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Human Rights Inquiry

Submission No. 403



EDO NQ

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Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane Qld 4000
Sent via email: lacsc@parliament.qld.gov.au

Dear Chair and Committee Members

Human Rights Inquiry – EDO NQ Submission

We welcome the opportunity to make submissions to the Human Rights Inquiry. Our submission is attached.

The Environmental Defenders Office (Northern Queensland) (**EDO NQ**) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also deliver community legal education and undertake law reform activities.

EDO NQ strongly supports the introduction of a Human Rights Act for Queensland for the reasons contained in our submission. Importantly, human and environmental rights are interdependent and both sets of rights should be recognised and protected.

If you have any queries relating to this submission, please contact Tania Heber at EDO NQ on (07) 4031 4766 or email: [REDACTED]

Yours faithfully,



Tania Heber
Principal solicitor
Environmental Defenders Office of Northern Queensland Inc

Attachment: Human Rights Inquiry – EDO NQ submission

HUMAN RIGHTS INQUIRY – EDO NQ SUBMISSION

1. Thank you for the opportunity to make a submission to this Committee regarding a Human Rights Act for Queensland.
2. The Environmental Defenders Office of Northern Queensland Inc. (EDO NQ) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. We provide legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also deliver community legal education and undertake law reform activities. We provide services to communities in northern and far northern Queensland.

Support for a Human Rights Act for Queensland

3. EDO NQ strongly supports the introduction of a Human Rights Act for Queensland. Any Act should include recognition and protection of both human and environmental rights as these rights are interdependent. (See paragraphs 14-22 below.)

Current protection of human rights in Queensland

4. In Queensland currently there is no right to a healthy and ecologically balanced environment. That is not to say that there are no environmental protections. The planning, environment protection, nature conservation and related legislation provide frameworks for some environmental protections.
5. Further, in Queensland, there are no blanket procedural rights that entitle Queenslanders to information; freedom of expression and association; participation in public processes and effective remedies from harm arising from conduct that is incompatible with human and environmental rights.
6. Again, various legislative frameworks do provide for some of these protections. However, as we have seen in recent years these protections are removed and reinstated at the behest of the government of the day without any requirement to debate compatibility with human and environmental rights. An example is provided in the next section.

Situations from our work that demonstrate the need for a Human Rights Act in Queensland

7. EDO NQ has been providing public interest environmental law services to northern and far northern Queenslanders for twenty years. Part of our work relates to law reform.

8. The changes to the Mineral Resources legislation¹ in Queensland in recent years is one example of the need for recognition of human and environmental rights in Queensland. Before 2009, the community had the benefit of provisions in the Mineral Resources legislation that empowered them to object to mining proposals on environmental grounds. A 2014 Act sought to remove community objection rights. A 2016 Bill currently before Parliament will reinstate community objection rights.
9. Notably, the amendments were made without any requirement for Parliament to debate or any provision for the public to provide submissions to a parliamentary committee in relation to the Bills' compatibility with human and environmental rights. This is in circumstances where mining proposals can have significant impacts on flora and fauna species, groundwater, surface waters, world heritage areas such as the Great Barrier Reef, climate, air quality, and the health and quality of life of surrounding communities and beyond.
10. Many environmental injustices are experienced as a result of the mining and other industries in Queensland and often the communities closest to a mine bear a large proportion of the environmental risk created by mines. This burden significantly impacts on these communities' substantive and procedural human and environmental rights.² These communities would benefit from recognition of their human and environmental rights.
11. Many disputes that we are asked to advise about relate to situations where a person or community detrimentally affected by environmental harm cannot find a public authority to act to protect them from harm. This is in circumstances where public authorities have obligations to protect the community from harm.
12. In a recent example, a property owner was unlawfully polluting surface water on his property. After rain, the polluted water was swept into the gully and ran through two neighbouring properties, to a creek and ultimately out to the Great Barrier Reef. The polluted water fouled a dam and a bore on the neighbors' properties. The dam and bore were used for back up water supply, stock and garden watering, recreation and flora and fauna habitat. The water in the dam and bore is now toxic. Our clients complained to six different authorities. Nine months later no action has been taken to remedy the pollution without any explanation from any of the authorities.

¹ See *Mineral Resources Act 1989 (Qld)*; *Mineral and Energy Resources (Common Provisions) Act 2014*; and *Mineral and Other Legislation Amendment Bill 2016*.

² Rivers, N. (2015). Submission to *Charter of Human Rights and Responsibilities Act 2006 Review 2015*: Consultation paper. Melbourne, Victoria: Environmental Justice Australia. Retrieved from http://myviews.justice.vic.gov.au/application/files/8314/5567/8586/Submission_42_Environmental_Justice_Australia.pdf

13. If public authorities had been required to act compatibly with human and environmental rights they would have to justify why they have not provided our clients with information about their investigations; why no remedy has been found despite various protections in a number of pieces of legislation; why the beneficial uses of the water on their land are not available to them; why they have not ordered a stop to the unlawful behaviour and assisted in finding a remedy for the unlawful behavior and resultant harm.

The benefits of a Human Rights Act for Queensland

14. The section explains the premise of our submission that human and environmental rights are interdependent.
15. The international community has long recognised the importance of the recognition of human rights as the “foundation of freedom, justice and peace in the world”.³
16. Environmental rights or rights related to environmental protection “are late arrivals to the body of human rights law”.⁴ Yet it is acknowledged that human rights and environmental rights create a virtuous circle in that the realization of human dignity, freedom, justice and peace relies on an environment that allows these qualities to flourish. For example, the right to sovereignty can only be exercised if a people are not forced to leave their country due to sea level rise. Similarly environmental protection relies on the exercise of human rights.⁵ For example, protection from air pollution requires exercise of the rights to life, health, information and participation in public processes.
17. Whilst international conventions and norms relating to environmental concerns such as sustainable development⁶ and climate change⁷ have acknowledged that protection of the environment and human rights are interdependent, there is no universal declaration of a right to a healthy or ecologically balanced environment.⁸
18. Despite this lack of a universal right, many nation States have enshrined the right to a healthy and ecologically balanced environment or other similar formulation⁹ in their national body of laws¹⁰.
19. We urge the Queensland government to enshrine the right to an ecologically balanced environment in Queensland law. This has the dual benefit of enshrining human and environmental rights, which are fundamentally interdependent, in Queensland law.

³ Universal Declaration of Human Rights General Assembly Resolution 217A, Paris, 10 December 1948 (UDHR)

⁴ Knox, J. H. (2012) *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. A/HRC/22/43. Human Rights Council p 4

⁵ *Ibid* p 4

⁶ United Nations Conference on Sustainable Development

⁷ Kyoto Protocol

⁸ Knox (2012) *op cit* p 5

⁹ Other formulations include: healthy, clean, safe, favourable, wholesome.

¹⁰ Knox (2012) *op cit* p 5

20. There are other substantive rights that we say are made vulnerable in circumstances where the environment is degraded. They are the right to life¹¹, the right to health¹² and the right to property¹³. Accordingly, we urge the Queensland government to enshrine these substantive rights in Queensland law.¹⁴
21. There are a further set of rights that support better environmental policy making. They are the right to freedom of expression¹⁵, the right to freedom of association¹⁶, the right to information¹⁷, the right to participation in decision-making and the right to effective remedies for harm¹⁸.
22. In our view, you cannot have human rights without recognition of environmental rights.

The rights that should be protected in a Human Rights Act for Queensland

23. Substantive rights – those vulnerable to environmental degradation

- 23.1. The right to an ecologically balanced environment.
- 23.2. The right to a healthy and safe environment.
- 23.3. The right to life.
- 23.4. The right to health.
- 23.5. The right to property.

24. Procedural rights – those that support better environmental policy making

- 24.1. The right to freedom of expression.
- 24.2. The right to freedom of association.
- 24.3. The right to information.
- 24.4. The right to participation in decision-making and public processes.
- 24.5. The right to effective remedies.

The application of a Human Rights Act in Queensland

25. By virtue of its terms of reference, Parliament has excluded consideration of a constitutionally entrenched model of engagement with human rights. The first term of reference provides:

- 25.1.1. That the Legal Affairs and Community Safety Committee inquire into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model. (Our emphasis.)

¹¹ Article 3, UDHR *op cit*

¹² Article 25, UDHR *op cit*

¹³ Article 17, UDHR *op cit*

¹⁴ Knox (2012) *op cit* p 7

¹⁵ Article 19, UDHR *op cit*

¹⁶ Article 20, UDHR *op cit*

¹⁷ Article 19, UDHR *op cit*

¹⁸ Knox (2012) *op cit* p 10

26. We consider that it is both appropriate and desirable to legislate for a Human Rights Act in Queensland. As to its application, we support a broad application and the adoption of a dialogue model of human and environmental rights in Queensland. This is the model adopted in Victoria,¹⁹ the Australian Capital Territory²⁰ and the United Kingdom. It is also the model recommended by the National Human Rights Consultation Committee at the federal level.²¹
27. This broad application requires the following elements:
- Recognition of a broad range of human and environmental rights and their interdependence (see paragraphs 14 to 24);
 - Parliamentary scrutiny of all Bills against stated human and environmental rights using a statement of compatibility (see paragraphs 31-33);
 - Consideration of human and environmental rights by courts and tribunals (see paragraphs 34-36);
 - Procedural and substantive consideration of human and environmental rights by all public authorities (see paragraphs 37-38);
 - Resolution of issues arising from authorities acting incompatibly with human and environmental rights; and
 - Remedies for authorities acting incompatibly with human and environmental rights.
28. Details of this broad application are provided in the paragraphs below.
29. The elements described above provide for the dialogue model of engagement with human and environmental rights. It establishes a constructive dialogue between the courts and Parliament on human and environmental rights.²² Essentially the model empowers the courts to interpret legislation having regard to its compatibility with human rights. If the Court finds incompatibility then this sends a clear message to the Parliament, and the public, that this provision needs to be amended or repealed.²³
30. Alternative models seen in other countries tend to rely on judicial oversight of rights with a power for the courts to invalidate legislation that is determined to be incompatible with human rights. This is the model seen in Canada and the United States of America.

¹⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic)

²⁰ *Human Rights Act 2004* (ACT)

²¹ National Human Rights Consultation Committee (2009) *National Human Rights Consultation Report*. Barton, ACT: Commonwealth of Australia.

²² Law Council of Australia (undated) *Charter or Bill of Rights: A Constructive Dialogue*. Braddon, ACT: LCA

²³ Campbell, T. & Morris, S. (2015) Human rights for democracies: a provisional assessment of the Australian *Human Rights (Parliamentary Scrutiny) Act 2011*. *UQLJ*, 34(1), 7-27.

The influence of a Human Rights Act on the development of new laws in Queensland

31. Like the Victorian situation²⁴, the Queensland Parliament should be required to consider a statement of compatibility when debating Bills of Parliament. Such a statement, which would be tabled with any new Bill at its first reading, makes statements about the extent of the compatibility of the provisions of the Bill with the enshrined human and environmental rights. When a Bill is referred to a parliamentary committee the statement of compatibility should be referred with it.
32. In the Queensland context, this would enable the human and environmental rights implications of any proposed legislation to be debated in Parliament. It would also enable citizens to have their say on the human and environmental rights implications of proposed legislation through the parliamentary committee system.
33. This would ensure that a fulsome debate about any potential limitations on human and environmental rights proposed by new legislation is a requirement of the parliamentary process.

The influence of a Human Rights Act on courts and tribunals in Queensland

34. All statutory provisions should be interpreted by courts and tribunals in a way that is compatible with the enshrined human and environmental rights.
35. Human rights judgements of international, foreign and domestic courts should be considered by a Queensland court or tribunal in interpreting a statutory provision.
36. The Supreme Court of Queensland should be given a supervisory power to consider and determine questions of law arising from the application of the Human Rights Act in relation to matters referred to it by lower courts and tribunals.

The influence of a Human Rights Act on public authorities

37. Public authorities should be required to conduct their work in a way that is both procedurally and substantively compatible with human and environmental rights.
38. Procedurally, public authorities would have to give consideration to human and environmental rights in administrative decision-making. Substantively, public authorities should not act in a way that would be incompatible with human and environmental rights.²⁵ This is the formulation used in The Victorian Act.²⁶

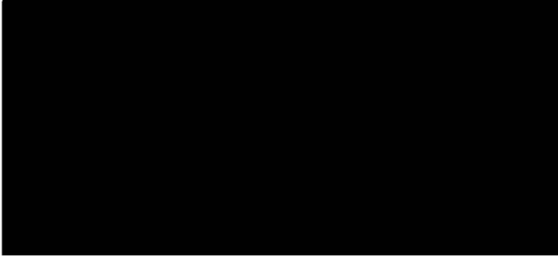
²⁴ *Charter of Human Rights and Responsibilities Act 2006 (Vic)*

²⁵ Robert, C. & Chen, B. (2013) *The Charter: What It Means for Administrative Decision-making*. Melbourne, Victoria: Victorian Government Solicitor's Office. Retrieved from: <http://vgso.vic.gov.au/content/charter-human-rights-and-responsibilities-what-it-means-administrative-decision-making>

²⁶ Section 38, *Charter of Human Rights and Responsibilities Act 2006 (Vic)*

Conclusion

39. EDO NQ supports a Human Rights Act for Queensland. The rights recognised and protected must include both human and environmental rights in recognition of these rights interdependence.



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