



Griffith Law School

Nathan campus, Griffith University
170 Kessels Road, Nathan
Brisbane, Queensland 4111
Australia

Gold Coast campus, Griffith University
Gold Coast Campus, Queensland 4222
Australia

Telephone +61 (0)7 3735 5339
Facsimile +61 (0)7 3735 5599

www.griffith.edu.au

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000
Via Email: lacsc@parliament.qld.gov.au

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Dear Research Director

Human Rights Inquiry

Thank you for the opportunity to make a submission to this inquiry. I am an Australian Research Council Future Fellow at the Griffith Law School, specialising in international human rights law. I was appointed as Associate Professor to Griffith University Law School in July 2015, and remain an Adjunct Reader at the Asia-Pacific College of Diplomacy at the Australian National University. I was appointed an Associate Fellow, International Economics at UK think-tank Chatham House (the Royal Institute of International Affairs) in December 2015, and will join Lady Margaret Hall at Oxford University as a Visiting Fellow in October 2016. My BA(Hons)/LLB(Hons) qualification was undertaken at University of Queensland and I was admitted to practice as a solicitor in the Supreme Court of Queensland in March 2000 after articles at Ashurst (then Blake Dawson Waldron). I was previously President of voluntary organisation Australian Lawyers for Human Rights from 2008 – 2010. My academic and practitioner experience in the area of human rights law may be able to assist the Committee.

I am a member of the Queensland Law Society Human Rights Working Group, but this submission represents my own independent views.

My view is that Queensland should take the opportunity of enacting a best-practice human rights act, building on the lessons learned from other Australian jurisdictions.

Introduction

I welcome the Queensland Government's decision to establish an inquiry through the Legal Affairs and Community Safety Committee as to whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.

From my research, such as legislative response is both appropriate and desirable due to the unique circumstances of Queensland as a state. This action is only the first, but crucial step in building a human rights culture in Queensland, moving from the welfare framework of government service delivery into an empowerment or 'full citizenship' model. As Peter Bailey writes, the human rights enterprise is concerned with 'having the dignity and

equality of each person recognised in all aspects of their lives—as individuals, as members of their communities and members of the world community’.¹

I argue that Queensland’s current protection of human rights is piecemeal and inadequate in places (TOR 2a), and that the unicameral nature of the State Parliament requires special focus.

Further, the experience of enacting human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally has shown evidence of positive incremental improvements in ordinary people’s lives, at a minimal cost and disruption to current systems (TOR 2b).

I support the submission of my UNSW Law colleagues George Williams and Daniel Reynolds to this inquiry dated 11 March 2016.

SUMMARY OF RECOMMENDATIONS

- That the Queensland Government appoint an independent consultation committee to conduct a formal consultation about human rights protection in Queensland based on the public dissemination of a model charter of rights.
- That the Queensland government adopt a model for human rights protection similar to the Charter of Human Rights and Responsibilities Act 2006 (Vic) (“the Victorian Charter”) and the Human Rights Act 2004 (ACT).
- That such a charter expressly covers all of the human rights contained in the various treaties that Australia has already ratified.
- That a Queensland charter of rights expressly covers economic, social and cultural rights.
- That a Queensland charter embody similar or identical provisions to those within the Victorian Charter and the ACT Human Rights Act concerning the application of the charter to those exercising functions of a public nature.
- That a Queensland charter provide a stand-alone cause of action. A Queensland charter should include provision for the granting of compensatory and/or declaratory relief by a court in cases where an incompatibility has been found between an act of a public authority and a human right.
- That a Queensland charter contain an express judicial interpretive provision in clear terms.
- That an antidiscrimination clause must be included, that expressly refers to attributes such as race, ethnicity, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

- That a Queensland charter of rights move towards consistency and adopt the term disability used by the Disability Discrimination Act 1992 (Cth) and by international conventions.
- That reforms be implemented in Parliamentary Processes in order to improve the protection of human rights through Parliamentary examination and scrutiny of policy and legislation, with express provision for sufficient time to consider bills.
- That reforms be implemented in order to improve access to justice, with increased resources for community legal centres.
- That a Queensland charter impose duties upon public authorities to actively promote human rights.
- That the role of the Queensland Anti-Discrimination Commission be expanded so as to include primary responsibility for addressing human rights issues.
- That specific measures be taken to greater educate specific vulnerable groups within the community.

Economic Social and Cultural Rights

I wish to draw particular attention to the importance of the rights set out in ICESCR, and argue for their inclusion in a Queensland charter or bill of rights.

As the ACT Bill of Rights Consultation Committee observed in its 2003 report:

The distinction between [civil and political rights and economic, social and cultural rights] is in many ways an artificial one. If human rights are concerned with the conditions of a worthwhile human life, rights to health, housing and to education are as integral to human dignity as the right to vote.

Many of the rights in the ICESCR and ICCPR are closely entwined. For example, the ICCPR protects the right to freedom of association, while the ICESCR protects the right to form trade unions.

Similarly, the right to life in the ICCPR is closely related to the ICESCR right to be free from hunger, and the rights in the ICCPR that protect against slavery and servitude are linked to the ICESCR right to work.ⁱⁱ

The WA consultation recommended that any bill incorporate ECSR.vi

In some ways, economic, social and cultural rights may be more relevant for many Australians because they impact on the quality of day-to-day life, rather than only “kicking in” in relation to criminal offences and court proceedings as many of the rights in ICCPR do. The ICESCR has been ratified by 156 countries – only 4 fewer than the ICCPR. The parity of ICESCR rights with ICCPR is recognised not only in the international treaties but in Australian law. This is indicative of an increasing recognition that economic, social and cultural rights are as fundamental and inherent to the dignity of all people as civil and political rights.

Human rights are interdependent, universal and indivisible. There are a number of precedents for the inclusion of economic, social and cultural rights in national legislative protection. The United Kingdom Human Rights Act includes the right to education whilst South Africa includes rights to education, housing, health care, trade, occupation and the right to a profession.

Recommendation

That the Queensland charter of rights expressly covers economic, social and cultural rights.

Current Protections are Inadequate

At a federal level, human rights are currently protected through an incomplete patchwork of limited Commonwealth Constitutional guarantees, Commonwealth legislative enactments and common law principles and presumptions. This was made clear through the Brennan Inquiry.

Many of the rights set out in the various international human rights instruments to which Australia is a party are not clearly protected. This situation has been noted more generally in Australia, with the "Concluding Observations" of the UN Human Rights Committee on Australia's third and fourth reports under the ICCPR noting "concern...that in the absence of a constitutional Bill of Rights, or a constitutional provision giving effect to the [ICCPR], there remains lacunae in the protection of [ICCPR] rights in the Australian legal system."

An audit of the current state of human rights protection at a state level against the international instruments would be a good first step to determine the position of Queensland in this national context.

Examples of change

In the ACT, the Human Rights Act 2004 (ACT) has been the basis on which the ACT Human Rights Commission has conducted audits of government compliance with human rights in places of detention. Where people are deprived of their liberty they are extremely vulnerable to having further rights taken away. The first audit conducted in the ACT under the Human Rights Act was of a youth detention centre. This audit 'shone a light' on to practices that were far from optimal. For example, when being strip searched, young people were required to strip completely naked in front of staff – a practice that was potentially very degrading for both the young person and staff member. As a result of the ACT Human Rights Commission's audit, this practice of strip-searching was changed so that the young person was only required to strip half naked at a time. In this way, the human rights audit identified an intrusive practice that could be done in a more proportionate and human rights consistent way. The Commission's subsequent audit of adult remand facilities also identified areas that needed to be addressed to make adult detention in the ACT human rights consistent. The recommendations from the audit of adult facilities fed into the physical design as well as policies, procedures and practices of the ACT's new prison the 'Alexander Machonochie Centre': the first prison to be built in Australia under human rights legislation.

In the ACT, for example, the Human Rights Act 2004 (ACT) was used as an advocacy tool to protect a single mother's rights, without the need to go to court. A woman and her children were living with the woman's mother in mother's public housing accommodation. The woman's mother passed away, and as a result the woman and her children were faced with eviction, because the lease was not in her name. There was a risk that if the family were evicted, the children may have been removed from the mother because of lack of suitable accommodation. In submissions to the local housing authority, the woman raised the right to protection of family life to successfully negotiate for the lease to be transferred to her own name thus avoiding homelessness.

In another example from the United Kingdom, an elderly husband and wife were nearly separated after 65 years together but used the Human Rights Act 1998 (UK) to ensure their rights were respected. He fell ill and was transferred to a high care aged care facility that would not accept his wife. However, the couple successfully argued to authorities that the right to family life meant they should be allowed to stay together.

How could Queensland better protect and promote human rights?

I believe that a Queensland charter of rights would improve the protection of rights and also provide an accessible statement of the rights that are fundamental to a life of dignity and value. The development of a culture of human rights and adherence to the rule of law will be greatly assisted by legislative protection of rights.

Australia is the only Western democracy without a national human rights instrument. Introducing a Queensland charter of rights will:

- enhance Australia's democracy;
- provide a yardstick by which to measure government, the courts and the community;
- assist disadvantaged people; and
- require government departments to consider the impact of their day-to-day operations on human rights.

By building on the model provided for in Victoria and the ACT, a Queensland charter of rights can retain parliamentary sovereignty and provide individuals with direct means of redress for overt breaches of civil and political rights. Respect, protection and fulfilment of economic, social and cultural rights can be pursued without exposing Government to liability for its allocation of scarce resources.

I recognise that the intention and premise of a Queensland charter of rights is to foster a 'conversation' between the three branches of government on one hand, and the public on the other.

Subject to certain qualifications identified below, I recommend the Queensland government adopt a model for human rights protection similar to the Charter of Human Rights and Responsibilities Act 2006 (Vic) ("the Victorian Charter") and the Human Rights Act 2004 (ACT).

The essential features of that legislation are as follows:

- All legislation is required to be interpreted in a way that is compatible with the rights set out in the Charter
- Where there is inconsistency between a human right and a statute the validity of the legislation is not affected. The Courts may make a declaration of inconsistency but such a declaration does not affect the validity of the legislation. Rather, the relevant Minister must prepare a written statement in response to the declaration and lay it before both houses. The response to a declaration of inconsistency is thus left to Parliament.
- With respect to new legislation the Minister introducing the legislation must either make a "declaration of compatibility" with human rights and lay it before both houses of parliament or utilise the override provisions. Parliament may expressly declare that a provision has effect notwithstanding that it is incompatible with the rights contained in the Charter.

- A public authority is required to act in accordance with the human rights set out in the Charter, unless it could not have reasonably acted differently. The authority is also required to give human rights proper consideration in making a decision.

Recommendation

That the Committee adopt a Queensland charter with these characteristics, based on the ACT and Victorian models

Application to any ‘body’ that performs public functions

I submit that a Queensland charter of rights should impose obligations on any person or body performing any public function, power or duty. There is an increasing trend towards the practice of contracting out government services that highlights the need for a Queensland charter to apply to private organisations that are performing a public function. One example is privately operated prisons and detention centres, which whilst operated under the auspices of state and territory government, are in effect private institutions that serve a core public function. I am of the view that these private bodies, when exercising public functions should also be within the scope of application of a Queensland human rights charter.

The UK Human Rights Act applies by virtue of s 6 to the acts of “public authorities”. The term “public authority” is defined in that section to include “a court or tribunal and any person certain of whose functions are function of a public nature”. This does not include either House of Parliament, but includes state actors such as government departments, local authorities, police and prisons. The UK courts are still resolving the manner in which those public authorities that involve a mixed public/private function are to be included within the definition. It is clear though that insofar as any private organisation is operating in the furtherance of a goal for the benefit of society at large, it will be considered public in nature and subject to the requirements of the Human Rights Act. Examples given by the Lord Chancellor include a private company exercising the public function of rail safety regulator, a private security company managing a contracted-out prison, and doctors in general practice whilst undertaking National Health Service functions.

Section 32 of the Canadian Charter of Rights and Freedoms provides that the Charter applies only to Canadian governments, and not to private individuals, businesses or other organizations. In the case of *McKinney v University of Guelph* the Canadian Supreme Court developed the “effective control test”, which in essence, asks whether or not the agency or institution in question is under the statutory control of government in terms of everyday operations, policy-making and funding.

Section 3 of the New Zealand Act mandates that the Bill of Rights applies to all three branches of government and to “any person or body in the performance of any public function, power or duty conferred or imposed on that person or body by or pursuant to law”. The New Zealand Court of Appeal has held that the wording of this provision ought to be given a “generous interpretation”, and that ultimately a decision as to whether a particular act or omission can be considered to fall within this decision is heavily dependent on fact.

Such examples from other jurisdictions demonstrate that whilst it may be difficult to provide for a more precise scope of application than the traditional dichotomy between "public" and "private", there are numerous situations in which a more restrictive scope of application would have the highly undesirable consequence of excluding aggrieved members of the public from seeking a remedy, simply because the alleged violation of a human right occurred through the actions of an entity operating outside the technical limits of the branches of government.

In the Australian context, the Victorian Charter and the ACT Human Rights Act contain specific provisions that extend the application of the human rights instruments to entities that are exercising functions of a public nature on behalf of the State or a public authority (whether under contract or otherwise). Both instruments also include provisions that seek to clarify and provide guidance as to whether a particular entity falls within that definition.

Recommendation

That a Queensland charter embody similar or identical provisions to those within the Victorian Charter and the ACT Human Rights Act concerning the application of the charter to those exercising functions of a public nature in order to enable continuity of legal precedent between various state and federal jurisdictions.

Powers of Courts to grant remedies

A right should be defined by reference to its remedy and the means by which it is enforced. It is well recognised in international human rights law that a State must make reparation to individuals whose human rights are violated. This is an essential element of providing an "effective remedy" for violations of human rights. An effective remedy may consist of include compensation, however in certain situations declaratory relief may be an appropriate additional or alternative form of relief, but not necessarily. It is my view that compensatory and/or declaratory relief should be available where a public authority is found to have acted in a manner which is incompatible with a human right. This is in accordance with the position under s 8 the UK Human Rights Act, which allows a court to grant such relief or remedy, or make such order, within its powers as it considers just and appropriate. The court is empowered to award damages only in cases where the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made, and when other remedies are inappropriate. The UK experience is that Courts have used the power to award damages for a breach of human rights sparingly.

An additional matter to consider in relation to the courts role in a Queensland charter of rights is the issue of costs in relation to any aspect of court proceedings involving a human rights question.

I consider that, due to the public function of such legislation, an appropriate provision would be for a presumption that the usual situation is no costs are awarded against a party. The Queensland charter of rights could use wording similar to that of the *Native Title Act 1993(Cth)*:

- (1) Unless the Court orders otherwise, each party to a proceeding must bear their own costs.

(2) Without limiting the Court's power to make orders under subsection (1), if the Court is satisfied that a party to a proceeding has, by any unreasonable act or omission, caused another party to incur costs in connection with the institution or conduct of the proceeding, the Court may order the firstmentioned party to pay some or all of those costs.

This section has received judicial consideration in various cases and has operated to ensure no costs order as the normal course, but has also seen the award of costs against applicants and respondents in cases where their position was unreasonably maintained.

Recommendations

That a Queensland charter should include provision for the granting of compensatory and/or declaratory relief by a court in cases where an incompatibility has been found between an act of a public authority and a human right.

That a Queensland charter adopt the language of the Native Title Act 1993(Cth) in relation to costs of judicial proceedings.

Inclusion of economic, social and cultural rights

I strongly support the inclusion of economic, social and cultural rights in a statutory Queensland charter of rights.

While such rights were not included in the ACT or Victorian legislation, they were included in the South African Constitution. The South African experience demonstrates that the inclusion of such rights is workable in a practical sense. The South African Constitutional Court has emphasised the importance of restraint on the part of courts in adjudicating upon the reasonableness of measures taken to implement such rights. For example, in the context of the health budget, priorities lie with the political organs and the medical authorities. The UK HRA includes the right to education.

The Queensland charter could also include economic, social and cultural rights to be included in the interpretative clause of the charter, or for the State Budget and Departmental Annual Reports to be audited against economic, social and cultural rights.

Recommendation

That a Queensland charter should include provision for the protection of economic, social and cultural rights, substantively, in the interpretation clause and also in relation to State Budgets and QPS Annual Reports.

Protection of the human rights of groups

Indigenous rights

In my view, the position of Australian Indigenous people requires a separate tailored human rights response, which recognises that those people currently suffer significant comparative disadvantage following dispossession and years of entrenched discrimination.

That need can be seen in the statistics regarding the socioeconomic status of Indigenous peoples in Queensland.

I submit that a Queensland charter of rights should include recognition of cultural rights for Indigenous peoples resident here. Article 31(1) of the United Nations Declaration on the Rights of Indigenous Peoples states that Aboriginal peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Article 18 states that Indigenous peoples have the right to participate in decisionmaking in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Recommendations

That the Queensland charter of rights should include the rights set out in Articles 18 and 31 of the Declaration on the Rights of Indigenous Peoples.

Anti-discrimination clauses

If all people are to have equal access to human rights then it is essential to prohibit discrimination. It was for this reason that the ICCPR and ICESCR expressly stated that human rights should be enjoyed free from discrimination:

ICCPR art 2(1)

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICESCR art 2(2)

without discrimination of any kind as to race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status.

The two Australian charters have modified the non-discrimination clauses in the ICCPR and the ICESCR. The Human Rights Act 2004 (ACT) adopted all the rights protected in the ICCPR and the ICESCR and added the protection of other vulnerable groups. Article 8 provides:

Discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

This provides a far broader protection against discrimination than the protections in the Discrimination Act 1991 (ACT), which limits protection to discrimination on the basis of an attribute specified in the Act. The Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic), article 3(1) provides that discrimination means discrimination within the meaning of the Equal Opportunity Act 1995) on the basis of an

attribute set out in section 6. Section 6 includes age, breastfeeding, gender identity, impairment, industrial activity, employment activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation or personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

I submit that any Queensland charter of rights must include an inclusive non-discrimination clause. Non-discrimination clauses appear in every charter of rights currently in operation.

I submit that the rights which are protected under the Victorian Charter of Human Rights and Responsibilities Act should form the basis of an antidiscrimination clause in any Queensland charter of rights. However, I suggest that the approach of referring to anti-discrimination legislation be rejected. The attributes should be expressly included in any Queensland charter, similar to the approach in the ICCPR, ICESCR and the Human Rights Act 2004 (ACT).

Recommendation

That an antidiscrimination clause must be included, that expressly refers to attributes such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Rights for Persons with a Disability

The Victorian Charter of Human Rights and Responsibilities refers to “impairment” as distinct from “disability”. I argue that any Queensland charter of rights should move towards consistency and adopt the term disability used by the *Disability Discrimination Act 1992* (Cth) and by international conventions.

The international protection of people with disabilities has substantially increased over the last few decades and I believe that any Queensland charter of rights should expressly protect this group from discrimination.

Various labels have been attributed to people who have a physical or mental condition which causes them to be different from other people in society. Society is structured around the fully functional norm and therefore reduces the ability of people with disabilities from functioning in community. As a result people with disabilities encounter discrimination in many everyday life activities: for example in exercising their right to privacy, obtaining an education, in obtaining and succeeding in work in the private labour market, in their access to justice and fair treatment by the legal system or by receiving inadequate treatment by public services.

Disabilities are not homogenous and the barriers confronting each person will alter according to their physical or mental state. The protection afforded to people with disabilities under international law has progressively increased under both universal and regional human rights regimes. The UN Convention on the Rights of People with Disabilities had sufficient signatures to enter into force on 3 May 2008. Following the accession of this convention, on 17 July 2008 Australia ratified the CRPD. Article 1 defines

the scope of the convention broadly to incorporate physical and mental disabilities. The CRPD requires States to remove all barriers to people with disabilities enjoying ‘Full and effective participation in society’. Article 4 provides that ‘States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.’ This obligation includes, inter alia, an obligation to “[t]o adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention’.

Recommendation

That a Queensland charter of rights move towards consistency and adopt the term disability used by the Disability Discrimination Act 1992 (Cth) and by international conventions.

Rights for People who are Homeless

If a Queensland charter of rights does not expressly include an anti-discrimination clause to ensure homeless people are not discriminated against then the introduction of an charter of rights may be meaningless for thousands of Queenslanders.

The homeless are perhaps the most marginalised of all Australian citizens. If a person does not have a home they may encounter problems exercising many civil and economic rights. Walsh and Klease have observed:

It is widely recognised that homeless people are among the most disadvantaged and vulnerable members of Australian society. But further to this, those who are homeless are excluded from participation in a wide variety of socio-political activities that other citizens take for granted. A survey of homeless people conducted in Brisbane in 2003 has confirmed that many homeless people do not identify as Australian citizens, and many believe that they do not enjoy the same citizenship rights as the remainder of the population.ⁱⁱⁱ

While the Victorian Charter of Human Rights and Responsibilities does not refer to property, the ICCPR, the ICESCR and the Human Rights Act 2004 (ACT) all prohibit discrimination on the attribute of property.

The right to dignity of the person is a well-recognised human right. For a person who is sleeping rough there is a substantially higher chance of violence or detention by law enforcement agencies for vagrancy/public/nuisance offences.^{iv}

Homeless adults have had problems registering to vote in Australia since Federation. While they are permitted to exercise their right to vote significant barriers remain to registering to vote. Moreover, how can a homeless child exercise their right to education? If they have insufficient food, no way to clean clothes, no finances to purchase educational material and no home in which to do homework?

Recommendation

That a Queensland charter of rights prohibit discrimination on the attribute of property ownership.

Rights for Gays, Lesbians, Bisexuals , Transgender and Intersex People

I also wish to draw attention to the need to provide specific additional legislative protections for gay, lesbian, bisexual, transgender and intersex people in Queensland. I submit that the government should introduce discrimination legislation that provides protection from discrimination on the grounds of sexuality, sex identity and gender identity.^v

Recommendation

I submit that the Queensland charter should expressly provide protection from discrimination on the grounds of sexuality, sex identity and gender identity.

Parliamentary Reforms

I submit that there should be better mechanisms to ensure that as Australia commits to new international human rights treaties, these obligations are incorporated into domestic legislation at the State level. Further, there should be a more rigorous examination of policies and legislation in the Queensland Parliament to ensure they conform to existing obligations. In order to improve the protection of the rights and responsibilities of Queensland citizens through Parliamentary processes, I propose the following reforms.

First, a Queensland charter of rights should impose an obligation to prepare “statements of compatibility” or “human rights impact statements”. Such an obligation is a feature of many statutory bills of rights. By way of example, s28 of the Charter of Human Rights and Responsibilities Act 2006 (Vic) provides:

(1) A member of Parliament who proposes to introduce a Bill into a House of Parliament must cause a statement of compatibility to be prepared in respect of that Bill.

(2) A member of Parliament who introduces a Bill into a House of Parliament, or another member acting on his or her behalf, must cause the statement of compatibility prepared under subsection (1) to be laid before the House of Parliament into which the Bill is introduced before giving his or her second reading speech on the Bill.

Note: The obligation in subsections (1) and (2) applies to Ministers introducing government Bills and members of Parliament introducing non-government Bills.

(3) A statement of compatibility must state-

(a) whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible; and

(b) if, in the member's opinion, any part of the Bill is incompatible with human rights, the nature and extent of the incompatibility.

(4) A statement of compatibility made under this section is not binding on any court or tribunal.

Two important features of that provision should be reflected in a Queensland charter:

(a) First, the obligation should apply to all bills (compare the position in the UK where the obligation applies only to government bills);

(b) Second, the statement should be required to be a substantive statement (see the requirement in s28(3)), rather than a one line assertion that the bill is compatible with human rights. I consider that the requirement should be expressed as a requirement to state “whether, in the member's opinion, the Bill is compatible with human rights and, if so, the reasons why the member considers it to be compatible”.

(c) Third, the statement of compatibility mechanism should be accompanied by a requirement that new bills be scrutinised by a Parliamentary Committee to ensure that they are compatible with human rights. Such a mechanism was discussed by the Victorian Consultative Committee in the following terms:

The Committee received many submissions that stated that once new legislation is introduced into Parliament, a parliamentary committee should scrutinise the legislation and report on its compatibility with the Charter. It was recognised that such a committee can facilitate a more robust debate by providing a clear statement to Parliament about a Bill’s consistency with the Charter. The Australian Human Rights Centre said that such a committee could contribute to a deeper and more considered form of deliberation on the rights implications of all Bills (Report of the Human Rights Consultation Committee on the proposed Victorian Charter, p76).

I consider that those comments apply with equal or greater force to the unicameral Queensland Parliament.

Recommendation

That a Queensland charter of rights should impose an obligation to prepare “statements of compatibility” or “human rights impact statements”, on the above terms.

Machinery

Unlike Victoria, there are no existing Committees that might readily fill such a role. It therefore seems desirable to constitute a new Committee for that purpose. Given the important role of such a Committee, I consider that:

- (a) It should be established by legislation to ensure its ongoing role;
- (b) there should be an obligation upon a member introducing a bill to ensure that the Committee has adequate time to consider and report upon the bill prior to any vote being taken;
- (c) the Committee should be required to at least consider whether to seek submissions from the public and conduct public hearings. I recognize that such a procedure will not be appropriate for every bill reviewed by the Committee. However, for bills which stand to have a significant effect upon human rights, public participation in the Committee process is an important means of ensuring proper scrutiny of the relevant provisions and for identifying unforeseen consequences which could violate Queensland’s human rights obligations;
- (d) it should also be provided that the Committee may (via the public inquiry process or otherwise) seek assistance from relevant government departments and other sources of specialised knowledge (eg human rights NGOS and the Equal Opportunity Commission).

Recommendations

- That a new Parliamentary committee be established, on the above terms.

- Delegated legislation has a significant impact upon people's lives, and yet is insufficiently scrutinised. The Queensland Parliament should be specifically required to consider whether
- delegated legislation is consistent with human rights.
- An Indigenous Audit Committee should be created. It should be comprised of Indigenous Australians and empowered to examine relevant portfolio estimates from the point of view of impact on Indigenous people. That process might be combined with inclusion of a requirement to consider Indigenous impact in Cabinet Submission process.
- A Women's Audit Committee or a Standing Committee on Women's Affairs should be created. Australia lacks the kind of parliamentary committees that have responsibility for gender equality matters in European and many other parliaments. In 2008 the Inter-Parliamentary Union (IPU) reported on 80 countries with 93 such parliamentary committees. Queensland could be a pioneer in this regard.

The Legal Profession

I believe the legal profession in Queensland will have to adapt to the challenge of building a human rights culture. Access to justice is a fundamental component of making human rights a reality for the community.

I attach for the Committee's consideration the QLS Report: [Access to Justice Scorecard](#).

Recommendations

That the Committee recommend that the Queensland Government pay special attention to the need to resource and support human rights legal work. The Committee should note the "Yes We Can Work Together" resolutions from the National Access to Justice and Pro Bono Conference held on 10 December 2008, and encourage Queensland to adopt the same tender rules as the Victorian government.

The Committee in its report and recommendations should pay particular attention to resourcing Indigenous access to justice, whilst recognising that no attempts to address Indigenous access to justice can be effective without simultaneously addressing the over-representation of Indigenous people in the Queensland justice system and the social disadvantages that underpin this reality.

Community Education and Awareness

In addition to enacting a Charter of rights, I submit that the government should initiate a human rights educational programme throughout the State. One example of such a programme is the work done in Victoria by the Victorian Human Rights and Equal Opportunity Commission.

The Victorian Human Rights and Equal Opportunity Commission have recognised three strategies for promoting education on the human rights issues raised by the charter:

- 1.) Education and training for their staff so that they can enhance their human rights knowledge and utilise this on a day-to-day basis.
- 2.) Giving support to entities providing public functions on behalf of government.
- 3.) Communication and general awareness- for public authorities and members of the public.

The Commission run a number of workshops tailored to different sectors of society to inform people of the development of the Charter and their rights and responsibilities under it, including:

- 1.) Workshops for advocates, school and communities (e.g.-implementing human rights approaches in community organisations)
- 2.) Workshops for the private sector and local government (e.g.- dealing with intimate partner and family violence at the workplace).

The 2008 Report on the operation of the Charter commended the different initiatives of government departments to educate their staff (such as training sessions) and to stakeholders (such as implementing new sections on their websites giving detailed information).

Recommendations

That a Queensland charter of rights should contain mechanisms which place a positive duty on government institutions to educate and actively promote the Rights stipulated therein.

That the EOC be expanded so as to include primary responsibility for tackling the issue of human rights issues at a State level, including education and awareness.

That the Commission have at least the following duties and be adequately resourced to perform them, including a rural and regional presence:

- a. To provide continuous training to their staff and all civil servants
- b. To provide continuous training to all three arms of government
- c. Establishment of specific offices/units within various departments which deal solely with human rights issues and the public
- d. Ongoing communication with the public via workshops, seminars, websites, information packages, brochures, campaigns which must be reviewed and tailored
- e. Distribution of information packages and copies of the Queensland charter of rights
- f. Responsibilities to continually educate non-governmental organisations and community organisations in their work with the Queensland charter of rights issues
- g. Ongoing discussions with non-governmental organisations and community organisations on how to address the issues of public awareness
- h. Integrating human rights education into schools

4.) Specific measures should be put in place to educate those groups highlighted in the Queensland charter of rights (e.g, Indigenous groups, elder Queenslanders).

These measures should include:

- a. Establishment of specific offices/units to solely deal with human rights issues with these groups
- b. Provision of materials in different languages or access to interpreters

c. Training community organisations and non-governmental organisations which already work with these groups


Conclusion

I congratulate the government for initiating this important human rights conversation, and strongly encourage the Parliament to seize the moment and take strong, positive action to improve human rights protection in this state.

Whatever the Queensland government decides to do, that decision will in many ways act as a larger symbol for what we stand for in the eyes of a national and international audience, especially in our region. I urge the Parliament to be bold and display statesmanship on this issue.

I stand ready to give evidence as required.

Kind regards



Susan Harris Rimmer

ⁱ Peter Bailey, *The Human Rights Enterprise in Australia and Internationally*, Sydney: LexisNexis, Butterworths, 2009.

ⁱⁱ Hilary Charlesworth et al., *Towards an ACT Human Rights Act*, Report of the ACT Bill of Rights Consultative Committee, (2003),95, para 5.29.

ⁱⁱⁱ Tamara Walsh and Carla Klease, 'Down and Out? Homelessness and Citizenship' [2004]*Australian Journal of Human Rights* 5.

^{iv} Tamara Walsh, 'Dealing with nuisance behaviour: Logical alternatives to traditional sentences': <http://www.isrcl.org/Papers/2006/Walsh.pdf> 30 April 2009.

^v See Australian Human Rights Commission 'gay, lesbian, transgender and intersex people' information sheet available at

http://www.hreoc.gov.au/letstalkaboutrights/downloads/HRA_GLBTI.pdf (downloaded on 10 June 2009), para 30.