



**Community
Legal Centres
Queensland**

Human Rights Bill 2018

Submission to the Legal Affairs and
Community Safety Committee

26 November 2018

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About Community Legal Centres Queensland Inc.

All Australians understand and value the idea of a “fair go” – that we will be treated equally and fairly regardless of the circumstances we face. This extends to our legal systems, and community legal centres play a vital role in making Australia a safer and fairer place to live, by ensuring that everyone has access to justice.

Community legal centres are independent, community-run organisations that provide legal help to anyone who asks. There are more than thirty of these organisations across Queensland providing legal advice and ongoing representation and support.

Community Legal Centres Queensland is the peak body for Queensland’s community legal centres, and we work with those centres towards a fair and just Queensland.

We help community legal centres so they can provide effective, high quality services to their communities.

We help the network of community legal centres keep informed, united and relevant.

We help disadvantaged and vulnerable people in the community to understand their legal and human rights, access legal help, and be heard and respected.

www.communitylegalqld.org.au

Executive summary

Community Legal Centres Queensland welcomes the introduction of the *Human Rights Bill 2018* (Qld) (**the Bill**) and appreciates the opportunity to make this submission to the Legal Affairs and Community Safety Committee (**Committee**). The introduction of the Bill, and its subsequent passing into law, will substantively strengthen the laws and practices that protect and promote human rights in Queensland.

Community Legal Centres Queensland supports the Bill in its current form. We propose some improvements to the Bill, including:

- incorporating more human rights from the UN DRIP to further protect and promote the rights of Indigenous Queenslanders;
- giving the Commissioner powers to direct public entities to address human rights complaints that are found to be substantiated;
- providing an independent cause of action for breaches of human rights;
- omitting consequential amendments to the *Corrective Services Act 2006*, or improving this clause if it is to be retained;
- recognising detention is a last resort for children; and
- including additional rights, including the right to housing; rights to protect survivors of domestic violence, sexual assault and other crime; and, the right to a healthy environment.

We endorse recommendations presented to the Committee by other submitters, including:

- amending the objects of the Bill (at clause 3(b)) to '*to help build a culture in ~~the~~ Queensland including the public sector that respects and promotes human rights*';
- providing greater clarity about the definition of 'public entities';
- strengthening the protection and promotion of the human rights of older Queenslanders;
- strengthening the protection and promotion of human rights of children and young people;
- strengthening reporting requirements, to provide greater accountability and increase community awareness of human rights; and
- considering how intervenors, contradictors and friends of the Court might be permitted to contribute to legal proceedings.

A copy of our 2016 submission to the Committee's inquiry into a Human Rights Act is **attached**, and provides examples of the practical impacts we expect from the Bill, and more detailed discussion of human rights norms and practices. This submission is directed to the Bill before the Committee, and offers strong support for the Bill, with some suggestions for improvement.

We strongly support this Bill

Our members provide free legal help to about 50,000 vulnerable Queenslanders each year, and they have a unique insight into the experiences of Queenslanders who interact with government institutions, legal processes, and the law.

We commend the Government on its introduction of the Bill and its willingness to enshrine important protections for human rights in Queensland. Community Legal Centres Queensland believes introducing legislation is essential to safeguarding human rights in this State, and a Human Rights Act is necessary to protect vulnerable Queenslanders.

Community legal centres have a keen insight into the benefits that the Bill (if made into law) will have for thousands of vulnerable Queenslanders. We support strengthening laws and practices to protect and promote human rights in Queensland. The Bill will increase fairness and justice for vulnerable and disadvantaged Queenslanders – many of whom are our clients.

Practical examples where our members think this Bill could improve the protection of Queenslanders' human rights include:

- "Protection of the human rights to education and to equality will help to ensure children with disability are given access to an inclusive education and have their support needs met within the state educational system."
– *Emma, Queensland Advocacy Inc.*
- "The Human Rights Act will help public housing authorities' prioritise people who are most at risk of being deprived of their rights to security and life. This will assist those, especially older vulnerable Queenslanders, who are at risk of homelessness due to family violence and other factors."
– *Eugene, Brisbane North Community Legal Service*
- "We hope the Human Rights Act will bring about periodic reviews of the appointment of the Public Trustee for those clients who did not choose to have their money managed by a stranger"
– *Robyn, Cairns Community Legal Centre Inc.*
- "The right to recognition before the law will recognise the rights of older Queenslanders and people with disability to assert their autonomy and independence, including the right to make legal decisions and act as their own agent. This will impact on the day-to-day decision making including medical treatment. It complements and enhances the rights already recognised by our Guardianship laws."
– *Bill, Townsville Community Legal Service*
- "The security and sanctity of a person's home is central to their wellbeing and safety. By explicitly recognising the right to privacy, family and home, we expect the Human Rights Act will ensure fewer people are evicted to homelessness or subject to intrusive housing practices."
– *Stephen, LawRight*

We support the Bill's clear objective of promoting a dialogue about the nature, meaning and scope of human rights, as we consider this dialogue is likely to strengthen a culture of protecting, promoting and preserving all Queenslanders' human rights..

Recommendation 1: That the Committee recommend that the Bill be passed.

We strongly support the inclusion of the 23 distinct human rights highlighted in the Bill. We are pleased each of the 21 human rights recommended for inclusion in our 2016 submission to the Human Rights Inquiry (**2016 Submission**) has been included in the Bill.¹ A copy of our 2016 Submission is **attached**.

We welcome the inclusion of two human rights beyond those recommended in our 2016 Submission - the right to health services and the specific protection for the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Cultural rights

Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples, and it is imperative they are not denied the right to practice their culture.

Community Legal Centres Queensland notes this human right has not been expressly and separately² included in equivalent legislation in other Australian states and territories. Other states' approaches shouldn't prevent this human right being included in Queensland's the Bill, and we welcome the Government's leadership on this important national issue.

The landscape and understanding of reconciliation and recognition of the rights of Aboriginal and Torres Strait Islander peoples has also developed since the enactment of the ACT Legislation and the Victorian Legislation. It is entirely appropriate that a modern understanding of the rights of Australia's first peoples is reflected in its human rights legislation – and this should clearly include a particular recognition of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

We acknowledge that further rights of Indigenous Persons, recognised in international law, are absent from the Bill, and suggest that incorporating rights from the UN Declaration on the Rights of Indigenous Persons (**UN DRIP**) be incorporated into the Bill. Other submissions to the Committee will consider the impact of this Bill on First Australians in more detail, and provide more detailed recommendations for improvement.

Recommendation 2: that the Bill incorporate more human rights from the UN DRIP to further protect and promote the rights of Indigenous Queenslanders.

Right to health services

Including a specific right to health services is an essential inclusion in any Queensland human rights legislation, and should be supported by the Committee in its consideration of the Bill. Specifically, where the Bill seeks to regulate the actions of public entities insofar

¹ Our submission to the 2016 Inquiry was made under our former name, QAILS.

² Section 19(2) of the Victorian Legislation recognises the cultural rights of Indigenous people, as a component of broader cultural rights.

as they perform public functions, it is essential this specifically extends to health services, given the important role public entities serve in providing such services.

It is unclear why this right (and the right to education in clause 36) is framed as a 'right to access' rather than simply a right to health care or a right to education.

In Queensland, the government and other public entities provide essential health services to thousands of vulnerable people who would otherwise not have access to them. Given the importance of these services to Queenslanders wellbeing, and the limited access to these services, public entities providing health services must be conscious of the human rights of those who access their services. In particular, we believe public entities are obliged to ensure non-discrimination in the delivery of health services and a right of recourse for people who feel as though they have been unfairly treated will deliver an important layer of transparency to health services in Queensland.

Each of the rights discussed above have their basis in international human rights standards (as noted in the explanatory note), and we are entirely supportive of their inclusion in the Bill.

Dispute resolution processes could be stronger

We have carefully considered the dispute resolution provisions included in the Bill, which provide for conciliation between complainants and public entities where the Commissioner has accepted a complaint.

We are concerned the Bill's conciliation provisions do not deliver binding outcomes or provide for enforcement of the rights set out in the Bill in any way. Specifically, if a conciliation fails, the Bill merely provides that the Commissioner is required to prepare a report for the complainant and the respondent setting out the substance of the complaint and the actions taken to resolve the complaint.³

We believe where there is no binding or clear outcome from a complaint being brought to the Human Rights Commission, aggrieved individuals will be disincentivised from raising concerns about breaches of their human rights by public entities. This is particularly the case given the structural power imbalance that naturally exists between individuals (who have human rights) and public entities with significant power (including the coercive power of the State). It is difficult to understand why an individual would bring a complaint to the Human Rights Commission under the framework set out in the Bill, given there is no right to a binding outcome and the complainant would have already sought to conciliate an outcome with the relevant public entity as a precondition of having the Commissioner even accept a complaint.

The current drafting is weighted in favour of public entities rather than individual complainants. However, the legislation is required because public entities already have significant power to influence the lives of individuals within Queensland, and it is necessary to correct the balance between individuals and public entities with legislation protecting human rights.

The legislation does little to further human rights protections in Queensland if individuals have difficulty seeking a resolution to their concerns about disregard for their human rights

³ Clause 88 of the Bill.

under its framework. The current dispute resolution framework will limit the efficacy of the Human Rights Commission insofar as regulating breaches of human rights is concerned. This should not be the position accepted by the Committee in its consideration of the Bill.

Recommendation 3: that the Commissioner be given powers to direct public entities to address human rights complaints that are found to be substantiated.

We endorse the position outlined in the submission to this inquiry from the Human Rights for Queensland campaign (of which we are a member), LawRight, Queensland Law Society and other submitters, that the Bill should provide victims with a freestanding cause of action against any public entity which fails to support human rights, with the full range of remedies, including damages. As it stands, the Bill only allows claims to be raised in legal proceedings if there is another ground on which to challenge the decision or action. A recent independent review of the Victorian Charter recommended introducing a standalone cause of action to address this failing.

Recommendation 4: that the Bill be amended to provide an independent cause of action for breaches of human rights.

Respect the human rights of people in detention

In our 2016 Submission, we acknowledge the general point that not all human rights are 'absolute'.

We have some reservations, however, about proposed amendments to the *Youth Justice Act 1992* (Qld) and the *Corrective Services Act 2006* (Qld).

In particular, we are concerned about the proposed amendment to the *Corrective Services Act 2006* (Qld) as the consideration of human rights for a prisoner detained without charge is excused, provided the chief executive has considered the 'security and good management of corrective service facilities'.⁴

Given the Bill's recognition that rights can be limited,⁵ we believe the consequential amendment to the *Corrective Services Act 2006* (Qld) is unnecessary.

Recommendation 5: that clause 126 of the Bill be omitted.

If consequential amendments to the *Corrective Services Act 2006* remain in the Bill, we strongly recommend that:

- **the 'or' at the end of the proposed section 5A(2)(a) be replaced with the word 'and'**, such that the chief executive is compelled to consider the safe custody and welfare of all prisoners when making decisions. The obligations of the chief executive and officers in relation to the Bill should not be satisfied merely because they have considered the security and good management of a facility – there must be an obligation to consider the welfare of all prisoners before it can be said a decision is consistent with the Bill.
- **the word 'also' be inserted into section 5A(2)**, to ensure the chief executive or officer does not contravene the clause 58(1) responsibility "only because the chief

⁴ Clause 126 of the Bill.

⁵ Clause 13 of the Bill.

executive's or officer's consideration **also** takes into account" the listed factors, together with the factors in clause 13 of the Bill.

We are particularly concerned about the proposed wording given it extends to officers, which includes all corrective services officers. It is imperative the Bill protects vulnerable Queenslanders, however the proposed wording clearly creates a risk that protections afforded by the Bill will be disregarded or ignored for prisoners within corrective facilities (who are some of Queensland's most vulnerable people).

There are already a number of well-documented and high profile instances of prisoners being treated poorly within correctional facilities. Building protections for officers, rather than prisoners, into Queensland's human rights legislation will do nothing to correct existing systemic issues, or extend the protections created by the Bill to those who require them.

Recommendation 6: that any amendments to the *Corrective Services Act 2006* be limited.

We do not share the same concerns in relation to the *Youth Justice Act 1992* (Qld), as the proposed amendments are limited only to the chief executive, which can be specifically and clearly delegated (such that the exemption is much more narrowly applied). We also appreciate there are instances in which it is appropriate to segregate children for their own protection, such as separating younger offenders from older offenders. However, we endorse the submission of the Youth Advocacy Centre, that the Bill should be amended to provide that detention is a last resort for children, as set out in article 37 of the Convention on the Rights of the Child, which is otherwise incorporated into the Bill.

Recommendation 7: that the Bill should recognise detention is a last resort for children.

Additional rights could be included in the Bill

Right to housing

As the Queensland Law Society submission to this inquiry states, adequate housing is essential for human survival with dignity. Without a right to housing, many other basic human rights will be compromised including the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development.⁶

The ICESCR protects the right to an adequate standard of living for individuals and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.⁷

Recommendation 8: that the Bill be amended to include a right to housing.

⁶ Chris Sidoti, Housing as a Human Right, <https://www.humanrights.gov.au/sites/default/files/content/pdf/human_rights/housing.pdf>

⁷ ICESCR, Article 11

Rights of survivors of domestic violence, sexual assault and other crime

The Committee should consider ways to strengthen the protections afforded to survivors of domestic violence and sexual assault under the Bill.

The Queensland Government already adheres to the Charter of Victims' Rights for agencies, as set out in the *Victims of Crime Assistance Act 2009* (Qld). Given part of the rationale for developing a human rights legislative framework in Queensland is to bring together the patchwork of differing protections of rights across the laws of Queensland, we submit it would be appropriate for the Bill to expressly recognise the human rights of victims of crime in Queensland.

This could be done in a number of ways:

- adding 'freedom from all forms of exploitation, violence and abuse, including their gender-based aspects' as a protected right, as recognised in international human rights laws;⁸
- providing for affected persons to bring complaints for a breach of their rights under the Charter of Victims' Rights to the Human Rights Commissioner;
- supporting victims and their advocates to use the Act to protect and promote their rights.⁹

Recommendation 9: that the Bill be strengthened to recognise the human rights of victims of crime in Queensland.

A number of submissions to this inquiry will provide more information on this issue; we direct the committee's attention to submissions from Women's Legal Service Queensland (a member of our organisation), Professor Heather Douglas, and others. We also note that the submission of experts from the T.C. Beirne School of Law (**UQ Law**) also recommends incorporating the *Charter of Rights of a Child in Care* in Schedule 1 of the *Child Protection Act 1999* – this Bill is an opportunity to make these legislative charters more effective and meaningful.

The right to a healthy environment

The Bill should be amended to include an express right to a healthy environment. As humans, our health and wellbeing is inextricably linked to the health of the environment we live in and depend on. In this context, we direct the Committee's attention to the submission from the Environmental Defenders Office (a member of our organisation) to this inquiry.

The right to a healthy environment was initially formally recognised in the Stockholm Declaration and Rio Declaration.¹⁰ There is broad recognition now that the protection of the environment is a key part of contemporary human rights doctrine, and will become

⁸ United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, article 16.

⁹ See further, Human Rights Law Centre, *Advancing the rights of victim/survivors of crime using Victoria's Human Rights Charter: Your advocacy guide* (August 2018), [available online](#).

¹⁰ *Declaration on the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1972); *United Nations Declaration on Environment and Development*, UN Doc A/CONF.151/5/Rev.1 (1992).

increasingly relevant as the earth's population continues to increase and the strain placed by the human population on the earth's resources continues to grow.

The protection of the right to a healthy environment would likely require public entities to better consider how proposed legislation, policy or projects might impact on the environment on which we depend for our livelihoods and health. With our members (especially the two Environmental Defenders Offices in Queensland, we consider there are clear public benefits flowing from such consideration.

Recommendation 10: that the right to a healthy environment be added to the Bill

The only express mention of the environment in the Bill is in clause 28, which is expressly limited to and focussed on the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples. This reference notes that Aboriginal and Torres Strait Islander peoples must not be denied the right to 'conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources'. We support clause 28 as it preserves the distinct rights of Aboriginal peoples and Torres Strait Islander peoples – but consider non-Indigenous Queenslanders should also have their right to a healthy environment recognised by the Government and preserved by the Bill.

Resourcing implementation of the Act

The Human Rights Act will only have real impact if each arm of government and the community understands how it applies to them. The Queensland Government must allocate sufficient resources to ensure each government department reviews its laws, policies and practices to ensure its compliance with human rights, for the Commission to be enabled to conduct its statutory responsibilities, and for community education.¹¹ A number of submissions to this inquiry have identified the need to resource community legal centres and other advocates to provide advice to people whose rights are infringed, and to provide representation in conciliations (as provided in clause 83 of the Bill). We will continue to advocate for resources to meet this emerging need in our ongoing discussions with Government.

Other issues

We endorse a number of other groups' submissions to this Inquiry, and draw the Committee's attention to a number of issues raised in those submissions, including:

- amending the objects of the Bill (at clause 3(b)) to '*to help build a culture in ~~the~~ Queensland including the public sector that respects and promotes human rights*', raised in the submissions of Townsville Community Legal Service (**Townsville CLS**), Queensland Law Society, and others;
- providing greater clarity about the definition of 'public entities', canvassed in the submissions of the Australian Lawyers Alliance, the Queensland Law Society and others;
- strengthening the protection and promotion of the human rights of older Queenslanders, as considered in Townsville CLS's submission;

¹¹ Information about the costs of implementing Victorian Legislation can be found in the [Victorian Government submission to the Scrutiny of Acts and Regulations Committee's review of the Charter of Human Rights and Responsibilities Act 2006](#).

- strengthening the protection and promotion of human rights of children and young people, as considered in the Youth Advocacy Centre's submission;
- strengthening reporting requirements, to provide greater accountability and increase community awareness of human rights (recommended by Queensland Law Society, LawRight, UQ Law, and others); and
- considering how intervenors, contradictors and friends of the Court might be permitted to contribute to legal proceedings (recommended by Townsville CLS, UQ Law, and others).

Conclusion

In conclusion, we support the Bill and commend the Queensland Government for introducing this vital piece of legislation to Parliament. We urge the Committee to support the passing of the legislation, with amendments as recommended in this submission.



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