



Submission to the Legal Affairs and Community Safety Committee on the Human Rights Bill 2018

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School of Law and Justice



USQ School of Law and Justice

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Submitted By

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Introduction

On 31 October 2018, the Human Rights Bill 2018 was introduced into the Queensland Parliament. The Bill is currently being considered by the Legal Affairs and Community Safety Committee which has issued a call for submissions.

This submission, written by two legal academics at the University of Southern Queensland School of Law and Justice, draws upon their experience and scholarly background in human rights and civil liberties. Four distinct submissions are presented below.

Submission #1: Human rights legislation is needed in Queensland

Australia was one of the first signatories to the *Universal Declaration of Human Rights*, 10 December 1948, UNGA Res 217A(III) and the Australian federal government prides itself on the country's strong tradition of respect for the rights and freedoms of every individual.¹ Nevertheless, the Australian Human Rights Commission has observed that some people in this country are denied their basic rights because of their colour, their race, their sex, sexuality a disability or some other aspect of who they are,² while the non-governmental organisation Human Rights Watch recently noted that 'Australia has serious unresolved human rights problems.'³

With this in mind, we commend the Queensland Parliament for proposing this Bill.

Civil liberties and human rights are a fundamental aspect of a successful liberal democracy. When people feel safe against arbitrary arrest, feel free to associate with like-minded members of their community and feel at liberty to speak out on matters that concern them, they can fully take part in exercising their right to have a voice about the leaders and laws that govern them. Individual rights and liberties are an essential safeguard against government abuse and overreach, as history shows the dangerous and corrupting effects of power without limits.

The most effective way to secure human rights and civil liberties is through judicially-enforceable constitutional bills of rights. But in the Australian context,

¹ Attorney-General's Department (Cth), *Human rights protections* <<https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Human-Rights-Protections.aspx>>.

² Australian Human Rights Commission, *Human Rights in Australia* <<https://www.humanrights.gov.au/education/students/get-informed/human-rights-australia>>.

³ Human Rights Watch, *World Report 2018: Australia* <<https://www.hrw.org/world-report/2018/country-chapters/australia>>.

where such protections do not exist, other mechanisms must be put in place to safeguard individual freedom. The cumulative effect of these non-constitutional safeguards can be a powerful deterrent to public entities who, through either malevolence or carelessness, would infringe upon individual rights.

The Human Rights Bill 2018 is a positive step towards the protection of human rights in Queensland. It contains a clear articulation of the specific rights that must be respected by public entities, mandates that Parliament consider the human rights implication of each bill that comes before it, articulates a mechanism for the judiciary to declare legislation incompatible with human rights, and creates new powers for the proposed Queensland Human Rights Commission to consider and conciliate complaints from members of the public.

We support the main objects set out in section 3 of the Bill. We welcome the inclusion of many civil and political rights, and we particularly welcome the insertion into the Bill of rights to education and health services.

We note that these objects, admirable in themselves, will also further Australia's compliance with its international human rights obligations. For example, in 2017 the United Nations Human Rights Committee recommended that Australia 'adopt comprehensive federal legislation giving full legal effect to all [International Covenant on Civil and Political Rights] provisions across all state and territory jurisdictions.'⁴ In the absence of federal legislation, the Human Rights Bill will increase awareness of human rights among public agencies and the community in Queensland and will help to give effect to Australia's international human rights obligations.

Our submission is that the Human Rights Bill 2018 should be passed into law.

Submission #2: Stronger remedies are needed

Although the draft Bill is a step in the right direction, it does not go far enough. There are several provisions that limit its ability to be an effective safeguard for human rights: declarations of incompatibility do not create causes of action (section 54), unlawful actions do not permit a claim for damages (section 59) and the Queensland Human Rights Commission has no available remedies beyond conciliation and reporting (section 88). The cumulative effect of these limitations is that the Human Rights Bill 2018 could become a toothless, symbolic measure that has no real impact on human rights protection in Queensland.

⁴ Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Australia*, 121st sess, Agenda Item 5, UN Doc CCPR/C/AUS/CO/6 (9 November 2017) [6].

In order to deter infringement and compensate individuals whose rights have been violated, public entities must be held accountable under the legislation—and accountability means consequences for breach. As the situation currently stands, a public entity that breaches human rights—once or twenty times—faces no real consequences. The temptation for public entities faced with conciliation will be to dig in their heels or make only token gestures, secure in the knowledge that, apart from negative comments in a report, no tangible consequences will be faced. Should this defensive approach be successful once, it creates a cascade effect whereby other public entities are encouraged to adopt the same approach. The ultimate risk is that Queensland’s human rights legislation becomes a ‘parchment barrier’ that is not taken seriously by government agencies.

We recommend that robust enforcement mechanisms should be added to the legislation. For example, the Queensland Human Rights Commission should be given powers to issue binding orders (judicially reviewable) to circumscribe unlawful practices or policies and to refer unresolved complaints to a court or tribunal for resolution, along similar lines to complaint resolution procedures under Queensland anti-discrimination law.

A successful complainant would benefit from a range of remedies similar to those available in section 209 of the *Anti-Discrimination Act 1991* (Qld). Appropriate remedies could include the award of compensation for loss or damage caused by a human rights breach (statutorily capped if necessary), orders requiring a public entity not to commit a further human rights breach against a complainant or other specified persons, orders requiring a public entity to do specified things to redress loss or damage suffered by a complainant or other persons because of a breach, orders requiring a public entity to make a private or public apology or retraction in relation to a breach, orders requiring a public entity to implement programs to increase human rights awareness and compliance, and mandated training in human rights for employees of public entities found to have acted unlawfully under the legislation.

Human rights are not trivial things—they are a crucial part of who we are and how we live. If we want public entities to take them seriously, the legislation must provide real and tangible consequences for wilful infringement.

We submit that additional and enforceable remedies should be added to the Human Rights Bill 2018.

Submission #3: Right to housing should be included

In addition to the human rights currently included in the Bill, we recommend that a right to housing be included in Part 2 Division 3 of the Bill. Housing is a

fundamental need, particularly for vulnerable individuals and families. It is also a 'meta-right' in that it enables or facilitates the enjoyment of other human rights. For example, individuals may only be able to take part in public life (section 23 of the Bill) or be in a position to protect their families and children (section 26) if they have housing.

Our submission is that the Human Rights Bill 2018 should include a right to housing.

Submission #4: Move cultural rights to Part 2 Div 3 of the Bill

We propose that the Parliament shift sections 27 and 28 promoting cultural rights generally and cultural rights of Aboriginal and Torres Strait Islander peoples to Part 2 Division 3 of the Bill which is headed 'Economic, social and cultural rights'.

We appreciate that there is overlap between the scope and content of human rights. The human rights in the *Universal Declaration of Human Rights* were separated into categories of civil and political rights and economic, social and cultural rights for historical reasons of political expediency. Some of the rights listed in the *International Covenant on Civil and Political Rights*⁵ could appropriately be included in the *International Covenant on Economic, Social and Cultural Rights*⁶ ('ICESCR'): for example, Article 18 protecting the right to freedom of thought, conscience and religion and Article 27 protecting minority rights. Similarly, other ICESCR rights, such as the Article 13 right to education, could also be categorised as civil and political rights.

We submit that sections 27 and 28 should be relocated to Part 2 Division 3 of this Bill, where they would be no less effective.

Conclusion

We would welcome an opportunity to expand upon this written submission.

⁵ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁶ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976).