test, and that is 'for the state', which in the ACT Human Rights Act and the Victorian charter is often described as 'on behalf of the state' or, in respect of the ACT, 'on behalf of the Territory'.

What does this notion of 'on behalf of the state' mean? It is in that context that the statutory example, similar to what exists in the Queensland bill in relation to non-government schools, appears. With regard to the education services themselves, whether they are delivered by a government school or a non-government school, the services are a function of a public nature. That is a clear public function. The question is: is it being performed on behalf of the state? This is where the ALA submits that the provision in the Queensland bill would need some further clarification: what does that phrase mean?

There was considerable explanation in respect of the Victorian charter as to what those particular words mean—that is, 'on behalf of the state'. There were additional provisions within the Victorian charter that said that the mere fact of receiving public money does not necessarily of itself indicate that it was being performed on behalf of the state, but there were other circumstances that it may indicate. These are complex subjects. You draw on the example of a non-government school and the question there is: are the education services, which are public functions, delivered on behalf of the state or are they delivered subject to a private contract? The use of the statutory example in Victoria was designed to specifically clarify the legislative intention that it was subject to a private contract. That may or may not be the case and it may be the subject of further interpretation by the courts, but it is that phrase 'on behalf of the state' that really needs some additional clarification which we have recommended in our submission.

Mrs McMAHON: The last part of that was the position of the ALA on whether it believes private education, including those that do receive some proportion of government funding, should be subject to the act.

Dr Schetzer: We have indicated in our submission the preference for the ACT provision in that respect where there is no statutory example that ultimately the delivery of education services is a function of a public nature and it is subject to extensive state regulation in terms of the content of curriculum and there are various other subsidies and, subject to funding allowances, we would suggest that there are substantial indications that it is being performed on behalf of the state and therefore should be subject to human rights obligations.

Mrs McMAHON: So that is a yes?

Dr Schetzer: Yes.

Mr McDONALD: You mentioned in some detail the reviews that have happened down south. This bill proposes to have reviews in 2023 and 2027. What is your comment about the sufficiency of that?

Dr Schetzer: I think there is enormous benefit to be had through the statutory review in terms of assessing whether the rights covered are sufficient and substantial and cover the various issues that Queenslanders will face. I note that within the bill there is particular attention given to whether the bill should be extended to cover additional rights. We have included in our submission that the four-year review should also include consideration as to whether the bill should include the right to a healthy and clean environment.

I think it is important to draw out and assess from those reviews whether the operation of the bill, its establishment and the education and training capacities of government and non-government public entities has been sufficient to allow them to become aware of their various obligations under the legislation. One of the concerns that came out with the various reviews of the Victorian charter was that there remained a level of confusion, particularly among non-government organisations, that may be assumed to be public authorities because of the nature of the functions they performed. There was a level of confusion and ambiguity as to what their obligations were and how they could operationalise it. This was the sort of information that came out of the review. They are productive exercises that really help to identify what further work needs to be done in order to embed a human rights culture.

CHAIR: That brings this part of the session to a conclusion. Thanks, Doctor, for your input.

Dr Schetzer: Thank you for your time.

HOLDER, Dr Robyn, Postdoctoral Research Fellow, Griffith Criminology Institute

Dr Holder: Thank you. Congratulations on such a huge day for you all, and here you are still listening to us. Thank you for the time. I will not repeat my written submission but say that, in addition to my expertise on victims' law and justice in an academic sense, I have had 15 years experience in a statutory rights protecting role, seven of which was within a human rights framework in the ACT.

There are two underpinning dimensions to my submission. The first asks that there be express recognition of the need to protect the human rights of both accused persons and persons as victims in the criminal process. This recommendation recognises that individual human rights may become relevant for one or more persons at the same time in a similar engagement with a public entity. In those circumstances, public entities will be called upon to make decisions compatible with different or the same human rights. They do this every day currently; it just needs to be made more explicit in this bill. In essence, I argue that the human rights duty to one person does not cancel out a human rights duty to another.

My second underpinning point is that where human rights are not well defined in legislation or in case law, as in the area of victims' human rights, specialist oversight must be implemented. I have recommended that the Human Rights Commission include such a specialisation and mechanism to oversee the promotion and protection of the human rights of victims of crime.

With that, I will make three preliminary observations that guided my submission. Human rights exist for all Queenslanders. This is said as if it is self-evident, but it requires careful attention. Some areas of individual interaction with public authorities are obvious, such as in places of detention, and some far less so—the daily encounters in criminal courts around the state between victims and public authorities where those persons are simply submerged in the process as a crown witness.

The second is that building a human rights culture is linked to that first point. Queenslanders, like other Australians, have a keen interest in fairness and equality with regard to state entities. They see when it is not happening. The Australian Survey of Social Attitudes, completed by over 8,000 people nationwide, found that around 70 per cent of Australians are confident that criminal courts have regard for defendants' rights. Only 47 per cent of Australians think the same for victims' rights. Therefore, a rights-respecting culture asks that rights protections are equitably considered and equitably applied.

As others have said—and I have listened—the Queensland bill already steps ahead of the Victorian and ACT legislation in a number of ways. I want to stress that this also is a unique opportunity for Queensland to establish pre-eminence. I hasten to add that my recommendations are not radical; they are simply a reflection of contemporary international standards of human rights, a corpus that has, as you have heard over this day I have no doubt, evolved since 1948. There are any number of provisions in all the different conventions—the rights of the child, the rights of people with disabilities, the rights of people with Indigenous backgrounds—where they make specific provision when such peoples are involved in criminal procedures. These are fragmented across all of these conventions. You have the opportunity to consolidate them in one piece of legislation and make it plain to people that their rights are considered equally.

Similarly, on that point, the existing jurisprudence in other human rights jurisdictions recognises both the interrelation of these instruments and the requirement to recognise the interrelation of rights across protected groups from these instruments. At higher and local court levels, this point has been recognised. For example, the European Court of Human Rights has observed that the 'principles of fair trial require that the interests of the defence are balanced against those of witnesses and victims called upon to testify in particular where life, liberty and the security of the person is at stake.' At a much more local level, the Victorian Magistrates Court expressed its recognition in different terms about this idea of the 'triangulation of the interests' of the accused, the victim and the community within criminal justice.

However, the recognition of human rights of all persons in criminal proceedings does need some specific terms on which it must rest. Thus the Victorian Law Reform Commission, in its 2016 review of The Role Of The Victim In Criminal Trials, recommended that this person be deemed what they call a 'participant' in criminal proceedings, obviously where relevant, and that the term 'participant' then helps us to see who may be involved such that human rights may be engaged and where in the interaction with the state. I have a range of different examples from my own experience that I can draw on in questions if you wish.

Nothing I say detracts from the rights of the accused pre trial, at trial or post trial. My recommendations simply expand these to incorporate protections for the victim as a participant in criminal proceedings.

CHAIR: Before we go on, I omitted to advise that a representative from Micah Projects was going to appear during this time but withdrew this morning.

Mr McDONALD: I am interested in the issue of a victims' rights commissioner. I understand that there are victims' rights commissioners throughout the world and, in fact, in other states of Australia. Could you outline to us the benefits that such a victims' rights commissioner may have? I can see that there is oversight, a reporting mechanism and checks and balances that may occur, but that is the limitation of my knowledge of it. I would appreciate hearing your experience.

Dr Holder: Thank you very much for your question. I will draw on my own experience in such a role. You would have heard from any number of experts over the course of the day—and that, I think, gives you the clearest answer—that human rights are general and particular. How they can be engaged in particular settings requires a particular understanding of that setting, whether it is public education for children or the execution of criminal justice in a day-to-day matter.

The second point I would make is that people as victims of crime are incredibly diverse. You are talking about child victims of sexual abuse, adult victims of elder abuse, burglary or homicide. It is an extraordinarily diverse constituency. As such, we can get lost in the difference about what is at stake with regard to people's rights and their interests—rights, I hasten to add, that are not about overturning the obligations of police, prosecutors and courts to make decisions as they are required to do but, by and large, would like to include and acknowledge in a whole range of different ways. The human rights act provides a framework in which, say, a public prosecutor, in executing their duties to both parties, can ask, 'How do I recognise the rights of that accused person and the victim, because I am obliged to uphold both?' Where that falls down, a specialist commissioner receives information about problems and then acts in order to bring those in a more systematic way to the attention of authorities for redress. It has both an individual and group mechanism in helping the rights to be realised.

Mr McDONALD: This is informing a restorative justice framework?

Dr Holder: No. The basic point of a rights-promoting protective entity such as a victims' commissioner within the human rights commission is about the relationship between state authorities, public entities and civilians, be they the accused or the victim. That is the primary relationship that the commissioner would be concerned with.

Mrs McMAHON: In Queensland we have a VOCAA—a Victims of Crime Assistance Act—and it incorporates the Queensland charter of victims' rights. It has been a while since I have looked at it, but I remember that it is set out there. Clause 12 of the Human Rights Bill specifically states that a right or freedom not included, or only partly included, in this bill that arises or is recognised under another law, such as VOCAA, must not be taken to be abrogated or limited. I can see the interplay between what we have under VOCAA specifically in relation to victims' rights and clause 12. Where do you see the gap where this should be read in conjunction with our existing legislation? If this Human Rights Bill is to be read in conjunction with all of our other legislation, which may include such similar charters and other rights, where do you see the gap or the danger?

Dr Holder: I do not see dangers. I see only opportunities in the relationship, in the same way as we would see opportunities in the relationship between the main instruments of human rights at an international level and the subsidiary or follow-on conventions. There are a couple of things I would say. One is that the VOCAA, similar to others across Australia, is not rights; it is administrative standards. It has no legal force. Public entities are under no duty to members of the public who seek to access those standards. The human rights act puts a different edge to those standards. I would see the VOCAA standards as ways in which public entities practically enact their primary duties under the human rights act. I do not see a conflict at all.

Mrs McMAHON: The VOCAA does not have any enforcement or punishment or pecuniary matter for people who do not comply, unlike a number of other acts which police officers or public officials may operate under?

Dr Holder: Correct. No, they do not.

Mr LISTER: Dr Holder, thank you for your appearance today. I might talk about police for a moment. I am not a policeman. There is a policeman sitting to my right, and I am sure he will tap me on the shoulder if I am getting this wrong. I believe, as we all do, that police have to respond very quickly in certain situations. They have to exercise their judgement and they have to be able to defend that later on. Might it not be the case that with a bill of rights which prescribes a whole lot of considerations in addition to the law which they are intending to apply at that particular critical moment their response might be dulled to the detriment of the triangle which you mentioned of the community and victims?

Dr Holder: I think one could say that we may assume public entities, whatever public function they are performing, generally do so in an ethical, lawful and humane manner. The issues arise, as you point out, when that breaks down. The sorts of processes that I understand are in this bill allow first for people to access the normal complaint mechanisms of a public authority in the same manner as they would generally, and people in so doing would draw on the existing procedural frameworks and legal frameworks around the conduct of that public function. However, for a member of the public they would be able to shape their concern in the language of rights—their dignity as a human being and the obligation of the public authority to discharge their duties according to human rights.

My answer connects to that which I gave to Mrs McMahon that the types of procedures and standards that are within the victims of crime act or charter presently are underneath the human rights act, as I would see them. They are subsidiary to it and the work of the police officer, the prosecutor or the court officer is through that in the first instance but within the overall human rights act.

CHAIR: The Australian Christian Lobby is on the program to appear at 4.45 but it advised this morning that it was unable to attend. I understand that we can go on to the representative from Cherish Life Queensland. Thank you very much for your time, Dr Holder.

JOHNSON, Ms Teeshan, Executive Director, Cherish Life Queensland

CHAIR: We are running ahead of schedule.

Ms Johnson: That is amazing.

CHAIR: The reason is that someone did not turn up.

Ms Johnson: Martin Iles is sick, I think. It is a shame. His submission was excellent. Will it still be taken by the committee?

CHAIR: Yes, all submissions have been taken—all the ones that have been published and that were within—

Mr ANDREW: Scope.

CHAIR:—the time. I think we did take late submissions too, but as far as I am aware every submission that was received was published. I welcome Teeshan Johnson from Cherish Life Queensland. I invite you to make a brief opening statement, after which committee members may have some questions for you.

Ms Johnson: Thank you for the opportunity to discuss the Human Rights Bill on behalf of Cherish Life Queensland. I am truly humbled and honoured to represent many thousands of Queenslanders who agree on the human right to life from conception until natural death.

On the face of it, the Human Rights Bill seems amazing. Who would not want rights for their family and friends enshrined in law? However, upon a closer look, it has a fundamental flaw as it does not extend the right to life to unborn human beings. To this end, a more accurate description or short title would be 'a born human bill of rights' or 'post-birth human bill of rights', but even on application the born or post-birth human bill of rights would not be accurate as this bill does not extend any rights to babies born alive during failed abortion procedures. I note that in Queensland between the years of 2005 and 2015 there were 204 babies born alive during botched abortions. All of these babies, who were clearly human beings, were left to die alone in absolute agony—unloved, naked and probably terrified on a cold, hard surface. The same fate would await little ones born alive during a failed abortion procedure if this bill were to pass because there is no protection for them under this proposed legislation.

The fact that this bill does not provide any recognition of or protection for unborn human beings or babies born alive during botched abortions is, quite frankly, a travesty. If this bill were to pass in its current format it would further solidify the gross injustice of the Termination of Pregnancy Act: that the unborn have no legal rights in Queensland whatsoever. The passing of that hideous and profoundly cruel and unjust legislation meant state sanctioned killing of the unborn up until birth was legalised in Queensland. This bill does not correct that injustice in any way. In fact, it grounds it by having another layer of legislation.

We have other grave concerns. I have just said that the right to life does not extend to the unborn. Section 20—the right to freedom of thought, conscience, religion and belief—is not extended to medical staff in regard to termination of pregnancy. Under the Termination of Pregnancy Act medical staff with a conscientious objection to abortion are compelled to refer for abortion. This creates an abortion totalitarian regime where doctors' freedom of conscience or even their medical opinion that an abortion is not best for their patient is overridden by this way of thinking that abortion is always best. This is hideously unjust.

Section 17 concerns freedom from cruelty or inhumane treatment. I want to point out that babies under the Termination of Pregnancy Act can be aborted right up until birth but there is also no requirement to anaesthetise unborn babies at any gestational limit. There is a lot of scientific proof that babies from 16 weeks gestation experience pain or react to stimuli. They actually feel pain during abortion procedures yet there is no requirement to anaesthetise these unborn children. In effect, section 17 does not apply to the unborn because the Termination of Pregnancy Act has legislated for cruel and inhumane treatment of unborn human beings. This is completely unacceptable, from Cherish Life's position.

The Human Rights Bill says that it would have a freedom of association or assembly. Once again, the Termination of Pregnancy Act did not extend that to people in the pro-life community who like to assemble and pray outside abortion clinics or offer counsel. Once again, there are complete contradictions between what is written in this proposed legislation and what is in the Termination of Pregnancy Act. I understand that assembly in this context means the right to be part of an association. There is an association called 40 Days for Life which meets outside abortion clinics right around the

world. Their meeting point is outside abortion clinics to peacefully pray and to possibly offer counsel. I will say that Cherish Life is a non-religious organisation, but we support their democratic right to meet outside abortion clinics and pray.

They are glaring contradictions and they are a great disappointment to us. We are very grieved as a pro-life community. There are some other concerns that I list in my submission which I assume most of you have read. I want to use a quote from Martin Iles of the Australian Christian Lobby who was just meant to present. He talked about the undermining of power from duly elected MPs to the judiciary, and I thought this was a very telling comment—

A bill of rights that shifts the power of parliament to judges who are not accountable to the electorate is extremely concerning. It would erode the nature of Queensland democracy forever.

I completely agree with that. Cherish Life is very democratic and we do not agree with the changing of power from MPs to judges.

If you have read our report you would know that we did a lot of research. One of the problems is that there is a lot of vague wording. Some people say in some areas there is an overreach and in other areas there is an under-reach. We feel enacting an overarching human rights act with vague wording is an abrogation of legislative duty to promulgate clear laws. There is a duty to let people know what the laws are, but it is really unclear because it is a map of rights but no-one is quite sure how it is going to work and where. There is a definite risk of cutting down freedom of speech, which I am particularly concerned about as the head of Cherish Life, a pro-life organisation. We think it could be used to weaponise anti-discrimination laws against a thought or an ideology that is different from that of the current government.

I also point out that, when this was reviewed back in 2016 in the inquiry into a possible human rights act for Queensland, they basically said they could not agree; they could not conclude whether it was good for Queensland. In the end, they kind of said, 'It isn't. I don't think we should proceed,' but there was no consensus made and now we are looking at this issue again. This was over many months, so this concerns me that we are talking about this again. I do not quite know why we are. One thing that came out of there that I thought was absolutely brilliant was the observation from Hon. Richard Chesterman, the former Supreme Court judge, whose observation was stated as follows—

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 than] is needed to address those problems.

In other words, it could really do more harm than good and that is a very big concern.

I also noted cost in our report. I do want to note and I do want it on file that we are very distressed that successive Labor governments have shut down 40 maternity units in regional and rural areas, yet you have legalised abortion to birth and that could mean all abortions will be performed at public hospitals. There are currently about 10,000 surgical abortions a year. If we say the average cost of a termination is about $500, that is $5 million you have already kind of shifted to the taxpayer and now we are going to look at more costing for this, which has a significant cost attached. I note that professor of law James Allan in this inquiry said—

Bills of rights cost significant amounts of money that could be spent elsewhere and deliver little, save to lawyers, judges, criminals, and some articulate, well-educated members of the professional class.

To me, that sounds kind of opposed to the Labor ideology of trying to help the underdog. I am concerned.

I do want it noted that I think the human rights bill in its current form is anti life, anti democracy, anti freedom of thought and anti freedom of speech. I think it would stand to primarily serve as a tool for implementing an ideological, legal framework aligned with the left faction of the Labor Party, who are the dominant faction in this government. It would be jobs for the boys, or more likely jobs for the girls in the current government. Whilst the bill will further solidify the lie in the current Queensland legislation that the unborn are not actually human beings and therefore have no rights, it should not proceed and should definitely not be enacted in Queensland. Thank you.

Mrs McMAHON: I am going to go to the comment that you made, and which is in your submission as well, about the concerns you have about the bill transferring decision-making power to the judiciary. I am not sure whether you have been listening to, without any disrespect, the cavalcade of lawyers that we have had before us today. The question has been put to a number of them about their opinions on the balance between the individual, the state and the judiciary. I think by and large almost all of them have not raised any particular concern about a weighting towards the judiciary over the elected officials. I was wondering where the legal opinion that you have about decision-making being transferred to the judiciary comes from.

Ms Johnson: A number of academics have raised it. Didn't Professor Nicholas Aroney raise that this morning?

Mrs McMAHON: He is one of about the 30 lawyers we have had today that has.

Ms Johnson: But he is also a professor of law, as is Professor James Allan.

Mrs McMAHON: As are many of the people we have had before us today. I am just saying that he is one of the many. The legal opinion that you base that on is from the same—

Ms Johnson: Several people have said that. As I said, James Allan says it, as does Professor Aroney. There are others I have read from our legal research team who did as well. I can get you a list of all the ones who have said that. I am happy to do that for you.

Mrs McMAHON: We have his submission here.

Ms Johnson: Yes, of course, but there are probably 10 or 15 that we drew from.

Mr LISTER: Thank you for your appearance today. I am from one of those electorates that has lost a number of maternity wards, so that comment rang true for me. If this bill were passed tomorrow, what consequences do you see flowing?

Ms Johnson: That is a really big question. It would further solidify the lie that the unborn in Queensland are not human beings or they are not treated as people. To me, that is a grievous thing. It would further take away freedom of speech from people with an opinion contrary to the prevailing government. The appointees to the judiciary would no doubt be government appointees and, because we have a Labor majority government and within that Labor majority government the left faction is dominant, there would be quite left ideology, which is a grave concern, particularly because this ideology said that the unborn do not have any rights even up until birth. The Termination of Pregnancy Bill allows for a termination up until birth. It is very selective. It takes power away from the MPs. I think in time it would be used to weaponise freedom of speech. I want to find some notes. I actually wrote quite a few notes so I will look for them.

Mr LISTER: While you are doing that, would the sources of that legal opinion you referred to be among the 25 or so eminent jurists who wrote essays in a 2009 paper against a bill of rights, including Paul de Jersey and the former Justice Richard Chesterman among others?

Ms Johnson: Yes. I will take that as a question on notice. I think one of the consequences would be unfair judgements. When I say 'unfair', there would be an inherent bias which is a function of the government's bias. We all have bias—my bias is pro life—but it would be averse to people like myself who hold a strong view that the unborn are people.

I think there would be needless expense, which is concerning. I think, as I said, there would be a shutdown of freedom of speech for those with views contrary to prevailing thoughts. There would be state sanctioned killing of the unborn up until birth. That is already the case, unfortunately, with the Termination of Pregnancy Act but it would be further solidified by the passing of this. There would be state sanctioned killing of babies who survive an abortion, because now we have the Termination of Pregnancy Act so abortion is legal but these little ones have not been provided for, so effectively by not covering them in law it is actually agreeing with their killing.

There would be state sanctioned thinking, as different judgements over time would make it clear what thinking is acceptable to the judiciary. This would create obviously case law. There would be state sanctioned jobs. When I say that, I mean you could not say some things and get some jobs. Even for me, with my views, I could not get some jobs because I would be seen as against the current thought. I think there would be more of that as there is more weaponising against freedom of speech and freedom of conscience. You could have freedom of conscience, you could have your own thoughts, but you really could not speak them out. I think there would be a lot of shutting down of freedom of speech and I think that is very scary.

There would be judicial misinterpretation, as we have seen in a case in Victoria as I outlined in my submission. I am also concerned if there is a federal change of government. With a federal Labor government wanting to bring in 33 genders, what does that look like? Does that mean there could be men in women's toilets for natural born men who are still kind of transitioning to whatever they want to be and if I as a woman say, 'I don't want you to be in this toilet. I've got my young niece here or someone's got their little girl and this is not appropriate,' I am going to suddenly be pulled before the Human Rights Commission saying that is disgusting behaviour? It is like, no, actually that is absurd behaviour. I am very concerned.

Mr LISTER: Was Cherish Life consulted in the development of the bill by the government?

Ms Johnson: This bill?

Mr LISTER: Yes.

Ms Johnson: No.

Ms McMILLAN: I am sorry that you see doom and gloom. In what ways do you see that the bill of human rights will improve Queenslanders' enjoyment of their basic human rights?

Ms Johnson: What way do I see it would improve?

Ms McMILLAN: Yes.

Ms Johnson: I do not think it will improve it.

Ms McMILLAN: Thank you.

CHAIR: That brings to conclusion this part of the hearing. Thank you for attending, Ms Johnson.

Ms Johnson: Thank you, Mr Russo.

LYNCH, Ms Angela, Chief Executive Officer, Women's Legal Service Queensland

SARKOZI, Ms Julie, Sexual Violence Solicitor, Women's Legal Service Queensland

CHAIR: I invite you to make a brief opening statement, after which the committee members may have some questions for you.

Ms Lynch: The Women's Legal Service Queensland is a specialist community legal centre established in 1984. We provide free legal social work services and support to Queensland statewide. In the last financial year we assisted 16,000 women, with 45 per cent of our clients from outside Brisbane. Our particular focus in responding to the Human Rights Bill comes from the perspective about the protection of rights of women who are victims of domestic and sexual violence who already face multiple structural barriers in their interaction with the criminal justice system and which manifests in low reporting and conviction rates for these crimes.

To us, the statistics are dire, where the majority of women who experience sexual violence—and some reports say nine out of 10—do not contact police. To us, this means that the current system is not responsive to the needs of sexual violence complainants and major reform is required. We thank the committee for our opportunity to provide this submission today. We also commend the Palaszczuk government on the historic occasion of the tabling of this bill in Queensland. We do recognise that, for many vulnerable Queenslanders and for many of our clients, it will provide an avenue of redress that would otherwise not exist.

However, the Women's Legal Service is concerned that the rights of victims of crime have not been appropriately acknowledged in the bill, while the rights of criminal defendants in criminal trials are explicitly upheld. We are concerned that the bill does not give recognition to the many circumstances in justice proceedings where people are not treated with dignity, are not treated with equality and are not afforded equal protection. On a daily basis we interact with victims of domestic violence and victims of sexual violence where that is a standard experience.

Without a counterbalance to the rights of a fair trial for criminal defendants by also recognising the rights of victims, it may become more difficult in Queensland to pass victim sensitive legislation in the future or for legislation to be interpreted in a victim sensitive way. These suggested amendments about fairness in the criminal justice system—we are asking that victims also be given the right to a fair trial—are not radical reforms. As Robyn Holder has previously outlined, they are consistent with modern thinking and modern understanding.

Indeed, the Royal Commission into Institutional Responses to Child Sexual Abuse recommended a very similar amendment to the criminal justice approach in light of that royal commission's many years of hearing interactions with the criminal justice system with some of the most vulnerable victims. They actually recommended the criminal justice system be reformed to ensure the following objectives are met: that the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused; that criminal justice responses are available for victims and survivors; and that victims and survivors are supported in seeking criminal justice responses.

This recommendation has been accepted in principle by the Queensland government in their response to the report in June 2018, so in fact it is consistent with the current Queensland government's position. Although this recommendation only relates to child sexual abuse, arguably this is because the terms of reference of the royal commission only related to this issue. However, the issues are not hugely different for our clients who are victims of domestic and sexual violence.

Without amendment, the proposed bill would be in opposition to this recommendation and the Human Rights Bill will adversely affect existing and future legislative reforms designed to uphold the rights of victims within the criminal justice system and also affect court outcomes, as judicial decisions are required to be made in a way that is consistent with the rights as outlined in the Human Rights Bill.

The right to a fair trial amendment has been supported by knowmore legal service and Micah Projects. They did not specifically refer to a fair trial in their submission, but I spoke this afternoon to Karyn, who is the CEO of Micah Projects, and they say that they support it as set out in the recommendation of the royal commission. Other services have also supported this.

We also seek a broad amendment to clause 32 so that it also particularises victims' rights in the criminal process. At the moment, that approach upholds only the rights of criminal defendants in relation to their interaction with police and other entities. We are happy to take some questions.

Mr LISTER: Thank you both very much for coming today. I recall you made an earlier appearance.

Ms Lynch: Yes.

Mr LISTER: I think it was one of our first as new members of the committee.

Ms Lynch: Yes.

Mr LISTER: It is lovely to have you back. You are obviously very familiar with the issue of female victims of domestic violence. I do not want to put words in your mouth, but would it be fair to say that you perceive an imbalance in the value of the rights of victims relative to that of perpetrators?

Ms Sarkozi: To defendants, yes.

Ms Lynch: Yes.

Mr LISTER: Defendants, yes.

Ms Lynch: In the criminal justice system, yes.

Mr LISTER: Are you concerned that this bill would facilitate an increase or an exacerbation of that malapportionment of rights?

Ms Lynch: Absolutely. It will exacerbate that.

Ms Sarkozi: To be as clear as we can, at the moment we are looking at a bill that will have legal enforceability whereas victims' rights are not explicitly stated in this proposed legislation. The closest we get to having any acknowledgement of victims' rights is our charter of victims' rights that is attached to the Victims of Crime Assistance Act. In that legislation, at section 7, it says that the victim's rights are not legally enforceable either criminally or civilly. It explicitly says that you cannot enforce those rights. They are a standard and they are something that departments can try to aim for, but there is nothing enforceable about victims' rights and this legislation enshrines and enforces defendants' rights.

Ms Lynch: It will create a hierarchy of rights. Therefore, the criminal defendant's rights will be above those of the victim because of the lack of enforceability under VOCAA.

Ms McMILLAN: The Women's Legal Service recommends amendments to the right to a fair hearing, clause 31; the rights in criminal proceedings, clause 32; and the rights of children in the criminal process, clause 33, to protect the rights of victims. Can you expand on how it is suggested that these rights be amended and what the impact on their interpretation may be, given that the existing rights are drawn from existing international instruments?

Ms Sarkozi: In our submission we have provided, I would say loosely, an example of how they might be amended. I believe at the moment clause 31 says that the defendant or accused has a right to a fair trial. If you took out the word 'defendant' and put either the 'victim and accused' have a right to a fair trial in criminal proceedings or just 'everyone' has a right to a fair trial in criminal proceedings—is that the sort of the answer that you are looking for, that detail?

Ms McMILLAN: Yes.

Ms Sarkozi: In relation to clause 32, I note that at the moment it starts with defendants' rights and then it moves to finally talking about children's rights. I was proposing that there be a subclause (6), and subclause (6) will address all of the victims' rights. It will basically list all the victims' rights that we have included in our submission. At clause 32, there will be subclauses (1), (2), (3), (4), (5)—and I think (5) relates to a right to legal aid—and then there would be subclause (6), the rights of victims. They include all of the things that we have asked for—dignity, courtesy, a right to know what is happening in their criminal proceedings, a right to be told and notified of investigations, rights to things like—

Ms Lynch: Privacy and confidentiality. The royal commission into institutional child abuse makes an expansive recommendation in relation to a number of these issues. Again, all of that is really consistent with modern understandings of highly vulnerable victims.

Ms Sarkozi: In our understanding, with the Victorian bill and maybe even the bill from the ACT, now that they are reviewing their legislation they are noticing that they are quite silent on victims' rights. Those sorts of amendments are being recommended. This is in relation to your question about this legislation being modelled on that of other jurisdictions.

Ms Lynch: Also, the royal commission into institutional child abuse has come after those reviews that have been undertaken in other jurisdictions. These recommendations have been made by the royal commission only a couple of years ago.

Ms Sarkozi: I would go further by addressing you directly in relation to the in-principle support and quite direct support that our current government has for the recommendations that came out of the royal commission. I have the criminal justice report in front of me and again and again it addresses the rights of victims in this process in the way that we are proposing in our submission. Sometimes that

focus is very much on the survivors of institutional sexual abuse, but often it talks about very significant changes in relation to our understanding of victims' rights within the criminal law process. I can take you to those points if you would like—recommendations 41, 42, 43 and recommendation 1. Recommendation 3 states –

Each Australian government should ensure that its policing agency ... recognises that a victim or survivor's initial contact with police ...

It lists it very thoroughly. I am reluctant to bore you all with just reading this 20-page report, but it is very explicit in terms of upholding victim survivors' rights within the context of policing, the DPP and the criminal justice process.

Mrs McMAHON: I understand that in clause 31 the focus is on people charged.

Ms Lynch: Fair trial.

Mrs McMAHON: And going through that, one would assume that it is aimed at people who have been charged. Going back to clause 15, 'Recognition and equality before the law', does that clause not adequately encompass a victim of crime being equal before the law or having a right to have equal and effective protection against discrimination?

Ms Sarkozi: No, it does not. The reason it does not is that there are a whole lot of procedural issues that are not covered by that. Our focus at the Women's Legal Service has been predominantly on victims of domestic violence and sexual violence. As someone who works specifically in this area, I am always talking to women who are saying, 'When I first had contact with the police, I was not informed of how the investigation was proceeding.' As we say in our submission, one of the most egregious examples of this is someone who, 10 years after her original report, because there was an administrative error, had her complaint progressed in court—10 years of her repeatedly going to the same police station asking, 'What is happening with my matter?' I wish I could say that that was an unusual circumstance. This is happening all the time.

One of the advantages of enshrining a victim's right to that kind of transparency and what I would say is procedural fairness means that they can get those departments—in this case it is the police but it could be the DPP; it could be in a criminal trial process—to be accountable for what they do in the same way that the rights of the defendant are very thoroughly borne out in this Human Rights Bill.

Ms Lynch: We are not asking to take away from the rights of the accused. We are asking, as the royal commission has asked, that the criminal justice system operates in the interests of seeking justice for society—that it is both the complainant and the accused. As Robyn Holder spoke about previously, it is that balancing and triangulation of rights that the court must hold.

Unfortunately, in legal proceedings it increases the likelihood of those arguments being made if it is specifically written in there. Otherwise, lawyers do not necessarily go to it. That is why we are asking, as the criminal defendant's rights are being upheld, that we recognise the victim's rights as well.

Mr McDONALD: Earlier we had Dr Holder speak about a commissioner for victims' rights. She made the suggestion of a delegated authority under the human rights commissioner to look at those things. How would that fit with your discussion and in balancing some of the victims' rights?

Ms Lynch: I think we would be supportive of that. It gives a real point of contact for all victims of those very personal crimes we are interested in. I am not sure if Dr Holder means this, but it also gives a right of intervention. I am not sure if that exists in certain court matters. In our submission we certainly ask that agencies other than just the Human Rights Commission have that right of intervention to uphold human rights. We are really thinking about places like the Women's Legal Service to also have a right to intervene.

Mr McDONALD: Were you ladies consulted on the drafting of the original legislation?

Ms Lynch: No, we were not specifically asked.

CHAIR: There being no further questions, I thank you for attending and thank you for answering the questions.

GEURTSEN, Mr Luke, Private capacity

CHAIR: Good afternoon, Luke. I invite you to make a brief opening statement, after which committee members may have some questions for you.

Mr Geurtsen: Thank you, Chair. I thank the committee for the invitation to speak to you today. I appear here in a personal capacity. I have 13 years experience in writing legislation for Queensland and advising on alternative means of achieving policy and the application of fundamental legislative principles. I was not involved in the drafting of the Human Rights Bill nor in giving advice on the bill in any way. Firstly, I would like to say that opposition to the bill does not necessitate opposition to human rights. In those 13 years I enthusiastically embraced the protection of the rights and liberties of individuals as provided for under the current Legislative Standards Act.

I think I can say with certainty that the hunger for human rights will not be satiated with this bill. As can be seen from the submissions to the committee already, there are calls for more—more rights to be included, more ways to enforce those rights and more money to be spent. The passing of this bill potentially creates a powerful new lobby group able to exercise influence on government and members of parliament. What topic would not cause the need for consultation with human rights lobby groups lest the policy of a bill be lost in a debate over its statement of compatibility? In reading various press releases about consultation undertaken by governments across Australia, it is easy to think that people do not matter unless there is a lobby group there to represent them.

I note the talk of creating a dialogue between the executive, the parliament and the courts. A judicial officer is not accountable to the public. I am sure that members here are all too aware that their stances on policy and laws have consequences at elections. It is that accountability of members that best places parliament as the proper place to decide the human rights of Queenslanders and any appropriate limitations. If the electorate loses the right—the ability—to hold accountable those who decide a public policy, human rights will certainly not flourish.

It is somewhat deceptive to say the Human Rights Commission will have a low-cost dispute resolution process. While it might be low cost for the complainant, it will certainly have costs for the Queensland taxpayer, requiring public resources from the commission and all the affected public entities.

I was confused by the department briefing to the committee and other submissions to hear that the bill does not do anything for human rights that is not already achieved by some existing mechanism. Why then is it necessary for this bill? One claim is to achieve the promotion of a human rights culture in the Public Service, but I am left wondering why the Public Service has not developed such a culture given the long recognition of human rights and the 26 years of operation in Queensland of the Legislative Standards Act. As the department and minister have acknowledged, there already exists a range of mechanisms in Queensland for the protection of human rights, even if they did so oddly without any reference to the Legislative Standards Act. The bill does not replace or interact with the mechanisms currently provided for in the Legislative Standards Act and seems to cause duplication of process. The most common problems faced by Queenslanders require the government to get into the detail—not vague big-picture goals, not a dialogue and not an exercise in navel-gazing by public entities.

Lastly, I would like to state my support for an amendment of clause 48, subs (1) and (2) of the bill. However, contrary to other submitters, I would respectfully submit only replacing the word 'purpose' in those subsections with the words 'text, context and purpose'. Such an amendment would be in keeping with the current approach to statutory interpretation and ensure that interpreting a provision in a way that is compatible with human rights will not result in an interpretation that is inconsistent with the plain text and context of the provision. Thank you.

Mr LISTER: Mr Geurtsen, thank you for your appearance today. It has been a long day and we have had a great many appearances before us. It has been very interesting. Just as a guess, I would say that 95 per cent have been lawyers. I put it to you that some people might say that since there is a massive preponderance of lawyers saying that this bill is a good thing it therefore should be passed. What do you have to say about that, bearing in mind that you are in the minority of those who have appeared today?

Mr Geurtsen: Yes. Personally I do not give my profession any preference over any other profession or any other part of society as to what should be appropriate public policy. Obviously there can be conflicting interests and why lawyers may want particular regulation or legislation introduced.

Mr LISTER: What might they be?

Mr Geurtsen: They may be that it creates new opportunities for them and it provides new status. These would be cynical comments, obviously.

Mr LISTER: Of course.

Mr Geurtsen: There would be some who obviously genuinely are working in a field where they look forward to appropriate changes to legislation or assistance in genuinely addressing a problem that they see, but I certainly do not think that just because lawyers saying something is good as a new law that that's evidence that it is.

Mr ANDREW: Mr Geurtsen, given your occupation and your history, you mentioned some of the subtle language used in the bill. Could you elaborate on that? Do you think it covers what it should or do you think it does not go where it should? As you said, it overlaps on other things that are already in place.

Mr Geurtsen: I can speak to the overlap. The overlap that I would be concerned about is that in Queensland we currently have the Legislative Standards Act, which provides for fundamental legislative principles. Fundamental legislative principles are the principles relating to legislation that underlie parliamentary democracy based on the rule of law. There is a non-exhaustive list of those spelt out in section 4 of the Legislative Standards Act. There is a requirement—I think it is part 4 of that act—for all explanatory notes for bills and subordinate legislation to address consistency with fundamental legislative principles and if there is an inconsistency the reasons why. I would see that as the main overlapping process because we have in this bill a statement of compatibility that must go alongside bills. I think there is a certificate of human rights for subordinate legislation, and that is where they are to address whether there are breaches of human rights et cetera. Without the bill making any sorts of amendments, it is sort of left to be: what happens? Do we have both processes? Do we have committees looking at both FLPs and the statement of compatibility?

I would just like to clarify some issues, because some of the submitters made some points earlier today. To the same extent that potentially human rights would with this bill, FLPs would certainly be something that is considered before a bill makes it to the House. It is not only in the House and at the committee stage that FLPs are considered by the departments or those responsible for shaping the policy. There is a cabinet process they go through for the preparation of bills. That has an ATP process, an authority to prepare process, and then an authority to introduce. At both stages, departments need to address any FLP issues with the bill to keep cabinet obviously informed.

With the ATI, by that stage they would have the explanatory notes ready as well and, again, that requirement for them to mention FLPs in there. I can say that in my experience they are certainly taken into consideration during the development of policy already and I do not see anything in the Human Rights Bill where it does anything different to what is in the requirements under the Legislative Standards Act to ensure that regard is had to human rights at an earlier stage, rather than just when it comes to a committee or when it comes to the debate in the House.

Mrs McMAHON: Mr Geurtsen, one of the comments you made was in relation to the ongoing cost. My understanding is that it has already been factored into budget submissions and it is an ongoing cost of $600,000 a year. That equates to roughly 12 cents per Queenslander per year. Considering that not everyone is going to find themselves making a complaint to the Human Rights Commission but those who do are the ones who are ostensibly our most vulnerable, is 12 cents per Queenslander per year excessive for ensuring that people have access to the infringement of their rights?

Mr Geurtsen: My question would be: is 12 cents accurate? With a lot of these things, if you say it is the budget of the Queensland Human Rights Commission—and we know through appropriations processes and estimates hearings how much that commission costs to run—I do not think it is accurate, with respect, to then say that that is the cost of having a human rights commission in Queensland. As an example, if you take something like the Privacy Commissioner or the right-to-information commissioner, it would not be accurate to say that the money the government spends solely on those commissions is the cost of having the right-to-information mechanism available in Queensland. There is a cost to all of the departments that handle initial inquiries and then there would be costs to them when those inquiries are then referred on to the commissioner in terms of their staff attending et cetera. I do not know that those costs are added into it when people are talking about the cost of something and looking at it, rather than just the running of a particular commission.

Ms McMILLAN: Mr Geurtsen, I wondered if you could explain or outline to the committee your experience in serving vulnerable people or serving vulnerable communities.

Mr Geurtsen: I would not say I have experience in serving them specifically. My role is taking the approach of advising on the protection of rights and liberties of individual Queenslanders generally. It may be if there is a particular topic that I am drafting that relates to only particular groups where your advice might be then restricted to them in consideration of what particular difficulties they face and then how that would impact on any breaches of FLPs should they be watered down or to what extent.

Mr LISTER: Mr Geurtsen, earlier this morning I mentioned that former Chief Justice Paul de Jersey in his capacity as Chief Justice contributed to a collection of essays on the question of a civil rights bill and he spoke of his concern that causing the extension of creation of law in the general sense to judicial officers exposes them to the risk that they will be selected on the basis of their political proclivities in the human rights space and that that could drag the selection of judicial officers into controversy and more generally politicise the judiciary. What do you have to say about that?

Mr Geurtsen: I do not have particular knowledge on the selection process, but, from what I understand, obviously to make it through to that selection process you would certainly have to be recognised in your particular field. It is difficult to say that I could agree that that is where it would go, although in my opinion the government of the day appoints judicial officers and each government may have its own preferences. To get to the point where you are up for selection, you would certainly be recognised in particular fields and there is just not the opportunity for everybody to be recognised to be of a super high standard in only one field.

CHAIR: Do you know how the process works now for judicial appointment?

Mr Geurtsen: Not specifically, no.

CHAIR: As there are no further questions, this concludes this hearing. Thank you very much to all witnesses for appearing today. Thank you to our Parliamentary Service staff and to our hardworking Hansard reporters. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. If any questions were taken on notice, your responses will be required by 12 December so that we can include them in our deliberations. I declare the public hearing for the committee's inquiry into the Human Rights Bill closed.

The committee adjourned at 5.41 pm.