



From: Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group (BLAG)
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Sent: Monday, 18 April 2016 12:48 PM
To: Legal Affairs and Community Safety Committee
Subject: Submission - Human Rights Inquiry.

Brisbane LGBTIQ Action Group (BLAG) is a group of Brisbane residents who are concerned about extensive research findings showing greater harm to Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people, including far higher rates of mental health conditions and suicide, resulting from living with prejudice and discrimination. We have engaged with government since 2011 to raise awareness and inclusion of LGBTI people. Our aim is for LGBTI people be validated and recognised by society and government as full and equal citizens, and to work toward reversing the worse health and social outcomes many LGBTI people continue to experience.

Submission to Legal Affairs and Community Safety Committee in support of a proposed Queensland Human Rights Act.

Why a Queensland Human Rights Act is needed.

Australia is a signatory to well over a dozen human rights treaties and/or conventions. Key treaties Australia has signed that demonstrate in-principle support for protection of human rights include the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. The desire to protect certain rights is honourable, however this needs to be ensured by more than just suggested principles in treaties. Human rights need to have guaranteed protections, and only legislation can do this. The rights contained in these treaties are not enforceable until they are fully protected and guaranteed by legislation.

The introduction of a Queensland Human Rights Act would:

- Allow recourse when breaches of human rights had occurred.
- Guide the formation of government policy and legislation to ensure human rights were always considered and protected.
- Guide the formation of corporate policy to assist the business sector to comply with human rights principles.
- Help Australia to fulfil our obligations in accordance with the human rights

treaties and conventions we have signed.

- Be in accordance with the United Nations Declaration of Human Rights.
- Protect the dignity and worth of all Queenslanders including those on the fringe of society.

As Queensland is the only state without an Upper House to scrutinise legislation, it's even more important that we have proper checks in place to ensure human rights are complied with in legislation. A Human Rights Act could help to provide these checks.

If human rights are not guaranteed by legislation, they are at risk of potentially being taken away. It's regrettable that there is no federal legislation in Australia to guarantee human rights, as there is in other countries. In the absence of rights being guaranteed by federal legislation, the Queensland government should introduce state-based human rights legislation to protect Queenslanders, as has been done in Victoria and the ACT.

Current Human Rights protections in Queensland are inadequate.

Protecting and enforcing human rights in Queensland currently relies on the application of many individual pieces of legislation, with no one specific all-encompassing piece of legislation. Some legislation guarantees some rights, however this may apply only under certain specific circumstances, leaving gaps which do not apply in all circumstances. For example, the Queensland Anti-Discrimination Act 1991 (the Act) does not provide protections in all circumstances, plus the Act contains considerable broad exemptions, rendering it non-applicable in some circumstances.

I previously took a case of discrimination I had experienced to the Anti-Discrimination Commission of Queensland, who accepted my case on the grounds of sexual discrimination. I understand not all cases of discrimination can be remedied under the Act, as the discrimination must fit within certain specific and limited circumstances for the Act to be applicable. My case did fit one of the criteria required under the Act - i.e. the provision of goods and services, however in some other circumstances I believe the Act would not have applied - meaning I would have no recourse to remedy a clear case of discrimination. During my case, it was demonstrated that a Queensland business had discriminated against me based solely on my gender (by refused me access to goods and services that the business provided). However my case had to be abandoned when it became known the organisation was a not-for-profit organisation, and therefore totally exempt from the Act. In certain circumstances broad blanket exemptions in the Act may apply to specific broad groups of organisations.

The lack of protection across all circumstances, as well as the broad exemptions in the Queensland Anti-Discrimination Act 1991, are not consistent with the requirement that human rights apply universally and to all people. The intention of Anti-Discrimination legislation is to protect people from discrimination. However, in my case (and many others), the offending business was given the green light to continue to legally discriminate against myself, and others, for no other basis than my gender. The Manager of the business that discriminated against me, even

asked how they can prevent other members of the public from commencing legal action against them, when in the future they discriminate against other people who then take a case to the Anti-Discrimination Commission. I was stunned to hear this admission from the manager that despite knowing the discrimination I experienced would be illegal if they were a "For-Profit" organisation (e.g. Myer, Woolworths, a bank, post-office, bakery, newsagent etc) - they fully intended to continue to discriminate against others. I believe this is wrong and unethical.

I understand that at least one former Queensland Anti-Discrimination Commissioner has publicly criticised the loopholes in the Queensland Anti-Discrimination Act which allow large numbers of cases (including mine) to avoid protections offered by the Act, effectively bypassing the intention of the Act. The current Act allowed myself, as well as continuing to allow many Queenslanders, to have no protection under anti-discrimination law when we are discriminated against. A Queensland Human Rights Act could ensure this would not happen in the future, and that rights were applied equally to all people, without favour or prejudice.

This is only one example where human rights have not been protected under existing legislation. There will likely be many other stories of breaches of a vast range of different human rights where no current legislation is in place to prevent future breaches. A comprehensive all-encompassing Queensland Human Rights Act could go a long way to prevent future breaches.

The vulnerability of, and need to ensure protection of human rights, for certain groups of people.

Certain groups within society can face additional challenges having their human rights complied with, often as a result of living with marginalisation, vulnerability or disadvantage. This may include homeless people, children, people with a disability, the elderly, Aboriginal and Torres Strait Islanders, culturally and linguistically diverse people, refugees and Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people. People in sub-groups of society, including these groups, can be at higher risk of having their rights ignored or removed, and these target groups should be considered at the time of drafting a potential Human Rights Act for Queensland.

An example of circumstances specific to LGBTI people that demonstrate why specific consideration is required, as well as how a Human Rights Act can protect the rights of all people, is provided in the example below which was on the website of the British Institute of Human Rights (BIHR). Unlike Australia and Queensland, the UK does have a Human Rights Act, which does provide protections to all people.

["Supporting a disabled man to visit a gay pub"](#)

["A physical disabilities team at a local authority had a policy of assisting the people they worked with to participate in social activities, when they wanted to. A gay man, Robert, asked if a support worker could accompany him to a gay pub. His request was denied even though other heterosexual service](#)

users were regularly supported to attend pubs and clubs of their choice. During a BIHR training session, Robert's advocate realised that Robert could challenge the decision by invoking his right to respect for private life (Article 8) and his right not to be discriminated against (Article 14) on grounds of his sexual orientation."

Source: <https://www.bihar.org.uk/faqs/supporting-a-disabled-man-to-visit-a-gay-pub>

While the above example relates specifically to a gay person, other vulnerable, disadvantaged or marginalised sub-groups within society are also at greater risk of having their human rights overlooked, withdrawn or dismissed. In addition to ensuring the human rights of all people are considered and protected, the rights of at-risk target groups must be given unique consideration - this includes homeless people, children, people with a disability, the elderly, Aboriginal and Torres Strait Islanders, culturally and linguistically diverse people, refugees and LGBTI people.

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

The Yogyakarta Principles address a broad range of human rights law issues relating to sexual orientation and gender identity. These principles were the outcome of a meeting of the International Commission of Jurists, the International Service for Human Rights and international human rights experts held in Yogyakarta Indonesia in 2006. The Yogyakarta Principles adhere to the rules that all human beings are created as equals and all humans are entitled to the full enjoyments of equal human rights.

Some of the key Yogyakarta Principles include:

- Rights to Universal Enjoyment of Human Rights, Non-Discrimination and Recognition before the Law.
- Rights to Human and Personal Security
- Economic, Social and Cultural Rights
- Rights to Expression, Opinion and Association.
- Freedom of Movement and Asylum.
- Rights of Participation in Cultural and Family Life.
- Rights of Human Rights Defenders.
- Rights of Redress and Accountability.

What rights should be protected in a Queensland Human Rights Act.

The Legal Affairs and Community Safety Committee will hopefully recommend that Queensland adopts a Human Rights Act. Prior to drafting human rights legislation, a broad range of human rights law experts should be consulted for their input on which human rights to protect. Rights to be protected should include those rights mentioned in the United Nations Declaration of Human Rights and

the Yogyakarta Principles (including those listed above).

Many thanks

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