

Dear Committee,

re: Human Rights Inquiry

Thank you for the opportunity to make a submission to this inquiry. In my view, Queensland should enact a human rights charter.

A Human Rights Charter fills a gap

An enforceable charter of human rights ('a Charter') will address a critical need in this state, providing Queenslanders with 'fair go' remedies where no others are available. Social services legislation, for example, can offer specific guidance, define standards, set out enforceable benchmarks and provide penalties that assure the quality of human service delivery; tort and contract law provide civil remedies for negligence, personal injury and loss of dignity and balance and protect the interests of parties to transactions for all sorts of goods and services; and the criminal law offers deterrence and redress for conduct that threatens property, health, safety, and moral welfare. There remains an enormous range of individual circumstances that are unjust, but difficult if not impossible to remedy under existing law.

Principles like freedom from cruel, inhuman or degrading treatment, or equal recognition before the law, are broad enough to capture many circumstances that lie beyond the reach of existing legal protections. A human rights charter is the most effective vehicle for the specification and protection of such rights.

A Human Rights Charter protects the unprotected

Anyone who doubts that Queensland needs a human rights charter should consider talking to people with disabilities who are subject to physical or chemical restraint, containment or seclusion, or who still live in institutions, such as Baillie Henderson in Toowoomba, or in prisons, where people with intellectual disability are jailed at three to four times the rate of the general population,¹ and where Aboriginal and Torres Strait Islander people experience mental health disorders at four to five times the rate of the general population.² Despite the safeguards set out in the *Disability Services Act 2006* (Qld), the *Penalties and Sentences Act 1992* (Qld) and in cognate legislation, there are people with disabilities who would live fuller lives with less restriction if only they had express, enforceable human rights to provide them with a remedy.

There are Aboriginal and Torres Strait Islander people who have been subject to harassment by state employees almost as soon as they were old enough to be charged with a crime (and sometimes before that); women who have been raped but who have found no remedy in the criminal or civil courts; and people in indefinite forensic detention who have been locked away for years, even decades.

¹ Corrective Services Queensland. 2002. *Intellectual Disability Survey*.

² E Heffernan, K Andersen, A Dev, S Kinner. 2012. 'Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons'. *Medical Journal of Australia*. 197(1):37-41.

There is no mechanism by which to challenge let alone to remedy these wrongs. A few Queensland Acts have piecemeal references to human rights principles³ but none articulates both human rights *and* effective mechanisms for their enforcement. The Commonwealth has signed and ratified most of the principal United Nations human rights conventions, but ratification does not introduce the terms of the convention into the laws of Australia, and cannot displace or override domestic legislation that is inconsistent with a convention's terms.⁴

Form of a Human Rights Charter

A Charter should be an ordinary Act of Parliament ('Act') rather than constitutionally entrenched, allowing Parliament to pass and later amend the Act without carrying out a referendum, and to refine it as needed, especially if the legislation had unintended consequences.

The Charter would contain judicially-enforceable human rights including civil and political rights such as freedom of expression, the right not to be tortured and so on. Economic, social and cultural rights like rights to health, housing and education would be listed but would not be enforceable, retaining Parliament's discretion in relation to them.

Public authorities, including Ministers, public servants, departments and agencies should have to comply with the human rights set out in the Charter when they make decisions and in their other conduct. Private organisations such as churches and other religious organisations would not be required to comply unless they are acting as a public authority such as when they provide a public service on behalf of the government.

The Act should contain a stand-alone cause of action when a litigant wants to allege that a public authority had violated their rights, rather than requiring litigants to rely on a separate ground of relief.

The Act should provide for parliamentary scrutiny of new legislation for its consistency with the Charter, including delegated legislation: one of the ways of getting around scrutiny is to place controversial policies in the form of regulation rather than in the relevant Bill.

The Act should require that other laws be interpreted consistently with Charter. Where a law could be interpreted in two ways a court would then prefer the rights-compliant interpretation. The Act would recognise that Parliament will legitimately need to impinge on some rights for a competing public interest, and where Parliament makes clear that a law is intended to override a right or rights, that intention will be respected by the courts.

The Act should establish a new joint Parliamentary committee to consider the impact of draft legislation and policy on human rights, ensuring that new laws are drafted wherever possible to respect fundamental human rights.

Yours sincerely,

Dr Nick Collyer, 

³ For example, the *Guardianship and Administration Act 2000* (Qld), Schedule 1.

⁴ *Koowarta v. Bjelke-Peterson* [1982] HCA 27.