

From: [President Brisbane Residents United](#)
 To: [Legal Affairs and Community Safety Committee](#)
 Subject: Human Rights Act Submission Thank you for your kind assistance with this.
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| | <p>Brisbane Residents United PO Box 3898 South Brisbane Q 4101 www.brisbaneresidentsunited.org president@brisbaneresidentsunited.org.au</p> |
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The Research Director
 Legal Affairs and Community Safety Committee
 Parliament House
 Brisbane QLD 4000

Thank you for this opportunity to make a submission to the Queensland Parliament’s Legal Affairs and Community Safety Committee inquiry into whether it is appropriate and desirable for Queensland to pass a Human Rights Act. There should be a Human Rights Act for Queensland. This act must enshrine in legislation the rights of all people in Queensland and endeavor to protect and value their dignity and worth as human beings. Recent events in Queensland have demonstrated the courts failure to protect our human rights in this state.

This legislation has become even more vital since the recent referendum where the Queensland State Government was guaranteed 4 year terms. Queensland is the only state with no upper house. The Queensland State Government has a degree of power that is extreme and can lead to situations where there is the possibility of abuse. During the most recent LNP Government we saw this possibility realised.

Australia is the only liberal democracy without national human rights protection. The ACT and Victoria have had their rights protected through legislation since 2004 and 2006.

There are so many issues in Queensland where people are not treated in an honest and respectful manner. Our rights as Queenslanders should be considered every time we come into contact with a state government agency including schools, hospitals, aged and disability services, housing services and child protection agencies and every time we deal with our local government representatives.

Planning legislation is an excellent example as the amenity of residents is neither acknowledged nor protected. Privacy, unreasonable overshadowing, noise, views, breezes, traffic generation, scale, height, bulk, reflectivity etc are all ignored if it suites the local government authority that wants to approve favoured developments. Corruption in this area is freely discussed and the public perception is that it is rife in the town planning decisions.

Environmental and climate change issues that affect residents would have to be seriously and transparently dealt with by all levels of government. A Human Rights Act would mean that if our rights were not properly considered we would have a way to challenge the injustice and obtain a remedy.

Many of our rights are not currently protected in law in Queensland these include – the right to freedom of speech, freedom of association and the right to be free from inhuman and degrading treatment. These need to be protected in Queensland’s law. Our elected representatives are responsible for making decisions that benefit and protect the greatest number of citizens but when they fail in their responsibilities we need legislative protection.

A Human Rights Act should protect the human rights contained in the international human rights treaties that Australia has signed up to. The two key treaties are the *International*

Covenant on Civil and Political Rights (the **ICCPR**) and *International Covenant on Economic, Social and Cultural Rights* (the **ICESCR**). Australia has signed and ratified both treaties. It has also signed and ratified five of the six other human rights treaties.

The key rights protected by the ICCPR and ICESCR are set out in the table below.

- right to self determination;
- non-discrimination in the enjoyment of ICCPR rights;
- right to equality before the law and equal protection;
- freedom from torture or other cruel, inhuman or degrading treatment or punishment;
- freedom from slavery and servitude;
- freedom of thought, conscience and religion;
- freedom of expression;
- freedom of assembly and association;
- the right to participate in public life, including the right to vote; and
- rights concerning criminal proceedings and punishment, including the right to a fair hearing, the presumption of innocence and the prohibition against double jeopardy.
- Right to self-determination
- right to work and have fair conditions of work;
- right to form trade unions and strike;
- the right to a family life, including paid parental leave and the protection of children;
- right to an adequate standard of living, including adequate housing;
- right to social security;
- right to the enjoyment of the highest attainable standard of physical and mental health; and
- right to education, including free primary education
- the right to participation in cultural life.

A Human Rights Act should bind the Queensland Government and organisations and businesses carrying out the functions of government. The central aim of a Human Rights Act is to ensure that the government respects, protects and fulfils human rights in accordance with Australia's international human rights obligations. Therefore, a Human Rights Act must bind the three arms of government: the Parliament, Courts and Executive.

Executive functions are increasingly carried out by statutory authorities (entities established by an Act) and contracted to private businesses and organisations. All persons and entities exercising public functions should be bound to protect and promote human rights while they are exercising such functions. This is the approach typically taken by other statutory Human Rights Acts. Examples of public functions include public education, aged care, disability services, child protection services, transport, housing and health services, and supply of gas, electricity and water.

All arms of government should be required to have regard to, and respect for, human rights in making, applying and administering of laws and in their other activities, but failure to do so must not invalidate the law or (generally) the activity.

The human rights legislation in the ACT, Victoria and the UK aim to create awareness of human rights and encourage governmental compliance, whilst also giving some redress to people whose rights have been violated. This means that the three arms of government (Parliament, Executive and Courts) play important parts in a dialogue about human rights, with the aim of building a culture that is respectful of human rights. The role of each of the arms of government in respect of human rights is considered in turn.

Parliament should be required to consider the human rights compliance of all laws that it passes. Each new bill accompanied by a statement of compatibility, stating whether the bill is consistent with human rights and the nature and extent of any inconsistency. The bill is also scrutinised by parliamentary committee to identify any human rights issues.

Courts are obliged to interpret legislation in a way that is compatible with human rights and may consider international and comparative human rights jurisprudence while doing so. The Supreme Courts of each jurisdiction are empowered to issue a declaration of incompatibility when a law

cannot be interpreted consistently with human rights. This does not invalidate the incompatible law, but Parliament is obliged to prepare and table a response to the declaration. In certain circumstances, Courts may also adjudicate legal proceedings in which a breach of human rights is raised as a ground to invalidate the decision of a public authority.

Public authorities are obliged to act compatibly with human rights, and to give proper consideration to relevant human rights when making a decision. A person affected by an authority's failure to do so can seek relief in certain circumstances.

A Human Rights Act in Queensland could empower a body to investigate, report on and conciliate human rights complaints, intervene in relevant legal proceedings, conduct alternative dispute resolution processes, and research and report on compliance and reform of the Act. In Queensland, the Anti-Discrimination Commission could carry out this role. The Commission would need to be appropriately resourced and empowered.

When people experience human rights abuses they should be able to bring legal proceedings against the offender for the full range of judicial remedies, including damages. More flexible and accessible remedies, such as mediation and complaints mechanisms, should complement this right. A Human Rights Act must ensure that people whose rights are violated have access to an effective remedy.

The Queensland Act could improve on existing Australian laws and allow a freestanding cause of action with a full range of remedies, including damages. When a person's human rights are breached they should have affordable access to a remedy. To ensure this is the case Queensland's Human Rights Act should include:

1. a separate cause of action for breaches of the human rights enshrined in the Act;
2. the ability to make a complaint to the Anti-Discrimination Commission and for the complaint to be conciliated by the Commission;
3. power for the Anti-Discrimination Commission to investigate and report on systemic human rights issues that it identifies;
4. provision for the Queensland Civil and Administrative Tribunal to receive applications alleging breaches of the Act;
5. the full range of judicial remedies, including declarations, injunctions, orders to cease the offending conduct and damages.

As well as enshrining human rights in law, a Human Rights Act would also provide important social, economic and cultural benefits. The key benefits are:

- (a) improving law making and government policy;
- (b) improving public service delivery;
- (c) protecting marginalised Queenslanders by addressing disadvantage;
- (d) contributing to the development of a human rights culture;
- (e) creating and adding economic value;
- (f) assisting to fulfil Australia's human rights obligations; and
- (g) 'bringing rights home' by enabling human rights complaints to be heard and determined within the State of Queensland.

A Human Rights Act can improve the quality of laws by making the consideration of human rights part of all law-making and policy development processes. Compatibility statements, override statements and declarations of incompatibility will all play a part in encouraging Parliament to act in a manner consistent with human rights. It can be a 'bad look' for Parliament to breach a Human Rights Act (and be required to publicly acknowledge that), thereby encouraging lawmakers to pass laws which are consistent with the human rights enshrined in a Human Rights Act.

A Human Rights Act can also encourage the incorporation of human rights standards into public service delivery. A human rights framework can be an effective mechanism to challenge existing poor practice in service delivery. In this way, it prompts organisations to take a proactive, rather than reactive, approach to their operations and the way they engage with the community. There is strong evidence a human rights approach can:

- empower marginalised and vulnerable individuals, communities and groups;

- provide a framework for the development of more effective, efficient and holistic public and social policy;
- promote more flexible, responsive, individualised and 'consumer friendly' public and social services;
- challenge 'poor treatment' and thereby improve the quality of life of marginalised and disadvantaged individuals and groups; and
- assist in the development of more effective social inclusion and poverty reduction strategies.

Not only can a Human Rights Act improve the dialogue within government and public authorities about human rights, it can also play a role in influencing community perception and dialogue about human rights, and thereby contribute to a human rights culture in the wider community. Creating a culture of respect for human rights is not simply a matter of enacting a law. Education, among other things, is vital.

A growing body of academic research suggests that countries that protect human rights have, overall, stronger economies. Human rights are critical to development, and their absence contributes to poverty. The Productivity Commission has previously concluded that reducing disability discrimination may yield substantial economic benefits by:

- increasing the productive capacity of the economy by enhancing the participation and employment of people with disabilities; and
- this in turn may provide incentives to students with disabilities to improve educational outcomes, making them more productive members of society.

The Human Rights Act passed in Queensland must contain a complaint mechanism, this would provide Queenslanders with the opportunity to lodge, and have resolved within the State, a human rights complaint against State authorities. Depending on the legislative model selected by the Parliament, it is possible that separate and direct recourse to the courts may be available for such human rights complaints. This would significantly improve access to justice for Queenslanders.

We request that the following rights should be protected.

Right to recognition and equality before the law
 Protection of family and children
 Right to life
 Right to participate in public life
 Protection from torture and cruel, inhuman or degrading treatment
 Cultural rights of ethnic religious or linguistic minorities
 Freedom from forced work
 Property rights
 Freedom of movement
 Right to liberty and security of person
 Privacy and reputation
 Humane treatment when deprived of liberty
 Freedom of thought, conscience, religion and belief
 Rights of children in the criminal process
 Freedom of expression
 Right to a fair hearing
 Peaceful assembly and freedom of association
 Protection of rights in criminal proceedings and against retrospective criminal law
 Right to be tried or punished not more than once.
 Right to housing
 Right to education
 Right to adequate health care
 Right to food
 A right to an adequate standard of living
 Right to a safe, clean, healthy and sustainable environment
 Participation in cultural life

Thank you for your assistance with this issue. Please contact me if you require further information

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Kind Regards

Elizabeth Handley

For the steering committee for Brisbane Residents United