

Human Rights Bill 2018

Response to Legal Affairs and Community Safety Committee:

Issues raised in written submissions

145 submissions were accepted and approved for publication by the committee in relation to the Human Rights Bill 2018 (the Bill) from the following submitters:

- 001 – Sara Davies
- 002 – Holly Acquisto
- 003 – Gillian Hall
- 004 – Dr Geralyn McCarron
- 005 – Name Suppressed
- 006 – Stewy Worth Odin’s Warriors Motorcycle Club Australia
- 007 – Marcel Reverter-Rambaldi
- 008 – Professor George Williams and Dr Janina Boughey
- 009 – Shay Dougall
- 010 – Don Willis
- 011 – Bill Tait
- 012 – Phil Browne
- 013 - David Solomon
- 014 - Dr Julie Debeljak
- 015 - Ann Kreger
- 016 - Kim Graham
- 017 - Jennifer Faulkner
- 018 - Disability Law Queensland Limited
- 019 - Protect All Children Today Inc
- 020 - Julian Gallimore
- 021 - Rodney Crisp
- 022 - Steve Clancy
- 023 - Confidential
- 024 - Australian Lawyers Alliance
- 025 - Law Right
- 026 - Castan Centre for Human Rights Law, Monash University
- 027 - Grace Field
- 028 - Sandy Horwood
- 029 - Christine Hodgkinson
- 030 - Scott James
- 031 - Queensland Nurses & Midwives' Union
- 032 - Bar Association of Queensland
- 033 - Local Government Association of Queensland
- 034 - Office of the Information Commissioner
- 035 - Townsville Community Legal Service Inc
- 036 - Women's Legal Service Qld
- 037 - Cairns Community Legal Centre Inc
- 038 - Eric Raymond

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- 039 - Joint University of Queensland Law Academics, TC Beirne School of Law
- 040 - Australian Association of Social Workers - Queensland Branch
- 041 - Youth Advocacy Centre
- 042 - The Hon. Matt Foley
- 043 - Dr Timothy Coyle
- 044 - A Human Rights Act for Queensland
- 045 - Christopher Merans
- 046 - Professor Heather Douglas
- 047 - Rev. Stefan Slucki
- 048 - Em. Professor Colin Apelt
- 049 - Brenton Hall
- 050 - Unborn Children's Advocacy Network
- 051 - knowmore
- 052 - Alison Courtice
- 053 - Julia Mizuno
- 054 - Hannah Berardi
- 055 - Name suppressed
- 056 - Bulimba Electorate Youth Advisory Panel
- 057 - Civil Liberties Australia
- 058 - Amnesty International Australia - Queensland Branch and Northern New South Wales Branch Committee
- 059 - Catholic Women's League State of Queensland
- 060 - Russell Wattie
- 061 - Michelle O'Flynn
- 062 - Luke Geurtsen
- 063 - Student Engagement, Learning & Behaviour Research Group, Faculty of Education, QUT
- 064 - Fair Go for Queensland Women
- 065 - Townsville Amnesty International Action Group
- 066 - Professor Tamara Walsh, Bridget Burton, Dr Rhonda Faragher, Dr Glenys Mann
- 067 - People with Disability Australia
- 068 - Australian Christian Legal Society
- 069 - Amnesty International Australia
- 070 - True - Relationship & Reproductive Health
- 071 - Children and Young People with Disability Australia
- 072 - Office of the Health Ombudsman
- 073 - All Means All
- 074 - Uniting Church in Australia - Queensland Synod
- 075 - Caxton Legal Centre
- 076 - Queensland Advocacy Incorporated
- 077 - Eugene White
- 078 - Jaime Hungerford-Morgan
- 079 - Ian Joyner
- 080 - Anti Discrimination Commission Queensland
- 081 - Michael O'Keeffe
- 082 - Dr Louise Phillips and Professor Peter Renshaw
- 083 - John Tracey

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- 084 - Queensland Council of Social Service Ltd
- 085 - The Royal Australian & New Zealand College of Psychiatrists - Queensland Branch
- 086 - Palliative Care Queensland
- 087 - Petros Khalesirad
- 088 - The Public Advocate
- 089 - Dr Bridget Lewis, Dr Hope Johnson and John O'Brien
- 090 - Office of the Public Guardian
- 091 - Australian Lawyers for Human Rights
- 092 - PeakCare Queensland Inc
- 093 - Queensland Council for Civil Liberties
- 094 - Mental Health Commissioner
- 095 - Dr Robyn Holder
- 096 - Micah Projects
- 097 - Queensland Collective for Inclusive Education
- 098 - Graham Preston
- 099 - Derek Sheppard
- 100 - Chris Jenkinson
- 101 - Human Rights Law Centre
- 102 - Dr Benedict Coxon
- 103 - Queensland Law Society
- 104 - Dr Nicky Jones and Dr Jeremy Patrick
- 105 - International Commission of Jurists Qld Branch
- 106 - Australian Christian Lobby
- 107 - Professor Nicholas Aroney and Professor Richard Ekins
- 108 - Lock the Gate Alliance
- 109 - Pat Coleman
- 110 - Cherish Life Queensland
- 111 - Andrea Gray
- 112 - The Australian Family Association
- 113 - United Voice
- 114 - Women's International League for Peace and Freedom - Australian Section
- 115 - Sarahann Newman
- 116 - Griffith Law School
- 117 - Community Legal Centres Queensland
- 118 - United Nations Association of Australia
- 119 - Queensland Council of Unions
- 120 - Queensland Family and Child Commission
- 121 - Victorian Ombudsman
- 122 - Environmental Defenders Office (Qld) Inc.
- 123 - ANTaR Q Inc
- 124 - Spinal Life Australia
- 125 - Bravehearts Foundation
- 126 - Endeavour Foundation
- 127 - Sisters Inside Inc.
- 128 - Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd
- 129 - Legal Aid Queensland
- 130 - yourtown

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- 131 - LGBTI Legal Service Inc.
- 132 - Immigrant Women's Support Service
- 133 - UNICEF Australia
- 134 - AgForce Queensland
- 135 - Health Consumers Queensland
- 136 - Respect Inc. and Scarlet Alliance
- 137 - Indigenous Lawyers Association of Queensland Inc.
- 138 - Lindsay Stevenson-Graf and Narelle Bedford
- 139 - Monique Bond
- 140 - Catherine Collins
- 141 - Janelle Maree
- 142 - Queensland Teachers' Union
- 143 - Margaret Anne Travers
- 144 - Luke Grayson
- 145 - Brisbane North Community Legal Service

In addition, four types of form submissions (A, B, C & D) and variants of Form A and C were received.

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
A HUMAN RIGHTS ACT FOR QUEENSLAND			
1.	Submissions in support of the Bill	<p>A number of submitters, including the following, expressed general support for the Bill:</p> <ul style="list-style-type: none"> • 002 - Holly Acquisto • 007 - Marcel Reverter-Rambaldi • 030 – Scott James • 034 – Office of the Information Commissioner Queensland • 042 – The Hon. Matt Foley • 118 – United Nations Association of Australia • 128 – Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd • 135 – Health Consumers Queensland • 139 – Monique Bond <p>The following submissions expressed support for the Bill, subject to specific recommendations (outlined below):</p> <ul style="list-style-type: none"> • Form Submission A • Form Submission B • Form Submission C • 001 - Sara Davies • 003 - Gillian Hall • 005 – Name Suppressed • 009 – Shay Dougall • 010 – Don Willis • 012 – Phil Browne • 013 – David Solomon • 014 – Dr Julie Debeljak • 016 – Kim Graham 	DJAG notes the submissions in support of the Bill and the submissions which support the Bill ‘in-principle’.

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		<ul style="list-style-type: none"> • 017 – Jennifer Faulkner • 018 – Disability Law Queensland • 019 – Protect All Children Today • 022 – Steve Clancy • 024 - Australian Lawyers Alliance • 025 – Law Right • 026 – Monash University Castan Centre for Human Rights Law • 028 – Sandy Horwood • 029 – Christine Hodgkinson • 031 - Queensland Nurses & Midwives Union • 032 – Bar Association • 033 – Local Government Association of Queensland • 035 – Townsville Community Legal Service Inc • 036 – Women’s Legal Service Qld • 037 – Cairns Community Legal Centre INC • 039 – Joint University of Queensland Law Academics, TC Beirne School of Law • 040 – Australian Association of Social Workers • 041 – Youth Advocacy Centre • 044- A Human Rights Act for Queensland • 045 – Christopher Merans • 046 – Professor Heather Douglas • 050 – Unborn Children’s Advocacy Network • 051 – knowmore • 052 – Alison Courtices • 053 – Julia Mizuno • 056 - Bulimba Electorate Youth Advisory Panel • 057 – Civil Liberties Australia Inc 	

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		<ul style="list-style-type: none"> • 058 – Amnesty International Australia – Queensland and Northern New South Wales Branch Committee • 059 – Catholic Women’s League State of Queensland Inc • 061 - Michelle O'Flynn • 065 – Townsville Amnesty International Action Group • 066 Professor Tamara Walsh, Bridget Burton, Dr Rhonda Faragher, Dr Glenys Mann • 067 – People with Disability Australia • 069 – Amnesty International Australia • 070 – True Relationships and Reproductive Health • 071 – Children and Young People with Disability Australia • 072 – Health Ombudsman • 073 – All Means All • 074 – Uniting Church of Australia – Queensland Synod • 075 - Caxton Legal Centre • 076 - Queensland Advocacy Incorporated • 077 – Eugene White • 080 – Anti-Discrimination Commission Qld • 082 - Dr Louise Phillips and Professor Peter Renshaw • 084 – Queensland Council of Social Service • 085 – The Royal Australian & New Zealand College of Psychiatrists • 088 – The Public Advocate • 089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien • 090 – Office of the Public Guardian • 091 - Australian Lawyers for Human Rights • 092 – PeakCare • 093 – Queensland Council for Civil Liberties • 094 – Queensland Mental Health Commission • 095 – Dr Robyn Holder 	

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		<ul style="list-style-type: none"> • 096 – Micah Projects • 097 – Queensland Collective for Inclusive Education • 101 – Human Rights Law Centre • 104 – Dr Nicky Jones and Dr Jeremy Patrick • 105 – International Commission of Jurists, Qld Branch • 108 – Lock the Gate Alliance • 111 - Andrea Gray • 113 – United Voice • 114 – Women’s International League for Peace and Freedom, Australian Section • 116 – Griffith University • 117 – Community Legal Centres Queensland • 119 – Queensland Council of Unions • 120 – Queensland Family and Child Commission • 122 - Environmental Defenders Office (Qld) Inc. • 123 – ANTaR Q Inc • 124 – Spinal Life Australia • 126 – Endeavour Foundation • 131 – LGBTI Legal Service Inc • 132 - Immigrant Women's Support Service • 133 – Unicef Australia • 137 - Indigenous Lawyers Association of Queensland Inc. • 138 - Lindsay Stevenson-Graf and Narelle Bedford • 142 – Queensland Teachers Union • 145 – Brisbane North Community Legal Service <p><u>121 – Victorian Ombudsman</u></p> <ul style="list-style-type: none"> • Expressed support for the Bill, noting that the Victorian experience demonstrates the benefits of the Ombudsman and Human Rights 	

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		Commission operatively effectively in their respective areas of practice.	
2.	Submissions not in support of the Bill	<p>A number of submitters, including the following, were not in support of the Bill and expressed specific criticisms (outlined below):</p> <ul style="list-style-type: none"> • Form Submission D • 60 - Russell Wattie • 115 - Sarahann Newman • 038 – Eric Raymond • 087 – Petros Khalesirad • 098 – Graham Preston • 106 – Australian Christian Lobby • 112 – The Australian Family Association <p><u>011 - Bill Tait</u> Expressed the view that the introduction of a Human Rights Bill is ‘premature’ and that ‘we first need to take a good long look, objectively...at how we’ve purported to implement...the very Bills of rights, that we’ve long had on the very statute books, before, we can even hope, to have a bit of an informed picture, as to how this one might end up...for we might just discover, that it’s largely unnecessary...and that all that’s really necessary would be to address the failings’ of existing legislation.</p> <p><u>062 – Luke Guertsen</u> Does not support the Bill and expressed the view that the Bill undermines the authority of Parliament. Expressed concern about the cost associated with implementing the Bill. Expressed concern that the Bill does not protect people from fees and regulation.</p> <p><u>106 – Australian Christian Lobby</u> Does not support the Bill unless a number of amendments are made.</p>	DJAG notes the submissions which do not support of the Bill.

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		<p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Make a number of specific criticisms (outlined below) and do not support the Bill for the following reasons:</p> <ul style="list-style-type: none"> • Respect for human rights does not require enactment of a statutory charter of rights – human rights are best protected by carefully drafted legislation which specifically addresses particular issues in a manner that provides certainty; • Charters of rights distort the proper functioning of the courts – inviting judges to evaluate legislation against standards that are too broad, entangling courts in what are essentially political controversies, and undermining confidence in their impartiality and ability to uphold the rule of law. • Statutory charters of rights do not produce dialogue – the ability and willingness of parties to engage in genuine deliberation over contested political matters is dependent on factors that have nothing to do with a charter of rights; • Charters of rights are a kind of constitutional statute because they regulate the making, administration and adjudication of law. Constitutional statutes should not be enacted without bipartisan support. <p><u>110 – Cherish Life Queensland</u> Does not support the Bill unless a number of amendments are made.</p> <p><u>112 – The Australian Family Association</u> Does not support the Bill and expressed the following views:</p> <ul style="list-style-type: none"> • The Act would be used to introduce ‘modern rights’ which are very often not ‘human rights’. They are products of convention or fashion (eg: the right to marry for same-sex couples); 	

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		<ul style="list-style-type: none"> • Queensland needs to refocus attention on the International Bill of Human Rights with our current democratic processes on human rights which are relevant under the state constitution; • Human rights legislation in Victoria has been a failure; • Unnecessary cost to the taxpayer and would be used by minority groups to advance popular ideologies (eg: Termination of Pregnancy Bill); • Modern society has confusion over human rights which stems from a fundamental confusion about freedom. <p><u>144 – Luke Grayson</u> Does not support the Bill, submitting that the stated objects are inappropriate and unnecessary, and expressing other specific criticisms.</p>	
SUPPORT FOR KEY PROVISIONS IN THE BILL			
3.	Rights -Inclusion of right to Health Services and Right to education	<p>The following submissions expressed particular support for the inclusion of the right to health services and the right to education, with some submissions supporting the inclusion of these rights subject to recommended changes.</p> <p>014 – Dr Julie Debeljak 026 – Monash University Castan Centre for Human Rights Law 039 – Joint University of Queensland Law Academics, TC Beirne School of Law 066 Professor Tamara Walsh, Bridget Burton, Dr Rhonda Faragher, Dr Glenys Mann 091 - Australian Lawyers for Human Rights 024 - Australian Lawyers Alliance 116 – Griffith University 139 – Monique Bond 037 – Cairns Community Legal Centre INC 096 – Micah Projects</p>	<p>DJAG notes the support for particular provisions of the Bill including:</p> <ul style="list-style-type: none"> • the addition of the rights to Health Services and Right to Education; • the distinct cultural rights of Aboriginal Peoples and Torres Strait Islander Peoples; • the rebranding of the Anti-Discrimination Commission Queensland (ADCQ) as the Queensland Human Rights Commission (QHRC); and • the complaints and disputes resolution function for the QHRC.

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		094 – Queensland Mental Health Commission 126 – Endeavour Foundation 069 – Amnesty International Australia 042 – The Hon. Matt Foley 122 - Environmental Defenders Office (Qld) Inc. 019 – Protect All Children Today	
4.	Rights – distinct cultural rights for Aboriginal Peoples and Torres Strait Islander Peoples	The following submissions expressed particular support for the inclusion of the distinct cultural rights for Aboriginal Peoples and Torres Strait Islander Peoples with some submissions supporting the inclusion of this right subject to recommended changes. 091 - Australian Lawyers for Human Rights 101 – Human Rights Law Centre 024 - Australian Lawyers Alliance 116 – Griffith University 037 – Cairns Community Legal Centre INC 139 – Monique Bond 128 – Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd 041 – Youth Advocacy Centre 094 – Queensland Mental Health Commission 069 – Amnesty International Australia 056 - Bulimba Electorate Youth Advisory Panel 122 - Environmental Defenders Office (Qld) Inc. 137 - Indigenous Lawyers Association of Queensland Inc.	

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5.	Establishment of QHRC and functions	092 – PeakCare 094 – Queensland Mental Health Commission 108 – Lock the Gate Alliance 019 – Protect All Children Today	
6.	Dispute Resolution with the QHRC	094 – Queensland Mental Health Commission 126 – Endeavour Foundation 065 – Townsville Amnesty International Action Group 058 – Amnesty International Australia – Queensland and Northern New South Wales Branch Committee 114 – Women’s International League for Peace and Freedom, Australian Section 014 – Dr Julie Debeljak 039 – Joint University of Queensland Law Academics, TC Beirne School of Law 091 - Australian Lawyers for Human Rights 101 – Human Rights Law Centre 025 – Law Right 024 - Australian Lawyers Alliance 037 – Cairns Community Legal Centre INC 044- A Human Rights Act for Queensland 084 – Queensland Council of Social Service 127- Sisters Inside Inc 056 - Bulimba Electorate Youth Advisory Panel 122 - Environmental Defenders Office (Qld) Inc. 138 - Lindsay Stevenson-Graf and Narelle Bedford 019 – Protect All Children Today 128 – Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd	

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THE HUMAN RIGHTS PROTECTED BY THE BILL (Part 2)			
7.	<p>Seeking to expand the Human Rights protected under the Bill – To include all Economic, Social and Cultural Rights; further rights from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and other human rights instruments</p>	<p><u>005 – Name Suppressed</u> Recommends encompassing principles of the Universal Declaration of Human Rights in its entirety.</p> <p><u>122 - Environmental Defenders Office (Qld) Inc.</u> Recommends the Bill include all rights in the ICCPR and the ICESCR.</p> <p><u>137 - Indigenous Lawyers Association of Queensland Inc.</u> Recommends that the UNDRIP rights should be adopted in full.</p> <p><u>069 – Amnesty International Australia</u> Recommends that the Bill incorporates all of the human rights prescribed by the international covenants and conventions to which Australia is a signatory, in particular:</p> <ul style="list-style-type: none"> • the right to work • the right to just and favourable conditions of work • the right to social security • the right to an adequate standard of living • the right to enjoy the highest attainable standard of physical and mental health • the right to take part in cultural life and benefit from scientific progress. <p><u>083 – John Tracey</u> Concerned that the Bill does not enact the Convention on the Rights of Persons with Disabilities</p> <p><u>099 – Derek Sheppard</u> Submits the Bill should include all human rights.</p>	<p>Like the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Victorian Charter), the rights in the Bill are primarily drawn from the <i>International Covenant on Civil and Political Rights</i> (ICCPR).</p> <p>The protection of civil and political rights is often the first step in human rights Acts, therefore human rights legislation usually protect a common selection of those rights enumerated in the ICCPR. Many of the civil and political rights in the ICCPR are also recognised as important common law rights (such as the right to liberty and security).</p> <p>The Bill goes beyond the Victorian Charter by including the rights to health services and education drawn from the <i>International Covenant on Economic, Social and Cultural Rights</i>, and a stand-alone provision recognising the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, which is informed by provisions in the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> (UNDRIP).</p> <p>Clause 12 clarifies that the human rights included in the Bill are in addition to other rights and freedoms included in other laws, for example rights and freedoms included in the common law, a law of the Commonwealth, or under international conventions. These existing rights and freedoms should not be taken to be abrogated or limited only because they are not included in the Bill.</p>

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		<p><u>057 – Civil Liberties Australia Inc</u> Questions why other rights in the ICESCR are not included, e.g. the right to adequate food and clothing and the right to health.</p> <p><u>117 – Community Legal Centres Queensland</u> Recommends that the Bill incorporate more human rights from the UNDRIP to further protect and promote the rights of Indigenous Queenslanders.</p> <p><u>014 – Dr Julie Debeljak and 026 – Monash University Castan Centre for Human Rights Law</u> Recommended including in the Bill the entirety of the economic, social and cultural rights in the ICESCR, on the basis that human rights are indivisible and inter-dependent. Recommended including articles 37 and 40 of the UN Convention on the Rights of the Child to protect children from corporal punishment and to protect children in the penal system.</p> <p><u>101 – Human Rights Law Centre</u> Submits that the rights in the Bill should be expanded to protect other fundamental rights in the ICESCR. Consideration should also be given to including rights from other international treaties that Australia is a party to (examples given).</p> <p><u>116 – Griffith University</u> Recommend that the Bill should include all the economic, social and cultural rights in the ICESCR.</p> <p><u>131 – LGBTI Legal Service Inc</u> Recommends that the Yogyakarta Principles (which ‘recast existing international human rights law in a manner that ensure these rights are more inclusive of concepts of sex and gender’) are incorporated in the</p>	<p>The first review of the operation of the Human Rights Act (HR Act), as soon as practicable after 1 July 2023, and the further review of the Act, must include consideration of whether additional human rights should be included under the Act.</p>

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		<p>meaning of human rights through clause 12, by including the Yogyakarta Principles in the notes to the clause.</p>	
8.	<p>Seeking to add a right to a healthy environment</p>	<p><u>Form Submission B and 122 - Environmental Defenders Office (Qld) Inc.</u> (also supported by <u>117 – Community Legal Centres Queensland</u>) Recommends the Bill include right to healthy environment, including rights to clean air and water. Without a right to healthy environment the basic human rights to life, health, work and education cannot be fully realised.</p> <p><u>Form Submission C and 108 – Lock the Gate Alliance</u> Expressed the view that the Bill should include environmental rights (rights to clear air, water and overall healthy environment) to protect communities from unconventional gas development in Queensland. Also expressed the view that the Bill should include right to free prior and informed consent for Aboriginal and Torres Strait Islander peoples for developments affecting their land and communities.</p> <p><u>004 - Dr Geralyn McCarron and 009 - Shay Dougall</u> Expressed the view that the right to a safe, clean, healthy and sustainable environment should be addressed in the Bill, incorporating the 16 principles relating to human rights and the environment proposed by Mr John H Knox, United Nations Human Rights Commission Special Rapporteur.</p> <p><u>109 – Pat Coleman</u> Concerned at the absence of an environmental right.</p> <p><u>116 – Griffith University</u> Supports right to a healthy environment being considered during the review of the Act.</p>	<p>While based closely on the Victorian Charter the Bill includes some modest additions including the distinct cultural rights of Aboriginal Peoples and Torres Strait Islander Peoples and the right to Health Services and the right to Education.</p> <p>The first review of the operation of the Human Rights Act (HR Act), as soon as practicable after 1 July 2023, and the further review of the Act, must include consideration of whether additional human rights should be included under the Act.</p>

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		<p><u>017 – Jennifer Faulkner</u> Recommends inclusion of the right to protection and enjoyment of our natural environment.</p>	
9.	<p>Seeking to add rights of victims</p>	<p><u>046 – Professor Heather Douglas</u> Recommends that a specific provision should be incorporated in the Bill that recognises the rights of victims, as it is of equal importance (re: rights of defendants) that victims of crime should have a fair hearing. The Bill provides no express rights to victims to receive information, free assistance of interpreters, or support of any kind. Recommends that, as a minimum, clause 63 should be amended to add ‘contraventions of specific Charters of Rights in other Queensland legislation’ to ensure the Charter of Victim’s Rights recognised in the <i>Victims of Crime Assistance Act 2009</i> is enforceable.</p> <p><u>132 - Immigrant Women's Support Service</u> The rights of victims of crime should be included in the Bill, noting current barriers to reporting sexual assault and reporting breaches of Domestic Violence Orders.</p> <p>Recommends amending clause 32(2)(i) to include that victims and defendants have a right to language support through a credentialed interpreter made available throughout all relevant proceedings.</p> <p>Recommends amending clause 32(3)) to include consideration of experience of trauma for children of refugee backgrounds, and consideration of diagnosed/undiagnosed disability of any type and behavioural difficulties and/or learning impairment of the child.</p>	<p>With the exception of the rights for children in the criminal process and cultural rights for Aboriginal Peoples and Torres Strait Islander Peoples, the Bill does not contain specific rights for groups of people, nor are particular groups of people, such as women, people with a disability, victims of crime or others specifically named.</p> <p>The Bill does however include the right to recognition and equality before the law and this right to equality permeates all human rights in the Bill. The right to equality means every person is equal before the law and is entitled to equal protection of the law without discrimination.</p> <p>While the Bill contains rights that relate to defendants (such as the right to a fair hearing and rights in criminal proceedings), these rights are not absolute and are subject to the general limitations clause (clause 13).</p> <p>The general limitations clause sets out a framework for deciding when and how a human right may be limited by providing that a human right may be limited if it is authorised by law <u>and</u> reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.</p>

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		<p>Recommends broadening the cultural rights provision to include the right to full and meaningful participation in all aspects of society including fair access to the justice system as a defendant or as a victim.</p> <p><u>019 – Protect All Children Today</u> Submits that the Charter of Victim’s Rights should be enforced and embedded into legislation, policy and procedures, noting that the impact on victims should also be considered as part of the right to liberty and security.</p> <p><u>125 – Bravehearts</u> Recommends that the rights of victims in justice processes be included, in particular key principles from the Charter of Victims’ Rights such as:</p> <ul style="list-style-type: none"> • The rights of victims to be treated with courtesy, compassion, sensitivity and dignity. • The rights of all victims to effective and timely responses through all levels of the justice system and that this system be transparent and accountable. • The rights of all victims to have a voice in matters relating to their experiences. <p><u>036 – Women’s Legal Service Qld (endorsed by 051 – knowmore)</u> Seek the following amendments to recognise the rights of victims of crime including children:</p> <ul style="list-style-type: none"> • amend clause 31(1) (right to fair hearing) to expressly recognise the rights of crime victims as participants in criminal proceedings (who also have a right to a fair hearing); • amend clause 32(3) (rights in criminal proceedings) to provide that “<u>any child charged with or a victim of a criminal offence has the right to a procedure that takes account of the child’s age and the desirability of</u> 	<p>Implied legitimate reasons for limiting rights (as drawn from human rights jurisprudence) that are consistent with a free and democratic society include:</p> <ul style="list-style-type: none"> • public interest considerations (including national security and community safety); and • protection of the rights of others (for example, children and domestic violence victims). <p>Therefore, rights relating to defendants will be interpreted with respect to other considerations, including the rights of victims and public safety considerations.</p> <p>As provided above, clause 12 clarifies that the human rights included in the Bill are in addition to other rights and freedoms included in other laws, meaning victims’ rights contained in other sources of law will continue to apply.</p> <p>The first review of the operation of the Human Rights Act, as soon as practicable after 1 July 2023, and the further review of the Act, will include consideration of whether additional human rights should be included under the Act.</p>

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		<p>promoting the child’s rehabilitation, <u>both child accused and child victim</u>. (suggested additional words are underlined);</p> <ul style="list-style-type: none"> • amend clause 33(2) (children in the criminal process) to also refer to a child victimised by a criminal offence; • amend clause 33(3) to include reference to a child victimised by a criminal offence. <p><u>096 – Micah Projects</u> Recommends the Bill include ‘adherence to the Victims of Crime Charter’ and that the same process for disputes resolution be applied to victims in relation to the Charter as part of the Bill to ensure that Victims’ Rights are scrutinised alongside human rights. Supports Women’s Legal Service submission in respect of rights in criminal proceedings/children in the criminal process.</p> <p><u>117 – Community Legal Centres Queensland</u> Recommends including rights for victims of crime, by adding ‘freedom from all forms of exploitation, violence and abuse, including their gender-based aspects’ as a protected rights, as recognised in international human rights law; expanding the right to fair hearing and the rights in criminal proceedings to protect the rights of victims; providing for affected persons to bring complaints for a breach of their rights under the Charter of Victims’ Rights to the QHRC; supporting victims and their advocates to use the Act to protect and promote their rights (referencing submissions by WLSQ, Prof Heather Douglas, and also the TC Beirne School of Law (UQ Law) submission recommending incorporating the Charter of Rights of a Child in Care).</p> <p><u>095 – Dr Robyn Holder</u> Recommends that the Bill be amended to include rights of victims in the criminal justice process, including explicit recognition of victims’ rights whenever the rights of an accused are recognised, in:</p>	

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		<ul style="list-style-type: none"> • Clause 29 – right to liberty and security of person • Clause 31 – fair hearing • Clause 32 – rights in criminal proceedings. <p><u>075 - Caxton Legal Centre</u> Submits that the Bill should include rights drawn from the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power including access to justice and fair treatment, the provision of redress through informal and formal procedures, access to victim services, training of criminal justice actors and support services about the needs of victims.</p>	
10.	Seeking to add workplace rights	<p><u>113 – United Voice and 119– Queensland Council of Unions</u> Recommends the right to collectively bargain should be included in the Bill, as the freedom of association is devalued in the absence of a right to collectively bargain. Submits that a range of other workplace rights could be included in the Bill such as:</p> <ul style="list-style-type: none"> • The right to take protected industrial action; • The right to a fair minimum wage; • The right to safe and healthy working conditions; • The right to equal opportunity; and • The right to reasonable limitation of working time. <p><u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien</u> Recommend the right to choose and accept work and to fair and favourable working conditions be included</p> <p><u>010 - Don Willis</u> Expressed the view that public service employee rights should be protected under the Bill and provided with a right to due process which is respect and adhered to by decision makers. This suggestion is made in light of the “treatment of public service workers by the former LNP government</p>	<p><u>Workplace rights</u> Clause 12 clarifies that the human rights included in the Bill are in addition to other rights and freedoms included in other laws. This means that existing right in legislation such as the <i>Industrial Relations Act 2016</i>, the <i>Work Health and Safety Act 2011</i> and the <i>Anti-Discrimination Act 1991</i> will continue to be protected.</p> <p>The first review of the operation of the Human Rights Act (HR Act), as soon as practicable after 1 July 2023, and the further review of the Act, must include consideration of whether additional human rights should be included under the Act.</p> <p><u>Specific rights for public servants</u> Clause 23 of the Bill provides the right to take part in public life, including the right for every eligible person to have the opportunity, without discrimination to have access, on general terms of equality, to the public service and to public office (clause 23(2)(b)). In the case of <i>Hermoza v Peru</i>, a</p>

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		<p>between 2012 and 2015” and given that, in the submitter’s view, “many of those who were made redundant...[do not appear] to have been accorded the due process to which they were entitled with established procedures and steps under relevant public service directives not being followed in a number of instances”.</p>	<p>member of the UN Human Rights Committee observed that suspension and discharge of someone arbitrarily, from public service and refusal to reinstate was a violation of the person’s right under the equivalent provision in the Convention (i.e. article 25(c) of the ICCPR).</p>
11.	<p>Seeking to add other specific rights</p>	<p>A number of submitters recommended the inclusion of other specific rights, including:</p> <ul style="list-style-type: none"> • Right to self-determination (<u>137 - Indigenous Lawyers Association of Queensland Inc.; 084 – Queensland Council of Social Service</u>); • right to education of human rights (<u>82 - Dr Louise Phillips and Professor Peter Renshaw</u>); • procedural rights, including right to public participation in decision making; public access to information; and transparency and accountability in governance and decision making (<u>122 - Environmental Defenders Office (Qld) Inc.</u>); • right to protection from domestic and family violence (<u>040 – Australian Association of Social Workers</u>) • rights of trans and gender diverse people (<u>040 – Australian Association of Social Workers</u>); • right to housing (<u>040 – Australian Association of Social Workers; 104 – Dr Nicky Jones and Dr Jeremy Patrick; 035 – Townsville Community Legal Service Inc; 103 – Queensland Law Society; 127- Sisters Inside Inc; 117 – Community Legal Centres Queensland; 116 – Griffith University; </u>); • rights of people with disability or mental illness, including children and young people (<u>071 – Children and Young People with Disability Australia; 090 – Office of the Public Guardian; 085 – The Royal Australian & New Zealand College of Psychiatrists</u>); • rights of older persons and persons with disabilities, particularly the right to participate in decisions which affect them (<u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien; 017 – Jennifer Faulkner</u>); 	<p>As provided above, the Bill primarily seeks to protect a selection of fundamental civil and political rights drawn from the ICCPR. The protection of these civil and political rights is often a first step in human rights legislation.</p> <p>These rights are in addition to other rights and freedoms included in other laws, for example rights and freedoms included in the common law, a law of the Commonwealth, or under international conventions. These existing rights and freedoms are not abrogated or limited only because they are not included in the Bill.</p> <p>With the exception of the right for children in the criminal process and cultural rights for Aboriginal peoples and Torres Strait Islander peoples, the Bill does not contain specific rights for groups of people, nor are particular groups of people, such as women, people with a disability, victims of crime or others specifically named. The Bill does however include the right to recognition and equality before the law and this right to equality permeates all human rights in the Bill.</p> <p>The first review of the operation of the HR Act, as soon as practicable after 1 July 2023, and the further review of the</p>

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		<ul style="list-style-type: none"> • access to palliative care and appropriate pain relief (<u>086 – Palliative Care Queensland</u>); • rights of older persons in aged care, and a right to freedom from violence, abuse and neglect (<u>075 - Caxton Legal Centre</u>); • protection from the reversal of the onus of proof in criminal proceedings, search or seizure without a warrant or being compelled to provide information to a government body (<u>062 – Luke Guertsen</u>); • protection against unlawful Indigenous incarceration (<u>081 – Michael O’Keefe</u>); • compensation for miscarriages of justice/wrongful conviction (<u>081 – Michael O’Keefe</u>; <u>110 – Cherish Life Queensland</u>); • right to an adequate standard of living, including adequate housing, food and water be included (<u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien</u>; <u>035 – Townsville Community Legal Service Inc</u>; <u>116 – Griffith University</u>); • right to freedom from violence, abuse and neglect (<u>035 – Townsville Community Legal Service Inc</u>; <u>036 – Women’s Legal Service Qld</u>; <u>103 – Queensland Law Society</u>); • right to autonomy and independence (<u>035 – Townsville Community Legal Service Inc</u>); • legal assistance (<u>036 – Women’s Legal Service Qld</u>); • adequate food and clothing (<u>057 – Civil Liberties Australia Inc</u>); • judicial hearing and legal representation (<u>096 – Micah Projects</u>); • right to overturn a wrongful conviction (<u>116 – Griffith University</u>); • right of a person to live free from gender based violence (<u>116 – Griffith University</u>); • cultural rights of Australian South Sea Islanders (<u>116 – Griffith University</u>); • rights of LGBTQIP people to ensure they are not discriminated against (<u>020 – Julian Gallimore</u>); 	<p>Act, must include consideration of whether additional human rights should be included under the Act.</p>

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		<ul style="list-style-type: none"> • right to practice beliefs (<u>027 – Grace Field</u>); • right to breath clear air (<u>049 – Brenton Hall</u>); • rights of vulnerable groups (<u>059 – Catholic Women’s League State of Queensland Inc</u>); • freedom to live without a religion (<u>140 – Catherine Collins</u>); • right to breastfeed (<u>141 – Janelle Maree</u>). 	
12.	Seeking a rationale why some rights where included and not others	<p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submit that here is no reason for the inclusion of some rights and not others. Some important rights from the ICCPR are excluded, for example, ‘the liberty of parents...to ensure the religious and moral education of their children in conformity with their own convictions.’</p>	<p>The protection of civil and political rights is often the first step in human rights Acts, therefore human rights legislation usually protect a common selection of those rights enumerated in the ICCPR. Many of the selected civil and political rights in the ICCPR are also recognised as important common law rights (such as the right to liberty and security).</p>
13.	Changes to the right to education (clause 36)	<p><u>001 - Sara Davies</u> Questions why the right to education (clause 36) does not include the phrase ‘without discrimination’ (in contrast to the right to health (clause 37)).</p> <p>Raised concerns that the clause 36 as it is presently drafted may be ambiguous and could be interpreted by an education provider, especially a private independent school, as ambiguous enough to justify exclusion on the grounds that a school is not resourced to support the child. Requested amendment to clause 36 to include the phrase ‘without discrimination’.</p> <p><u>142 – Queensland Teachers Union</u> Submits that the right may restrict the ability of the Department to make decisions (e.g. excluding or expelling a student) which are necessary to protect the health and safety of QTU members and other students, as these</p>	<p>The right to education is modelled on article 13 of the <i>International Covenant on Economic, Social and Cultural Rights</i>. Internationally, this right has been interpreted as including a requirement that education must be accessible to all persons without discrimination.</p> <p>Whilst the words ‘without discrimination’ are not explicitly included in the right to education in the Bill, clause 15 of the Bill (recognition and equality before the law) states that every person has the right to enjoy their human rights without discrimination. It is intended that the rights in the Bill, read with clause 15, are to be enjoyed by all persons without discrimination.</p> <p>In addition, clause 12 of the Bill clarifies that the human rights included in the Bill are in addition to other rights and freedoms included in other laws. This means that provisions</p>

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		<p>decisions may be in breach of the right to education. Suggests that clause 36(1) could be amended to add 'according to law'.</p> <p><u>063 - Student Engagement, Learning & Behaviour Research Group, Faculty of Education, QUT</u> Recommends that the right to education is revised to reflect international conventions and national legislation by referring to key terms, including 'discrimination' (<i>Disability Discrimination Act 1994</i>), equality of opportunity (Convention on the Rights of the Child), accessible (ICESCR), and inclusive (Convention on the Rights of Persons with Disabilities). Recommends that right be amended to refer to 'further education and training' rather than vocational education and training, to reflect the diversity of post-school educational offerings.</p> <p><u>076 - Queensland Advocacy Incorporated</u> Recommends that clause 36(1) should be amended to: reflect the human right to inclusive, quality and free education without discrimination; require the provision of the support required to facilitate this; and require that school discipline be administered in a manner consistent with every child's human dignity.</p> <p><u>061 - Michelle O'Flynn</u> Submits that the right to education is undermined by the wording 'appropriate to the child's needs', which will give rise to further exclusion of students with disability. The right should be amended to state that everyone has the right to inclusive, accessible and equitable education, including the supports required in primary, secondary and tertiary education.</p> <p><u>082 - Dr Louise Phillips and Professor Peter Renshaw</u></p>	<p>in the <i>Anti-Discrimination Act 1991</i> will continue to operate to protect vulnerable Queenslanders from unfair discrimination.</p> <p>It is not intended that non-state schools be captured as 'public entities' under the Bill (clause 9(1)(h)) and therefore the Bill will not impose any obligations that are additional to obligations under existing legislation. This is because while they may be performing functions of a public nature, they are not performing those functions on behalf of the state.</p>

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		<p>Recommended the right should be amended to provide that every child has the right to have access early childhood; and to provide that every child has the right to not be excluded from education and to fair treatment administered in a manner consistent with the child’s human dignity, to protects children from the excessive exclusion from education that the <i>Queensland Strengthening Discipline in State Schools Act 2013</i> enabled.</p> <p><u>041 – Youth Advocacy Centre</u> Expressed concern that the right to access to education is narrower than the right to education in the Convention on the Rights of the Child (CROC), and recommends considering whether it should be amended;</p> <p><u>071 – Children and Young People with Disability Australia</u> Expressed concern that the words ‘education appropriate to the child’s needs’ will create different expectations and rights for individual students (and specifically will enable low expectations and discrimination against children with disability). Also concerned that the right to inclusive education as set out in the Convention on the Rights of Persons with Disabilities is not included. Recommends that the words be removed.</p> <p><u>066 Professor Tamara Walsh, Bridget Burton, Dr Rhonda Faragher, Dr Glenys Mann</u> Submits that the right to education should be redrafted so that it reads “Every child has the right to have access to primary and secondary education that is appropriate to the child’s age and inclusive of their needs” to better reflect the Department of Education’s commitment to inclusive education and the United Nations Convention on the Rights of People with Disabilities. The right to vocational education and training should not be conditional upon a person’s ‘abilities’ which could allow for discrimination against a person based on impairment. Rather the right should be redrafted so that it</p>	

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		<p>reads ‘Everyone has the right to have access to further education and vocational and continuing training without discrimination.’</p> <p><u>091 - Australian Lawyers for Human Rights</u> Submits that the right to education should be redrafted so that it encompasses the right to enjoy education ‘without discrimination’.</p> <p><u>073 – All Means All</u> Recommends amending right to education to reflect the intent of applicable International Conventions and domestic disability laws. Submits that the current wording may have unintended consequences of increasing discrimination against persons with disabilities.</p> <p>Submits that the qualification ‘appropriate to the child’s needs’ is not present in the expression of the right to education under the applicable human rights instruments.</p> <p>Submits that ‘based on the person’s abilities’ is likely to lead to discriminatory outcomes for persons with disabilities potentially in breach of the <i>Disability Discrimination Act 1992</i> (Cth)</p> <p>Submits that ‘vocational’ is outdated and inappropriate.</p> <p><u>097 – Queensland Collective for Inclusive Education</u> Submits that the term ‘appropriate to child’s needs’ will perpetuate discriminatory treatment and inequality based upon the use of segregated settings, and justify prejudice in educational administration. Recommends that the right should be amended to reflect the intent of the applicable International Conventions and domestic disability discrimination laws.</p>	

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		<p><u>133 – unicef Australia</u> Submits that guidance should be provided on the ramification of the right to education with regard to policies and processes to all forms of school exclusions (suspensions and expulsions).</p>	
14.	<p>Changes to the freedom of expression (clause 21)</p>	<p><u>142 – Queensland Teachers Union</u> Submits that this right may legitimise cyberbullying (including parents engaging in cyberbullying in respect of teachers and school staff) and disrupt the prevention and management of cyberbullying. Recommends this right could either be removed or amended to provide that the right must be exercised ‘within the bounds of the law’.</p> <p><u>091 - Australian Lawyers for Human Rights</u> Submits that the right should be amended to incorporate the internal limitation equivalent to section 15(3) of the Victorian Charter, to make it clear that special duties and responsibilities attach to the right to freedom of expression. Contrary to the findings of the Young Review of the Victorian Charter, the general limitations clause does not obviate the need for this additional internal limitation.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> The internal limitation in article 19.3 of the ICCPR has not been replicated in this right in the Bill. It would have offered a more certain and defined way of limiting this right as opposed to clause 13.</p> <p><u>37 - Indigenous Lawyers Association of Queensland Inc.</u> Notes concerns that freedom of expression (clause 21(2)) may be abused to the detriment of Aboriginal peoples and Torres Strait Islanders, in</p>	<p>The general limitations clause (clause 13) will ensure that the right to freedom of expression can be limited in accordance with the law and in ways that can be justified in a free and democratic society based on human dignity, equality and freedom.</p> <p>The independent review of the Victorian Charter, conducted by Michael Brett Young, tabled in the Victorian Parliament in September 2015 – <i>From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006</i> (the Young Review) recommended that the right to freedom of expression not include an internal limitation, as this would duplicate the effect of the general limitations clause and create confusion.</p> <p>Not including a specific internal limitation in the right to freedom of expression is also consistent with the approach taken to the right to freedom of thought, conscience, religion and belief (clause 20).</p>

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		<p>particular where Aboriginal peoples and Torres Strait Islanders are menaced, harassed, offended or subject to violence where the other individual is asserting their right to expression.</p>	
15.	<p>Children in the Criminal Process (clause 33)</p>	<p><u>076 - Queensland Advocacy Incorporated</u> Recommends that the right is amended to require that all children detained must be segregated from all detained adults, irrespective of whether the child is an accused child, a child detailed without charge, or a convicted offender.</p> <p><u>041 – Youth Advocacy Centre and 117 – Community Legal Centres Queensland</u> Recommends the right be amended to provide that detention of a child should be used only as a last resort and for the shortest possible time.</p> <p><u>069 – Amnesty International Australia</u> Recommends that clause 33(3) be amended to provide greater clarity around the treatment of children convicted of an offence in a manner that is ‘appropriate for the child’s age’.</p> <p><u>081 – Michael O’Keefe</u> Is concerned that the Bill does not prevent children being imprisoned with adults.</p> <p><u>091 - Australian Lawyers for Human Rights</u> Recommends that clause 33(3) be removed and clause 33(1) be amended to include convicted children in the segregation requirement.</p> <p><u>130 – yourtown</u></p>	<p>The rights to humane treatment when deprived of liberty (clause 30) and children in the criminal process (clause 33), as they are currently drafted, reflect the wording of the equivalent rights in the Victorian Charter as well as the ACT <i>Human Rights Act 2004</i> (the ACT Human Rights Act).</p> <p>Whilst the rights, as drafted, do not explicitly state that a convicted child must be segregated from a detained adult (convicted or unconvicted), that may be implied through the application of the third limb of the right of children in the criminal process (clause 33), which provides that a convicted child must be treated in a way that is appropriate for the child’s age.</p> <p>In Victoria, the Victorian Charter rights were relied upon to successfully overturn a decision to transfer children (aged 16 and 17 years) into an adult prison, part of which had been purportedly excised and declared a youth justice centre (see <i>Certain Children v Minister for Families and Children & Ors (No 2)</i> [2017] VSC 251). Although the equivalent right to clause 33(3) was not engaged, because the plaintiffs in the case were not convicted at the time of the hearing, the case illustrates the extent to which the other rights in the Charter (in particular, the right to protection of families and children contained in section 17(2) and the right to humane treatment</p>

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		<p>Recommends treatment of children and young people should consider their development and not simply their age given that a child’s maturity is not age-based.</p>	<p>when deprived of liberty contained in section 22(1)) were able to be relied upon in order to ensure the humane treatment of the detained children and secure their return to a properly established and functioning youth detention facility.</p>
16.	<p>Changes to other existing rights</p>	<p>Peaceful assembly and freedom of association (clause 22) <u>031 - Queensland Nurses & Midwives Union</u> Submits that these two rights should not be conflated, as peaceful assembly may not necessarily lead to collective action under freedom of association.</p> <p><u>136 – Respect Inc and Scarlett Alliance</u> Recommends right to peaceful assembly and freedom of association be amended to: include allowing any person of any occupation in Queensland to associate, support one another, and to share resources without unnecessary police intervention; and extend clause 22(2) to include professional bodies and representative organisations.</p> <p>Right to privacy and reputation (clause 25) <u>031 - Queensland Nurses & Midwives Union</u> Recommends that this right should be extended to incorporate the privacy of workers particularly in the use of technology (i.e. to provide that the use of technology cannot interfere with this right).</p> <p>Recognition and equality before the law (clause 15) <u>076 - Queensland Advocacy Incorporated</u> Recommends that the right to recognition and equality before the law should be expanded to include the right to equal and effective access to</p>	<p>DJAG notes the recommended changes to the drafting of the rights in the Bill and thanks the submitters for providing this feedback. DJAG will consider this feedback.</p> <p>In addition, DJAG notes the operation of the Act will be reviewed as soon as possible after 1 July 2023, pursuant to clause 95.</p>

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		<p>justice, including through the provisions of reasonable adjustments, to ensure equitable access to justice.</p> <p><u>067 – People with Disability Australia</u> Recommended right be amended to include a specific guarantee to procedural and age-appropriate accommodations (reasonable adjustments) in all legal proceedings including, as witnesses, in investigations and other preliminary stages.</p> <p><u>091 - Australian Lawyers for Human Rights</u> Submits that this right should be expanded to include the right to effective access and adjustments, i.e. incorporating the obligation to make reasonable adjustments to ensure more equitable access to justice.</p> <p>Fair hearing (clause 31) <u>019 – Protect All Children Today</u> Recommends that all children’s matters are held in closed courts.</p> <p><u>120 – Queensland Family and Child Commission</u> Recommends the right be amended so that judgements or decisions are required to be publicly available <i>unless in the best interests of the child</i>.</p> <p><u>035 – Townsville Community Legal Service Inc</u> Recommend amending the right to refer to an <i>expeditious</i>, fair and public hearing (by adding the word “expeditious”).</p> <p><u>103 – Queensland Law Society</u> Suggests amending clause 31 to include the word ‘expeditious’ as part of the ‘fair and public hearing’. Justification includes the Council of Europe, Committee of Ministers, Recommendation CM/Rec(2014) of the Committee</p>	

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		<p>of Ministers to member States on the promotion of human rights of older persons.</p> <p>Right to humane treatment when deprived of liberty (clause 30) <u>040 – Australian Association of Social Workers</u> Recommends amendment to reflect the recommendations of the Independent Review into Youth Detention.</p> <p>Rights in criminal proceedings (clause 32) and rights of children in the criminal process (clause 33) <u>090 – Office of the Public Guardian</u> Recommends that the provisions should be clarified so that a child’s capacity, as well as age, is taken into account.</p> <p>Protection of families and children (clause 26) <u>041 – Youth Advocacy Centre</u> Recommends the views of children be given due weight in decisions made about them.</p> <p><u>090 – Office of the Public Guardian</u> Clause 26 should be amended so that a child’s views about their best interests are taken into account.</p> <p><u>133 – Unicef Australia</u> Recommends the right should be amended to provide that the best interest of the child should be primary consideration in decisions concerning child and, when decisions are made about the adoption of a child, the best interests of the child should be the paramount consideration (consistent with <i>Convention on the Rights of the Child</i>).</p>	

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		<p><u>120 – Queensland Family and Child Commission</u> Recommends amendments to reference the four principles underpinning the United Nations Convention on the Rights of the Child (non-discrimination, devotion to the best interests of the child, right to life, survival and development and respect for the view of the child).</p> <p><u>125 – Bravehearts</u> Recommends that the rights in clause 26 be more explicitly set out, in line with the rights defined in the Convention on the Rights of the Child (with a particular concern about the rights of children to be safe from sexual, physical and psychological abuse and neglect).</p> <p><u>017 – Jennifer Faulkner</u> Recommends amending the right to name and registration (clause 26(3)) as the right does not recognise that Aboriginal and Torres Strait Islander people have never ceded sovereignty of the land. The government must work in consultation with indigenous elders before imposing such a law upon them.</p> <p>Right to health services (clause 37)</p> <p><u>014 – Dr Julie Debeljak</u> Recommended expanding the scope of the protection of the right to health as per art 12 ICESCR.</p> <p><u>041 – Youth Advocacy Centre</u> Expressed concern that the right to access health services is narrower than the right to the highest attainable standard of health and to facilities for treatment of illness and rehabilitation of health in the CROC, and recommends considering whether it should be amended.</p>	

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		<p><u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien</u> Submits that the environmental dimensions of the rights to food and water and the right to the highest attainable standard of health be explicitly acknowledged.</p> <p><u>035 – Townsville Community Legal Service Inc</u> Recommends amending the right to health services to reflect a broader right to health and access to health services as reflected by the General Comment No 14 of 2000.</p> <p><u>133 – unicef Australia</u> Submits that the Bill should expressly recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (as per Article 12 of the ICESCR). The right should go broader than a non-discriminatory basis</p> <p>Cultural rights for Aboriginal peoples and Torres Strait Islander peoples (clause 28)</p> <p><u>103 – Queensland Law Society</u> Recommends including the concepts contained in articles 26 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples in the Bill. These articles support the right of Aboriginal and Torres Strait Islander persons to self-determination and the right to full prior and informed consent, particularly in the context of decision making involving the contribution of Aboriginal and Torres Strait Islander voices and cultural tradition.</p> <p><u>116 – Griffith University</u> Submits that this is a limited recognition of cultural rights as it does not include key issues such as free, prior and informed consent, justice</p>	

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		<p>reinvestment, access to justice and provisions for the recognition and protection of vulnerable members of the Indigenous community including elders, women and youth.</p> <p>Submits that the provisions around cultural rights are not supported by any overarching mechanism, independent governing body or formal office to ensure the voices of Indigenous people are heard. The Bill should include provisions additional to cultural rights in clause 28, following a further consultation process to provide for the protection, not just the recognition of these rights; oversight and enforcement through greater Indigenous representation and consultation; and an appropriately funded redress scheme to address historical legacies.</p> <p><u>017 – Jennifer Faulkner</u> Recommends further consultation should occur with elders of each community, as clause 28(3) may increase the risk or, or actually imposes, forced assimilation. These people have the right to choose whether to become Australian citizens.</p> <p>Freedom of thought, conscience, religion and belief (clause 20) <u>052 – Alison Courtices</u> and <u>053 – Julia Mizuno</u> Submits that ‘belief’ is not defined and should be defined as including ‘non-religious beliefs’ to avoid any uncertainty that non-religious beliefs have equal protection to religious beliefs.</p> <p><u>106 – Australian Christian Lobby</u> Recommends right should be amended so it is consistent with ICCPR article 18.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>Property rights (clause 24) <u>134 – AgForce Queensland</u> Recommends clear provisions for the requirement of providing different forms of compensation to landholders for whom their property has been arbitrarily deprived.</p>	
WHO HAS RIGHTS?			
17.	<p>Should corporations have rights? (clause 11)</p>	<p><u>093 – Queensland Council for Civil Liberties</u> The Bill should be amended to provide for the situational model for determining whether or not a corporation is entitled to human rights as contained in the South African Constitution and the NZ Bill of Rights.</p> <p><u>068 – Australian Christian Legal Society</u> The religious freedom rights of not only individuals but also of corporate entities and other organisations should be protected.</p> <p><u>106 – Australian Christian Lobby</u> Clause 11 (Who has human rights) should be amended to recognise corporations have a long history of association with religious activity.</p> <p><u>116 – Griffith University</u> Government should consider how to encourage corporations to adopt human rights standards.</p> <p><u>026 – Monash University Castan Centre for Human Rights Law</u> Supports the restriction of human rights to natural persons – the exclusion of corporations as rights holders will help to ensure the Bill has</p>	<p>While some human rights legislation confers rights on corporations, the restriction of the application of human rights to natural persons in this Bill is consistent not only with the Victorian Charter, upon which the Bill is based, but also human rights legislation in other common law and Commonwealth jurisdictions (such as the Australian Capital Territory and United Kingdom).</p>

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		<p>the effect of increasing the capacities of the vulnerable and marginalised while reducing litigation in the field.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submit that the exclusion of corporations as having rights under the Bill is problematic as much of social life is undertaken through corporate form, including not only for-profit arrangements, but also not-for-profit social, religious and charitable organisations. Corporations are often best placed to insist on the respect for rights. Excluding corporations undermines the effective protection of human rights and creates uncertainty as to whether a corporation may be able to benefit from rights-protective provisions of the Bill when it is the means by which individuals are exercising their communal and associational rights.</p>	
18.	Expanded scope of protection (clause 11)	<p><u>004 - Dr Geralyn McCarron</u> Expressed the view that the Bill would be improved if it 'were to specify not only that all individuals <u>in</u> Queensland have human rights, but also all individuals seeking asylum in Queensland have human rights protected under Queensland as well as international law'.</p>	The application of human rights in the Bill to people in Queensland is consistent with the Victorian Charter, and other Commonwealth jurisdictions (such as the Australian Capital Territory and United Kingdom).
PUBLIC ENTITY			
19.	Definition of Public Entity (clause 9)	<p><u>035 Townsville Community Legal Service Inc</u> Recommended amending the definition of public entity to include an approved provider under the <i>Aged Care Act 1997</i> (Cwlth).</p> <p><u>088 – The Public Advocate</u> Recommended expanding protections of rights of older Australians receiving publically-funded aged care. The definition of 'registered provider'</p>	<p><u>Non-state schools</u> Consistent with the Victorian Charter, it is intended that the Bill not capture private or non-state schools within the definition of 'public entity' on the basis that they are not delivering services on behalf of the State, even though the functions of the non-state school may be of a public nature.</p>

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		<p>be specifically expanded to include publicly-funded aged care providers in addition to registered NDIS service providers.</p> <p><u>096 – Micah Projects</u> Recommended that the Bill be amended to ensure that there is greater clarity about all NGO’s working with people and schools (including non-government schools) being bound by the Act</p> <p><u>101 – Human Rights Law Centre</u> Expressed the view that the inclusion of the example about non-state schools should be omitted from clause 9(1)(h) as it causes unnecessary uncertainty and confusion.</p> <p><u>025 – LawRight</u> Submitted that while the Bill has application to the Courts, by virtue of cl 9(4)(c) this is limited to when the courts are acting in an administrative capacity, which is not further defined. The Bill should provide clarity about what is ‘an administrative capacity’.</p> <p><u>024 – Australian Lawyers Alliance</u> Submitted that the statutory example of a non-state school should be removed as it only adds to the uncertainty associated with the definition. Unlike the Bill the Victorian Charter provides further clarification of the phrase ‘on behalf of the state or a public authority’ in subsections 4(4) and (5) Victorian Charter. This should be adopted in the Bill.</p> <p>Submitted that while supportive of the opt-in provisions for entities (see clause 60), to complement these provisions there would be comprehensive promotion and encouragement of the opportunity to voluntarily elect to be subject to the HRA; and the development of a Government tender pre-</p>	<p><u>Aged care services</u> Aged care service providers may be captured by the definition of ‘public entity’ depending on whether they fall within the definition in the Bill, i.e. the entity is in and for Queensland; <u>and</u> the functions are of a public nature; <u>and</u> the functions are being performed on behalf of the State (Qld) or a public entity.</p> <p>The Bill includes matters that may be considered in deciding whether a function is of a public nature and provides a non-exhaustive list of functions of a public nature, including public health services and public disability services. Although not specifically included in the list, ‘public aged care’ and ‘public out-of-home and residential care’ will be captured where the other criteria of the definition are met, and depending on the circumstances.</p> <p>For example state government operated aged care facilities will be captured by the definition of public entity.</p> <p><u>A court acting in administrative capacity</u> The meaning of when a court is acting in ‘an administrative capacity’ will be a matter for the courts to determine in practice and in the context of the specific circumstances.</p> <p>While courts will be captured as public entities when acting in an administrative capacity, clause 5 of the Bill also provides that the Act will apply to Courts (regardless of whether they are acting in an administrative capacity or not) to the extent</p>

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		<p>qualification process in which prospective tenderers for government contracts have to satisfy their capacity to adhere to the HRA.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submitted that the opt-in provision (clause 60) could have unpredictable consequences on the law applicable to such bodies, as it would engage the operative provisions of the Bill i.e. the interpretative obligation; the procedural obligations. It is also unnecessary and perverse given that private bodies are free to bind themselves to treat others in particular ways by virtue of the machinery of private laws.</p> <p>Also submitted that the scope of the application of the Bill is uncertain and unclear. While the clarification provided by the example of the exclusion of non-State schools is welcome, it raises the question of other entities that perform public functions.</p> <p><u>093 – Queensland Council for Civil Liberties</u> Submitted that the definition of ‘public entity’ is too narrow and the Bill should apply to all bodies, whether public or private, which provide government services under contract with government or using government funds. This should include private schools.</p> <p><u>82 - Dr Louise Phillips and Professor Peter Renshaw</u> Submitted that private schools should be included as public entities, particularly to ensure the right to education is upheld.</p> <p><u>115- Sarahann Newman</u> Submitted that all human rights principles and relevant provisions of the Bill must apply to all and be observed by all, including OPT, OPG and QCAT.</p>	<p>that they are performing functions under part 2 and part 3, division 3 of the Bill.</p> <p><u>‘on behalf of the state’</u> It was not considered that subsections 4(4) and (5) of the Victorian Charter assisted in further clarifying the relationship between the State and an entity given the great variety in arrangements that might exist between the state and other entities in delivering public functions.</p> <p><u>Other issues</u> Statutory bodies that fall within the definition of ‘government entity’ in the <i>Public Service Act 2008</i>, section 24, are specifically included in the definition of a ‘public entity’ for the purposes of the Bill.</p> <p>Private entities whose functions include functions of a public nature will be captured by the definition of ‘public entity’ when they are performing those functions on behalf of the State or a public entity.</p> <p>In determining whether entities, other than core public entities, are captured by the legislation, it will be necessary to consider the particular characteristics of the entity, its relationship with the State government, and the nature of the functions that are being performed (i.e. are they public functions).</p> <p>It is intended that entities that opt-in to the human rights regulatory framework, via the mechanism provided in clause</p>

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		<p><u>094 – Queensland Mental Health Commission</u> Submitted that entities that receive Government funding and provide services similar to public entities (such as private hospitals and private schools) should be captured as public entities.</p> <p><u>124 – Spinal Life Australia</u> Supported the inclusion of functional public entities in the definition, noting that there will need to be sufficient clarity regarding Public Private Partnerships (PPP) that involve funders and suppliers in a partnership contract with government</p> <p><u>087 – Petros Khalesirad</u> Concerned about the lack of clarity about what is a public entity (specifically regarding transport providers).</p> <p><u>015 – Ann Kreger</u> Expressed the view that exemptions should not function to provide a safe haven for those providing public services such as education to avoid accountability of the same standard applied to public entities.</p> <p><u>085 – The Royal Australian & New Zealand College of Psychiatrists</u> Expressed the view that given private entities, for example, a private hospital or a private school both receive substantial public funding, and arguably provide a public function, it is not clear why they are not considered public entities (for the purposes of the Bill).</p> <p><u>080 – Anti-Discrimination Commission Qld</u> Submitted that the explanatory notes do not address the reason for excluding non-state schools from the definition of public entity. Education is a state responsibility irrespective of whether it is delivered by public or</p>	<p>60 of the Bill, will be subject to the obligations and consequences of non-compliance with the obligations in the same way as other public entities.</p>

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		State educational authorities. The definition of public entity should include all educational authorities.	
20.	<p>List of Public Functions (clause 10)</p>	<p><u>035 Townsville Community Legal Service Inc</u> Recommended amending clause 10(3)(b) to include public ageing services.</p> <p><u>101 – Human Rights Law Centre</u> Submitted that the non-exhaustive list of public functions should be expanded to include other vital services such as aged care and out of home services. For further certainty the Bill should prescribe that organisations performing the functions in clause 10(3) are public entities when performing the listed public functions.</p> <p><u>024 – Australian Lawyers Alliance</u> Submitted while welcoming the examples of functions of a public nature, cl 10(3) should also include the provision of gas, electricity and water as functions of a public nature. This is consistent with the ACT HRA and acknowledges that functions that were once provided by government are now provided by private entities on behalf of the state.</p>	The current list of functions of a public nature is a non-exhaustive list and not intended to exclude particular categories that are omitted.
THE LIMITATIONS CLAUSE			
21.	<p>General limitations provision (clause 13)</p> <p>The limitations clause is too vague</p>	<p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> The limitations clause is vague and open-ended. The carefully-defined limitations clauses that appear in particular provisions of the ICCPR would have been preferable.</p> <p>This clause is a ‘laundry list’ of considerations that might be relevant to the reasonableness of a limit on a right. It offers judges an open-ended framework for lawmaking choice, for reasoning about what should be done by way of statute and administrative action and the standards of</p>	<p>The Bill recognises that human rights are not absolute and must be balanced against other rights and public policy issues of significant importance.</p> <p>The general limitations clause (clause 13) sets out a framework for deciding when and how a human right may be limited by providing that a human right may be limited if it is authorised by law <u>and</u> reasonable and demonstrably justified</p>

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		<p>justice and decency that should govern our public life. These are political questions.</p> <p><u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien</u> Rights which are commonly subject to limitations, such as freedom of expression, freedom of assembly, freedom of religion, should be defined in more detail to make clear when limitations on their enjoyment will be permitted.</p> <p>Recommended that the non-derogable status of freedom from torture and freedom from slavery should be recognised.</p> <p><u>60 - Russell Wattie</u> The Bill should not allow exemptions to the standards laid out in the Bill itself.</p>	<p>in a free and democratic society based on human dignity, equality and freedom.</p> <p>The general limitations clause sets out the factors that may be relevant in deciding if a limit is reasonable and justified. These factors are intended to broadly align with the principle of proportionality in international human rights jurisprudence and also structured proportionality as reflected in numerous High Court cases in testing whether a limit on the implied freedom of political communication can be justified (e.g. in <i>McCloy v New South Wales</i>; <i>Brown v Tasmania</i>).</p> <p>The reference to ‘demonstrably justified in a free and democratic society’ means that a law is not permitted that would be inconsistent with our system of law and government.</p> <p>Implied legitimate reasons for limiting rights (as drawn from human rights jurisprudence) that are consistent with a free and democratic society include:</p> <ul style="list-style-type: none"> • public interest considerations (including national security and community safety); and • protection of the rights of others (for example, children and domestic violence victims). <p>The approach taken in clause 13 in setting out the factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable, is proposed to both provide guidance but also to allow flexibility, so that a certain</p>

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			<p>approach is not mandated and the approach can develop over time.</p> <p>This approach allows for a greater degree of transparency and a more structured approach to analysing when and how rights can be limited. It will also allow for a flexible judgement that takes into account all the circumstances of the case.</p>
22.	<p>General limitations provision (clause 13) - Some rights should not be limited</p>	<p><u>014 – Dr Julie Debeljak</u> The general limitations provision (clause 13) should not apply to those human rights which are recognised as absolute: prohibition on genocide; the prohibition on torture or cruel, inhuman or degrading treatment or punishment; the prohibition on prolonged arbitrary detention; the prohibition on imprisonment for failure to fulfil a contractual obligation; the prohibition on the retrospective operation of criminal laws; the right of everyone to recognition everywhere as a person before the law; and the right to freedom from systematic racial discrimination.</p> <p><u>025 – Law Right</u> The general limitations provision (clause 13) should not apply to those human rights which are recognised as absolute: the prohibition on torture or cruel, inhuman or degrading treatment or punishment; and the right to be free from slavery and servitude.</p> <p><u>006 - Odin’s Warriors Motorcycle Club</u> Expressed the view that in light of clause 11, which sets out that individuals in Queensland have human rights, ‘no corporation or public entity has overriding ability to limit those rights and nor should they’; and also that the ability to certify exceptional circumstances (to justify an override declaration) will ‘severely diminish from the inherent rights of every individual living under Queensland laws and legislation’.</p>	<p>While it is acknowledged that international law provides that some rights are non-derogable, and are acknowledged as absolute, a policy decision was made to include a general limitations provision.</p> <p>This is the approach also taken in the Victorian Charter and the ACT Human Rights Act.</p> <p>While the limitations clause provides that rights may be limited, this is restricted to limitations that:</p> <ul style="list-style-type: none"> • are lawful; and • can be justified in a free and democratic society based on human dignity, equality and freedom. <p>It is expected that in interpreting whether an act, decision or statutory provision was compatible with a human right that is acknowledged as absolute in human rights jurisprudence (such as the prohibition on torture) that courts would consider international jurisprudence and whether the limitation of such rights could be demonstrably justified in a free and democratic society.</p>

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		<p>Expressed the view that the ability under the Bill to limit human rights where it is reasonable and justifiable (clause 13) should be included but ‘without the restriction of compatibility’.</p> <p>Expressed the view that there should be no mechanism at law to override or limit the right to peaceful assembly and freedom of association, and the right to privacy (particularly given that in the submitter’s view ‘the right is currently being breached by government entities that constantly and publicly refer to innocent men as ‘criminal gangs’ and ‘outlawed gangs’ when referring to legitimate motorcycle clubs without any avenue of remedy available’).</p> <p><u>068 – Australian Christian Legal Society</u> Expressed concern that the reasonable limitations clause weakens the protection for religious freedom in international law.</p>	
STATEMENTS OF COMPATIBILITY			
23.	Statement of compatibility (clause 38) – Enhancements to the statement	<p><u>014 – Dr Julie Debeljak</u> The statement of compatibility must require evidence for the member’s opinion that either the Bill is or is not compatible with human rights and if so how it is compatible or not compatible with reference to cl 7(2) (the limitations provision).</p> <p><u>026 – Monash University Castan Centre for Human Rights Law</u> The statement of compatibility must require evidence for the member’s opinion that either the Bill is or is not compatible with human rights and if so how it is compatible or not compatible with reference to cl 7(2) (the limitations provision).</p>	The intention is that the statement of compatibility will do more than merely assert compatibility or otherwise. It should provide detailed reasons and justification in respect of any human rights that may be impacted by the Bill which is the subject of the statement.

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		<p><u>069 – Amnesty International Australia</u> Recommends that the parliamentary scrutiny provisions in the Bill be amended to ensure statements of compatibility are of a high quality, evidence based standard, and that parliamentary procedures be reformed to ensure bills cannot be passed without adequate consideration of the statements of compatibility and relevant committee reports</p>	
24.	<p>Statement of compatibility (clause 38) – A risk these statements will be relied upon in litigation</p>	<p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> There is a risk that these statements may be relied upon in litigation. In the UK courts have sometimes reasoned that because the Minister certified that proposed legislation conformed to rights, judges were entitled to impose a very strained meaning on the statute in order to secure the result the judges thought respected rights.</p>	<p>It is not unusual for extraneous material, including documents tabled in Parliament accompanying a Bill (such as explanatory notes) to be used as an aid in statutory interpretation, although they are not determinative.</p> <p>As discussed further below, the interpretative provision (clause 48) has been drafted with the policy intention of avoiding a remedial approach by the courts associated with human rights legislation in some international jurisdictions. The emphasis on giving effect to the legislative purpose means that the provision is not intended to authorise a court to depart from Parliament’s intention.</p>
SCRUTINY BY PARLIAMENT			
25.	<p>Role of Parliamentary Committee- Mandatory examination (clause 39)</p>	<p><u>008 - Professor George Williams and Dr Janina Boughey</u> Expressed the view that, to ensure that the portfolio committee has the time it needs to conduct its analysis, the Bill should be amended to reflect the approach taken in the ACT, to require that no bill will proceed to debate until the (portfolio) committee has reported (on compatibility of the relevant bill with human rights).</p>	<p>A provision requiring Parliament to delay the passing of legislation until the portfolio committee has had adequate time to consider a Bill’s compatibility with human rights is not considered necessary in Queensland, as most bills introduced into the Legislative Assembly are referred to a parliamentary committee which is required to report on the bill within a specified period of time (between six weeks and six months). This allows the parliamentary committee adequate</p>

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		<p><u>014 – Dr Julie Debeljak</u> The committee scrutiny process should be compulsory and failure to comply with the process should mean that any Bill that becomes an Act is not a valid Act.</p> <p><u>026 – Monash University Castan Centre for Human Rights Law</u> The committee scrutiny process should be compulsory and failure to comply with the process should mean that any Bill that becomes an Act is not a valid Act.</p> <p><u>101 – Human Rights Law Centre</u> It is important that there is a thorough and detailed consideration of the statement of compatibility and the Bill by the Parliamentary committee. Clause 39 should be amended to provide greater formal opportunity for public submissions and hearings on Bills that raise significant human rights concerns; provide that other than in exceptional circumstances legislation should not be passed before the Parliamentary Committee has provided its report; and require the responsible Minister to respond substantively to any concerns raised by the portfolio committee prior to the passage of the Bill.</p>	<p>opportunity to consider the compatibility of a bill with human rights before the bill is debated.</p> <p>Standing order 136 of the <i>Standing Rules and Orders of the Legislative Assembly</i> provides a portfolio committee must report to the House on a bill (unless it is an urgent bill) within six calendar months of the bill being referred. The House may set an alternative report date provided it is for a period of not less than six weeks.</p>
26.	<p>Role of Parliamentary Committee- A dedicated committee – and/or expertise (clause 39)</p>	<p><u>014 – Dr Julie Debeljak</u> A stand-alone Parliamentary Committee should be established to scrutinise rights compatibility of legislation.</p> <p><u>026 – Monash University Castan Centre for Human Rights Law</u> A stand-alone Parliamentary Committee should be established to scrutinise rights compatibility of legislation.</p> <p><u>080 – Anti-Discrimination Commission Qld</u> In the absence of specialist parliamentary committee to scrutinise legislation for compatibility with human rights, the portfolio committees</p>	<p>The Bill does not create a stand-alone parliamentary committee. Clause 39 provides that the portfolio committee responsible for examining a Bill introduced into the Legislative Assembly must consider the Bill and report to the Assembly about whether the Bill is not compatible with human rights and consider the statement of compatibility and report to the Assembly about the statement.</p> <p>All Parliamentary committees play an important role in facilitating parliamentary and broader public debate about proposed laws. In the context of human rights legislation,</p>

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		<p>will need expert advice. Recommends that the Office of the Queensland Parliamentary Counsel (OQPC) be given the function to provide advice to Ministers and Members of parliament on human rights. The <i>Legislative Standards Act 1992</i> should be amended to give OQPC this function.</p> <p><u>122 - Environmental Defenders Office (Qld) Inc.</u> The Bill could establish a joint Parliamentary Human Rights Committee with the power to declare incompatible legislation to be invalid and unable to be passed unless adequate explanation is provided as to why a proposed breach is necessary.</p>	<p>they can assist Parliament in assessing the human rights implications of new laws, expose legislation to effective scrutiny independent of the Executive and allow for public participation in the human rights dialogue and debate. It is intended that portfolio committees will play an important role in promoting greater awareness of human rights.</p>
OVERRIDE DECLARATIONS			
27.	Override Declarations (clause 43)	<p><u>006 – Odin’s Warriors Motorcycle Club</u> Expressed concerns about the ‘ability of the parliament to introduce legislation that is “incompatible” with human rights as granted by common law and international covenants to which we are signatories’ (i.e. the override declaration facility), and expressed the view that all reference to ‘compatibility’ should be removed from the Bill.</p> <p><u>014 – Dr Julie Debeljak</u> Submitted that as statutory protection of human rights preserve parliamentary sovereignty, override provisions are superfluous. If it is included it must operate within the strict confines of the operation of derogation at the international level as reflected in Article 4 of the ICCPR. Such an approach would provide that certain rights are non-derogable, and for those rights that are derogable, derogation must be strictly limited (e.g. to times of emergency threatening the life of the nation) and limited in time and effect (ie. the five year sunset limit is too long).</p>	<p>Clause 43 allows Parliament to expressly declare in an Act, via an <i>override declaration</i>, that an Act or a provision of an Act has effect despite being incompatible with one or more human rights.</p> <p>The Bill provides that it is the intention of Parliament that an override declaration will only be made in exceptional circumstances, for example, war, a state of emergency or an exceptional crisis situation constituting a threat to public safety, health or order.</p> <p>An override declaration has effect for five years after the day on which the provision commences, or on an earlier day stated in the relevant Act, and Parliament may re-enact an override declaration at any time.</p>

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		<p><u>026 – Monash University Castan Centre for Human Rights Law</u> Submitted that as statutory protection of human rights preserve parliamentary sovereignty, override provisions are superfluous.</p> <p><u>024 - Australian Lawyers Alliance</u> Submitted that the override declaration facility is not supported and should be removed as it undermines the dialogue model of the Bill. It is not needed as in a statutory model of protection of human rights Parliament retains sovereignty.</p> <p><u>080 – Anti-Discrimination Commission Qld</u> Recommended that OQPC be given the function of recording and publishing details of override declarations made. The <i>Legislative Standards Act 1992</i> should be amended to give OQPC this function.</p> <p><u>117 – Community Legal Centres Queensland</u> Australian Lawyers Alliance submitted that the Bill should be amended to remove ability of Parliament to override the HR Act; and remove clause 58(6) relating to the validity of acts and decisions;</p> <p><u>016 – Kim Graham</u> Indicated concerns regarding the ability of parliament to introduce legislation that is ‘incompatible’ with the Bill (the override clause). Submits that all references to ‘compatibility’ should be removed from the Bill.</p> <p><u>022 – Steve Clancy</u> Indicated concern about the override clause – believes if legislation takes away human rights it is the wrong legislation. Unconditional rights are needed.</p>	<p>The provision reflects the clear position that, under this model of human rights legislation, Parliament remains sovereign and may, if it wishes, intentionally pass legislation that is not consistent with human rights.</p>

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		<p><u>045 – Christopher Merans</u> Indicated concern about the override clause – believes government actions that are contrary to Part 2 are the very essence of why the Bill was proposed, and it cannot be acceptable that any part of the proposed legislation can provide a way to easily avoid its main intent; Submitted that Part 3 (Application of Human Rights in Queensland) should be revised to lessen the ability of the government to override the principles and application of the legislation’s intent.</p> <p><u>071 – Children and Young People with Disability Australia</u> Recommended that clause 43 be amended so that specific rights cannot be overridden, in line with article 4 of the ICCPR.</p> <p><u>60 - Russell Wattie</u> Believes the Override declaration serves to allow government to not comply if it doesn’t want to</p> <p><u>019 – Protect All Children Today</u> Appreciates the need for the override provisions</p> <p><u>111 - Andrea Gray</u> Objects to the override provision - Parliament should not be able to pass legislation that is not compatible with human rights.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submitted that the override declarations clause is highly problematic. As the Bill is framed on the presupposition that legislation that does not conform to human rights remains valid, there is no reason for an override declaration.</p>	

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INTERPRETATION OF LAWS			
28.	Interpretative provision (clause 48) – need for a ‘strengthened provision’	<p><u>008 - Professor George Williams and Dr Janina Boughey</u> Suggested that clause 48 of the Bill (the interpretative provision) be amended to read as follows:</p> <p style="text-align: center;"><i>So far as it is possible to do so consistently with their <u>language, context and purpose</u>, all statutory provisions must be interpreted in the way that is most compatible with human rights.</i></p> <p>This amended wording would ‘strengthen the effect of section 48 to give it more effect than its ACT and Victorian equivalents, and would ‘indicate to courts and tribunals that section 48 is intended to be stronger than its Victorian and ACT counterparts, and that where there are multiple possible interpretations of a provisions, the courts should prefer the interpretation that best protects human rights, over all other interpretations’.</p> <p><u>014 – Dr Julie Debeljak</u> Clause 48 should be redrafted to make it clear that the parliament intends a remedial approach to interpretation rather than a simple codification of the principle of legality (that is the approach in the British decision of <i>Ghaidan v Godin-Mendoza</i> [2004] UKHL 30 (<i>Ghaidan</i>). The extraneous material, including explanatory notes should also be redrafted to make this clear.</p> <p><u>026 – Monash University Castan Centre for Human Rights Law</u> Clause 48 should make it clear that if primary legislation is interpreted compatibly with human rights, yet delegated legislation enacted under that</p>	<p>The interpretative provision in the Bill (clause 48) has been drafted in light of criticism and interpretations of the equivalent provision in the Victorian Charter, particularly the decision of the High Court in <i>Momcilovic v The Queen</i>.</p> <p>The provision in the Bill makes it clear that the principle of proportionality has a role to play in interpretation (which was a point of contention in <i>Momcilovic</i>). This is done by clarifying the relevance and connection to the general limitations provision (clause 13). The meaning of ‘compatible with human rights’ in clause 8 provides that an act, decision or statutory provision is compatible with human rights if it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 (the general limitations provision). Clause 13 improves on the Victorian limitations provision by providing further clarification about the factors that go to proportionality by drawing on the test of ‘structured proportionality’ that has been adopted by the High Court.</p> <p>The provision has been drafted with the policy intention of avoiding a remedial approach by the courts associated with human rights legislation in some international jurisdictions. The emphasis on giving effect to the legislative purpose means that the provision is not intended to authorise a court to depart from Parliament’s intention.</p>

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		<p>legislation cannot be interpreted compatibly, the result will be a judicial finding that the delegated legislation is ultra vires and invalid.</p> <p><u>039 – Joint University of Queensland Law Academics, TC Beirne School of Law</u></p> <p>The interpretative provision should be redrafted to clarify the interpretative role of the courts, in particular to make it clear that the Human Rights Act gives the court an interpretative role beyond the principle of legality. The interpretative provision should also require courts to consider relevant judgements, decision or advisory opinions of domestic, foreign or international courts and tribunals relevant to determining a question which has arisen in connection with a human right which is relevant to the proceedings.</p> <p><u>116 – Griffith University</u></p> <p>The Bill should be amended to provide that “So far as it is possible to do so consistently with their language, context and purpose, all statutory provisions must be interpreted in a way that is most compatible with human rights.’</p> <p><u>122 - Environmental Defenders Office (Qld) Inc.</u></p> <p>The Human Rights Act should be made to prevail over other legislation to the extent of any inconsistencies.</p>	<p>Therefore it is not intended that the provision empower courts to remedy deficient legislation, by changing the meaning of legislation so as to make it compatible with human rights.</p> <p>This is reflected in the emphasis on giving effect to the <u>purpose of the statute</u>. It is expected that the approach under clause 48 would be similar in nature to the common law principle of legality (that is, that absent words of clear intent that a statutory provision should be interpreted in a way that is compatible with fundamental rights). Nevertheless, it is still considered that the statutory requirement in the Bill would point to a stronger approach, and may for example involve a court departing from the literal or grammatical meaning of the words in a statute in exceptional circumstances.</p> <p>Clause 48 clarifies that if the court is unable to interpret a statutory provision compatibly with human rights, the provision must, <u>to the extent possible that is consistent with its purpose</u>, be interpreted in a way that is ‘most compatible’ with human rights.</p> <p>Unlike the Victorian provision, clause 48(2) makes it clear that the interpretative provision has work to do in directing the court to select the option which is most compatible with human rights, even though none of the options available are compatible with human rights. This means that if a provision can be interpreted in more than one way but none of the options would be compatible with human rights, then the court should apply proportionality to each of the available</p>

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			<p>options and select the option that is most compatible with human rights.</p> <p>This clause also makes it clear that if a court cannot interpret a provision in a way that is compatible with human rights that this does not affect the validity of an Act, provision of an Act or a statutory instrument empowered by an Act. This is important under a 'dialogue' model as it maintains the sovereignty of Parliament.</p>
29.	<p>Interpretative provision (clause 48) – the interpretative clause is not appropriate for the courts</p>	<p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Courts are under a current duty to interpret statutory provisions in accordance with orthodox principles of statutory construction. Introducing a new interpretative direction will constitute a significant change in the relationship between the courts and the Parliament and will increase the relative power of the courts. It will also introduce uncertainty into Queensland law with every prospect that over time judges will be encourage to understand that this provision empowers them to change the meaning of statutes.</p>	<p>As discussed above, the provision has been drafted with the policy intention of avoiding a remedial approach by the courts associated with human rights legislation in some international jurisdictions. The emphasis on giving effect to the legislative purpose means that the provision is not intended to authorise a court to depart from Parliament's intention.</p>
<p>REFERRAL TO THE SUPREME COURT</p>			
30.	<p>Referral of questions about the HR Act to the Supreme Court</p>	<p><u>019 – Protect All Children Today</u> Supports the clauses in relation to referral to the Supreme Court and the involvement of the Attorney-General</p> <p><u>024 - Australian Lawyers Alliance</u> Noted that a referral to the Supreme Court is limited to where there is a proceeding. The submitter considered that all existing legislation and policies in Queensland should be reviewed and amended upon</p>	<p>Only the Supreme Court is empowered by the legislation to make a declaration of incompatibility (i.e. a declaration that a provision cannot be interpreted in a way that is compatible with human rights).</p> <p>A lower court or tribunal may refer a question of law or a question relating to interpretation of a statutory provision to the Supreme Court in certain circumstances (see clause 49),</p>

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		<p>commencement of the Act. This would serve as a proactive measure in reducing the need to for an independent right of referral to the Supreme Court for declarations of incompatibility.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> While the Bill provides that no one may apply to the court for a declaration, and that it may only be made as a side-effect of other proceedings, it is likely parties will attempt to frame disputes in order to provide courts with the opportunity or responsibility to denounce legislation.</p>	<p>for example, when a question of law arises that relates to the application of the HR Act or a question arises in relation to the interpretation of a statutory provision in accordance with the HR Act.</p> <p>There is no capacity to make a standalone or separate application to the Supreme Court to consider the human rights compatibility of legislation and this is consistent with the model of the Bill.</p> <p>A consideration of whether further or different provision should be made in the HR Act about proceedings that may be brought or remedies, will be undertaken in the review of the HR Act in 2023 (see clause 95(4)(b)).</p>
INTERVENORS			
31.	<p>Who may intervene in proceedings before a court or tribunal when a question arises in relation to the HR Act? (Clauses 50 and 51)</p>	<p><u>019 – Protect All Children Today</u> Supports the clauses in relation to referral to the Supreme Court and the involvement of the Attorney-General</p> <p><u>035 – Townsville Community Legal Service Inc</u> Submitted that the right to intervene in proceedings should be extended beyond the Attorney-General and the Queensland Human Rights Commission, to allow an intervener to assume a special interest or contradictor role in limited situations.</p>	<p>Clauses 50 and 51 of the Bill ensure that the Attorney-General and the QHRC may intervene in and be joined as a party to a proceeding before a court or tribunal where:</p> <ul style="list-style-type: none"> • a question of law arises that relates to the application of the HR Act; or • a question arises in relation to the interpretation of a statutory provision in accordance with the HR Act. <p>Allowing the QHRC to intervene in relevant proceedings will enable it to act, in some way, as an independent and expert advocate in relation to the interpretation of the Bill and its</p>

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		<p><u>036 – Women’s Legal Service Qld</u> Submitted that clauses 50 and 51 could be amended to allow advocacy groups with specialised skills and expertise to have the ability with leave, to intervene in matters concerning human rights.</p> <p><u>039 – Joint University of Queensland Law Academics, TC Beirne School of Law</u> Submitted that guidelines should be developed in order to assist persons or bodies seeking leave to apply as an amicus curiae in respect of human rights issues in Queensland (similar to those developed by the Australian Human Rights Commission).</p> <p><u>090 – Office of the Public Guardian</u> Raised an issue in relation to the Attorney-General’s ability to intervene in proceedings if the Attorney-General is the entity subject to a human rights complaint</p> <p><u>117 – Community Legal Centres Queensland</u> Supported the submissions made by Townsville Community Legal Service Inc (035) and the Joint University of Queensland Law Academics, TC Beirne School of Law (039) in relation to extending the intervenor provisions.</p>	<p>application to the particular circumstances before the court or tribunal.</p> <p>In the absence of a specific provision in the Bill, it is arguably open to the relevant court or tribunal to exercise its discretion as to whether leave should be granted to a person seeking leave to intervene in a proceeding (or leave to appear as amicus curiae).</p> <p>In the event that the Attorney-General is a party (i.e. respondent) to the proceeding, then there would be no need for the Attorney-General to intervene in the proceedings as contemplated under clause 50 of the Bill as the interests of the Attorney-General would already be represented in the proceedings.</p>
DECLARATIONS OF INCOMPATIBILITY			
32.	Drafting and operation of declaration of incompatibility (clause 53)	<p><u>103 – Queensland Law Society</u> Indicated a concern that the functions of the Supreme Court, set out in clause 53 might be perceived not to fit within a judicial officer’s role. The submitter expresses concern about the involvement of judicial officers in making declarations of incompatibility and the subsequent referral of</p>	<p>Clause 53 sets out when the Supreme Court may make a declaration of incompatibility, that is, a declaration that the court is of the opinion that a statutory provision cannot be interpreted in a way that is compatible with human rights.</p>

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>those declarations to the Attorney-General and relevant parliamentary committees. In the submitter’s view, the substance of a declaration of incompatibility can be contained within a judicial officer’s judgement. Recommended that all statements of incompatibility and the corresponding government response be provided as a requirement, to the QHR Commissioner. The Commissioner should then be empowered to publish these statements and the corresponding response as part of their annual report or on a public register of human rights issues.</p> <p><u>104 – Dr Nicky Jones and Dr Jeremy Patrick</u> Recommended that the Bill should be amended so that declarations of incompatibility give rise to causes of action.</p> <p><u>071 – Children and Young People with Disability Australia</u> Submitted that there is a lack of accountability and enforcement mechanisms in the Bill, in that statements of compatibility are not binding on any court or tribunal and a declaration by the Supreme Court of incompatibility has no effect on the validity of the statutory provision.</p> <p><u>026 – Monash University Castan Centre for Human Rights Law</u> Recommended that there should be a provision in the Bill that higher courts are empowered to make a Statement/ Declaration of Inconsistent Interpretation, consistent with the Victorian Charter, including a requirement that the Minister respond within six months.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submitted that the Declaration of Incompatibility process will constitute a significant change in the relationship between the Supreme Court and the Parliament and the executive. It will politicise litigation, arming courts to participate in democratic politics, exposing them to political criticism.</p>	<p>The provisions, while based on the Victorian Charter, have been drafted taking into account jurisprudence and the 2015 independent review of the Victorian Charter – the Young Review.</p> <p>The meaning of the term ‘compatible with human rights’ is set out in clause 8 of the Bill. This makes it clear that the proportionality analysis in clause 13 is relevant to the exercise of the court’s power to make a declaration. This effectively narrows the scope of the court’s power to issue a declaration since the court may only issue a declaration after the court has first considered whether a limit on a human right is reasonable and demonstrably justifiable in accordance with clause 13, and concluded that it is not</p> <p>The relationship between the legislature and the judiciary is maintained under the provision because the court is not empowered by the Act to invalidate legislation even if a declaration of incompatibility is made. This is consistent with the dialogue model of the Bill.</p> <p>Allowing a court to invalidate legislation that was not compatible with human rights would be incompatible with this model of human rights legislation i.e a dialogue model where parliament remains sovereign.</p>

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		<p>Further submitted that while the Bill provides that no one may apply to the court for a declaration, and that it may only be made as a side-effect of other proceedings, it is likely parties will attempt to frame disputes in order to provide courts with the opportunity or responsibility to denounce legislation</p> <p><u>111 - Andrea Gray</u> Courts should be able to invalidate legislation that is not compatible with human rights.</p>	
OBLIGATIONS ON PUBLIC ENTITIES			
33.	Obligation on public entities (clause 58)	<p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submitted that clause 58 which makes it unlawful for a public entity to act or make a decision in a way that is not compatible with human rights, will constitute a significant change in the relationship between the courts and the executive, particularly because unlawfulness can be a ground on which a person may seek relief from a court pursuant to the requirements of clause 59</p>	The Bill, if enacted, will create a new ground of unlawfulness on the basis of contravention of the HR Act, however, in order to seek remedy or relief through the courts, the complainant will need to establish a separate or independent claim to which the ground of unlawfulness under the HR Act may be attached. In this way, the court already has an existing/ independent role to play in reviewing the decisions and acts of the executive (public entities).
34.	Reporting (clause 97)	<p><u>103 – Queensland Law Society</u> Recommended that government departments and agencies should be required to report on the implementation of the human rights legislation in their annual reports, and that departments and agencies be required to develop human rights action plans.</p>	Clause 97 of the Bill requires certain public entities, i.e. entities that are required to prepare an annual report under the <i>Financial Accountability Act 2009</i> , to include details about: any actions taken to further the objects of the HR Act; human rights complaints and how they were dealt with; and any review of policies, programs, procedures, practices or services undertaken in relation to their compatibility with human rights.

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35.	<p>Exemptions from the obligations (clause 58)</p>	<p><u>101 – Human Rights Law Centre</u> Submitted that the exemption in clause 58(3) for a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned, should be removed. While drafted in similar terms to the <i>Anti-Discrimination Act 1991</i> section 109(1)(d) the ADA does not allow religious schools to discriminate against students, teachers or staff on the basis of sexual orientation, gender identity, relationship or marital status or pregnancy.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> Submitted that the religious exemption raises two issues: firstly it implies that some religious bodies may fall within the definition of public entity; further it colours the interpretation of the right to freedom of religion.</p> <p><u>080 – Anti-Discrimination Commission Qld</u> Submitted that it is unclear what is covered by the exemption for acts or decisions of a private nature and the Bill should clarify this.</p>	<p>The obligations on all public entities imposed by the Bill (clause 58) do not apply in the following circumstances:</p> <ul style="list-style-type: none"> • if the entity could not reasonably have acted differently or made a different decision because of another law. In this case, the statutory provision under which the decision is made may be incompatible with human rights, but the public entity will not be breaching its obligations under the HR Act if it has acted or made a decision in accordance with that legislation; • to bodies established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of that religion. <p>This exception is consistent with the exception contained in other Queensland legislation, i.e. the <i>Anti-Discrimination Act 1991</i>. In Victoria, a similar exemption for religious bodies has received some criticism. However the 2015 review of the Charter (the Young review) recognised the need for a consistent approach across legislation, and recommended that the issue be considered alongside a review of the religious exemptions in the Victorian <i>Equal Opportunity Act 2010</i>. To ensure consistency with other Queensland laws, it is not proposed to remove the exemption at this stage.</p>

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			<ul style="list-style-type: none"> • acts or decisions of a private nature, i.e. the obligations on public entities will only apply when they are acting or making decisions of a public nature, as distinct from decisions of a private nature (for example decisions that a public servant decision maker may make about how they spend their personal time; or a decision of a private company operating a prison about another aspect of their business unrelated to their public functions).
36.	Validity of decisions – (clause 58(6))	<p><u>101 – Human Rights Law Centre</u> Submitted that clause 58 should be amended to provide that decisions or actions of public entities that are unlawful under clause 58(1) are invalid.</p> <p><u>024 – Australian Lawyers Alliance</u> Submitted that clause 58(6), that provides that an act or decision of a public entity is not invalid merely because it contravenes the Act, should be omitted. Human rights without effective remedies is an unacceptable result.</p>	The intention is that an act or decision that is unlawful under clause 58(1) is not automatically rendered invalid. To alter this position would risk removing certainty and undermining confidence in relation to public sector decision-making.
REMEDIES/ ENFORCEABILITY			
37.	Support for amending the Bill to include a stand-alone cause of action (clause 59)	<p>A number of submitters, including the following, supported amending the Bill by allowing a standalone cause of action so people can enforce their rights in a tribunal or a court (for example, either directly to QCAT or the Supreme Court, or via referral to QCAT in the event that a complaint is unresolved by the QHRC):</p> <ul style="list-style-type: none"> • 008 -Professor George Williams and Dr Janina Boughey • 009 - Shay Dougall • 012 - Phil Browne • 035 - Townsville Community Legal Service • 037 – Cairns Community Legal Centre Inc 	Consistent with the Victorian Charter, the Bill does not provide a stand-alone (or ‘independent’) cause of action for a breach of the HR Act. The Bill does however establish a new ground of unlawfulness under the HR Act which is available whenever an applicant has an existing right to claim a remedy on a separate ground of unlawfulness (a ‘piggy-back’ claim). The remedy available for a ‘piggy-back’ claim is the one the person would have been entitled to on the basis of the existing claim.

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		<ul style="list-style-type: none"> • 044 – A Human Rights Act for Queensland • 084 – Queensland Council of Social Service • 096 – Micah Projects • 103 – Queensland Law Society • 127 – Sisters Inside • 117 – Community Legal Centres Queensland • Form Submission A and Form Submission C • 046 – Professor Heather Douglas • 076 – Queensland Advocacy Incorporated • 122 – Environmental Defenders Office (Qld) Inc • 138 – Lindsay Stevenson-Graf and Narelle Bedford • 015 – Ann Kreger • 052 – Alison Courtices • 053 – Julia Mizuno • 070 – True Relationships and Reproductive Health • 071 – Children and Young People with Disability Australia • 073 – All Means All • 123 – ANTaR Q Inc • 067 – People with Disability Australia • 092 – Peakcare • 126 – Endeavour Foundation • 069 – Amnesty International Australia • 105 – International Commission of Jurists Qld Branch • 077 – Eugene White • 145 – Brisbane North Community Legal Service • 014 – Dr Julie Debeljak • 026 – Monash University Castan Centre for Human Rights Law • 039 – Joint University of Queensland Law Academics, TC Beirne School of Law 	<p>This approach is consistent with the regulatory model established under the HR Act which aims to build a human rights culture in the Queensland public sector. It favours discussion, awareness raising and education to encourage compliance with human rights – rather than a strong enforcement and compliance model.</p> <p>Unlike the Victorian Charter, the Bill provides another avenue for people to have their human rights complaints dealt with by the Queensland Human Rights Commission (QHRC).</p> <p>The QHRC on accepting a complaint, may require a complainant and respondent to attend a conciliation conference. This model of disputes resolution aims to provide an accessible, independent and appropriate avenue for members of the community to raise human rights concerns with public entities with a view to reaching a practical resolution.</p>

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		<ul style="list-style-type: none"> • 066 Professor Tamara Walsh, Bridget Burton, Dr Rhonda Faragher, Dr Glenys Mann • 091 - Australian Lawyers for Human Rights • 101 – Human Rights law Centre • 025 - LawRight • 032 – Bar Association • 024 – Australian Lawyers Alliance • 080 – Anti-Discrimination Commission Qld • 075 – Caxton Legal Centre • 040 – Australian Association of Social Workers • 065 – Townsville Amnesty International Action Group • 058 – Amnesty International Australia – Queensland and Northern New South Wales Branch Committee • 093 – Queensland Council for Civil Liberties <p><u>057 – Civil Liberties Australia Inc</u> Queried why a stand-alone cause of action was not included.</p> <p><u>090 – Office of the Public Guardian</u> Recommends that consideration be given to stand-alone legal remedy for significant breaches of the Act.</p> <p><u>080 – Anti-Discrimination Commission Qld</u> Submitted that the Bill should be amended to remove the restriction on stand-alone judicial review applications. Restricting judicial review to cases where there is another ground of unlawfulness will unnecessarily impede the development of human rights jurisprudence. Queensland’s Supreme Court is best placed to develop jurisprudence on human rights.</p>	

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38.	<p>Support for remedies to include damages/compensation (clause 59)</p>	<p>A number of submitters, including the following, suggested amending the Bill to provide an ‘effective remedy’ to people whose rights are violated in particular financial compensation/damages:</p> <ul style="list-style-type: none"> • 009 - Shay Dougall • 012 - Phil Browne • 035 – Townsville Community Legal Service • 044 – A Human Rights Act for Queensland • 096 – Micah Projects (suggested a cap could be placed on compensation) • 127 – Sisters Inside • Form submission A • 076 – Queensland Advocacy Incorporated • 052 – Alison Courtices • 053 – Julia Mizuno • 070 – True Relationships and Reproductive Health • 073 – All Means All • 123 – ANTaR Q Inc • 092 – Peakcare • 069 – Amnesty International Australia • 105 – International Commission of Jurists Qld Branch • 104 – Dr Nicky Jones and Dr Jeremy Patrick • 089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien • 039 – Joint University of Queensland Law Academics, TC Beirne School of Law (the Bill should include a non-exhaustive list of examples of specific remedies to which victims of human rights breaches may be entitled) • 091 - Australian Lawyers for Human Rights • 101 – Human Rights law Centre • 025 - LawRight 	<p>Consistent with the Victorian Charter, the Bill does not provide a right to monetary damages or compensation on the grounds of a breach of the HR Act alone.</p> <p>This reflects a measured approach to the introduction of a new human rights framework in Queensland and the regulatory model of the Bill - which aims to build a human rights culture in the Queensland public sector. It favours discussion, awareness raising and education to encourage compliance with human rights – rather than a strong enforcement and compliance model.</p> <p>The provisions in respect of proceedings and remedies are identified as provisions to be considered in the first review of the HR Act in 2023.</p>

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		<ul style="list-style-type: none"> • 024 – Australian Lawyers Alliance • 075 – Caxton Legal Centre • 040 – Australian Association of Social Workers • 093 – Queensland Council for Civil Liberties <p><u>057 – Civil Liberties Australia Inc</u> Queried why compensation was not included as a remedy.</p> <p><u>116 – Griffith University</u> Submitted that the Bill should include a right to compensation for wrongful conviction. This provision should be modelled on section 23 of the ACT Human Rights Act 2004.</p> <p><u>085 – The Royal Australian & New Zealand College of Psychiatrists</u> Expressed concern that that the primary remedy for contravention is limited to dispute resolution. The cost of a ‘piggyback’ clause of action may be beyond the means of many members of the community.</p> <p><u>104 – Dr Nicky Jones and Dr Jeremy Patrick</u> Submitted that the Bill should be amended so that:</p> <ul style="list-style-type: none"> • declarations of incompatibility give rise to causes of action; • the QHRC has enforcement mechanisms beyond conciliation and reporting. <p>Recommended that an enforcement procedure should be established to ensure that remedies can be enforced.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien</u> Recommended that the Bill be amended to include a stand-alone cause of action (including the ability for an individual or group to bring a matter before a court or tribunal without first attempting conciliation, where there is an imminent risk of a human rights violation).</p> <p><u>080 – Anti-Discrimination Commission Qld</u> Submitted that the Bill should be amended to remove the restriction on stand-alone judicial review applications. Restricting judicial review to cases where there is another ground of unlawfulness will unnecessarily impede the development of human rights jurisprudence. Queensland’s Supreme Court is best placed to develop jurisprudence on human rights.</p> <p><u>116 – Griffith University</u> Submitted that the Bill should clarify that legal remedies against the government will be available from private public entities</p>	
FUNCTIONS OF THE QUEENSLAND HUMAN RIGHTS COMMISSION			
39.	Support for the dispute resolution function and submissions to increase the powers and functions of the QHRC (Part 4)	<p>The following submitters expressly supported the establishment and/or the dispute resolution function with the new Queensland Human Rights Commission:</p> <ul style="list-style-type: none"> • 014 – Dr Julie Debeljak • 025 – Law Right • 039 – Joint University of Queensland Law Academics, TC Beirne School of Law • 056 – Bulimba Electorate Youth Advisory Panel • 088 – The Public Advocate • 092 – PeakCare • 094 – Queensland Mental Health Commission 	<p>The powers and functions of the QHRC in the Bill are those considered necessary and appropriate in order to fulfil the intended purpose of the legislation, that is, to provide an accessible, independent and appropriate avenue for individuals to raise human rights concerns with public entities with a view to reaching a practical resolution.</p> <p>Once a complaint has been accepted, the QHRC may require a public entity to attend a conciliation conference. If the complaint is not resolved, there is no appeal or review mechanism, however, the Commissioner may publish</p>

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		<ul style="list-style-type: none"> • 101 – Human Rights Law Centre • 108 – Lock the Gate Alliance • 122 – Environmental Defenders Office (Qld) Inc <p>The following submitters indicated a decision by the Commissioner should be reviewable or subject to appeal rights:</p> <ul style="list-style-type: none"> • 071 – Children and Young People with Disability Australia • 076 – Queensland Advocacy Incorporated • 091 – Australian Lawyers for Human Rights • 101 – Human Rights Law Centre • 126 – Endeavour Foundation <p><u>019 - Protect All Children Today</u></p> <ul style="list-style-type: none"> • Indicated support for the renaming of the ADCQ to the Queensland Human Rights Commission. <p><u>024 - Australian Lawyers Alliance</u></p> <p>Submitted that the Commissioner should have the power to direct a public entity to address the issues raised in the complaint that have been acknowledged by the respondent and supported the dispute resolution function with the Commission, subject to suggested improvements.</p> <p><u>025 - Law Right</u></p> <p>Submitted that the Commission should have the power to instigate investigations into and prepare independent reports on systemic human rights violations.</p>	<p>information about the complaint, including any action taken to try to resolve an unresolved complaint (clause 90). In addition, in its annual report, the Commissioner may name public entities and provide details (without revealing personal information) of human rights complaints that have not been resolved (clause 91).</p> <p>Funding of \$2.298 million over four years (\$0.6 million per year ongoing) has been committed as part of the 2018-19 Budget process for the ADCQ (to be rebranded as the QHRC) to support the operation and administration of the HR Act.</p>

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		<p><u>039 - The Joint University of Queensland Law Academics, TC Beirne School of Law</u> Supported the dispute resolution function with the new Queensland Human Rights Commission, noting this inclusion overcomes one of the primary weaknesses in the ACT and Victorian Acts and sets the Queensland Human Rights Bill apart as a more effective form of rights protection Submitted there should be stronger reporting requirements including a requirement for the Commission to maintain a searchable database of all Human Rights Act cases (as distinct from complaints) similar to the Charter Case Audit database hosted by the Law Institute of Victoria.</p> <p><u>056 - Bulimba Electorate Youth Advisory Panel</u> Did not support shifting power to commission constituting members are not subject to an election process.</p> <p><u>067 - People with Disability Australia</u> Submitted that the Bill should enable the Commission to create guidelines for the judiciary on how to interpret the <i>Sentencing Act</i> and the <i>Evidence Act</i> in accordance with the Bill.</p> <p><u>071 - Children and Young People with Disability Australia</u> Submitted that clause 91 be amended to include an obligation for the Commissioner to report on entities that failed to adhere to actions agreed during conciliation.</p> <p><u>072 - The Health Ombudsman</u> Submitted that a referral from the Commissioner to the Health Ombudsman should be subject to consultation with the Health Ombudsman, prior to referring a matter.</p>	

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		<p><u>074 - Uniting Church of Australia – Queensland Synod</u> Supported changing the role of the current Anti-Discrimination Commission Queensland to the Human Rights Commission Queensland, submitting that it will be helpful in promoting an understanding and acceptance of human rights in the broader community.</p> <p><u>075 - Caxton Legal Centre</u> Submitted that the Bill should require the Commissioner to publish de-identified information about a human rights complaint in a conciliation register.</p> <p><u>085 - The Royal Australian & New Zealand College of Psychiatrists</u> Submitted that the Commission should have a broader range of functions and powers including the ability to:</p> <ul style="list-style-type: none"> • Make recommendations to the Premier and Attorney-General or Minister who oversees the Commission; • Promote and raise public awareness about human rights; • Publicly name entities who breach the Human Rights Act, for example, naming in Parliament; • Hold entities legally accountable for violating a provision. <p><u>087 - Petros Kholesirad</u> Recommended that the Commission establish a committee to deal with how government decision-making can properly take into account ‘special needs’;</p> <p>Recommended that the Commission have the power to prosecute;</p>	

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		<p>Recommended that a member of parliament can be referred to the Commissioner if they have committed an offence or contravened the Parliamentary code of ethics.</p> <p><u>088 - The Public Advocate</u> Supported the establishment of the Commission, noting that it should be properly resourced. Further, the submitted considered that the powers of the Commissioner should be extended to apply to all functions of the Commission that may require information to be obtained (e.g.: systemic functions) and not just to complaints functions. This would be similar to the scope of the information power given to the Public Advocate under the <i>Guardianship and Administration Act</i>.</p> <p><u>090 - The Office of the Public Guardian</u> Queried how the Commissioner’s consent to representation will operate, whether it will extend to a legal representative or legal guardian, and whether a person represented is still required to attend; Recommended that the performance of public entities against the Act be actively monitored and reported on by the Commission and that the data obtained from this monitoring be used to inform future legislation; Recommended that the Commission actively engage with disability advocacy groups and the Office of the Public Guardian to ensure vulnerable Queenslanders understand their rights under the Act; Recommended that the Queensland Government consider providing the Commissioner with investigative powers under the Act.</p> <p><u>091 - Australian Lawyers for Human Rights</u> Supported the powers of the Commission to examine and report on human rights issues and authority to request or direct a public entity to provide the Commissioner with information about a complaint. The</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>submitter also considered that the Commission must be adequately resourced to properly fulfil its functions. The resourcing allocated in the 2018/19 budget will require supplementation.</p> <p><u>092- PeakCare</u> Expressed concern that the Commission cannot make a legally binding finding about a breach of human rights and that it cannot award remedies for a breach of human rights.</p> <p><u>095 - Dr Robyn Holder</u> Submitted that the Commission should also include a Victims Rights Commissioner with authority to protect and promote the human rights of victims of crime.</p> <p><u>099 - Derek Sheppard</u> Submitted that breaches of human rights must be considered by the courts and not a government body such as the Commission.</p> <p><u>104 - Dr Nicky Jones and Dr Jeremy Patrick</u> Submitted that the Commission should have enforcement mechanisms beyond conciliation and reporting.</p> <p><u>105 - The International Commission of Jurists, Qld Branch</u> Submitted that adequate funding be provided to the Commission to allow it to perform its functions, and expressed concern that the funding is significantly less than that allocated in Victoria.</p> <p><u>106 - The Australian Christian Lobby</u> Indicated that the Anti-Discrimination Commission should not become the Human Rights Commission, submitting that the 'dual role' will 'continue to</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>skew human rights to being surrogate for anti-discrimination law. The submitter indicated that these should be separate entities.</p> <p><u>118 - United Nations Association of Australia</u> Supports the role of the Commissioner and seeks an opportunity to work proactively with the Queensland Government and the Human Rights Commissioner in 2019 and 2020 to enhance the benefits of the Transparent Human Rights Program by way of community education.</p> <p><u>120 - The Queensland Family and Child Commission</u> Suggested the Commissioner should have legislative authority to share information and data with other human rights monitoring bodies. The submitter also suggested that clause 61(e) (regarding the Commission making information about human rights available to the community) be amended to require accessible information for the community which includes targeted information for discrete community groups.</p> <p><u>123 - ANTaR Q Inc</u> Submitted that the Commission needs broad powers to examine and report on human rights issues, especially concerning the failure of public entities.</p> <p><u>133 - Unicef Australia</u> Supported the new system for human rights complaints within the Queensland Human Rights Commission. The submitter also considered that the Commission be resourced to ensure that children of all ages can participate in accessible and quality human rights education.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
DISPUTES RESOLUTION			
40.	Support for disputes resolution process with suggested amendments and concerns about potential limitations	<p>The following submitters expressly supported the dispute resolution and conciliation process:</p> <ul style="list-style-type: none"> • 014 – Dr Julie Debeljak • 025 – Law Right • 039 – Joint University of Queensland Law Academics, TC Beirne School of Law • 088 – The Public Advocate • 091 - Australian Lawyers for Human Rights • 101 – Human Rights Law Cent • 114 – Women’s International League for Peace and Freedom, Australian Section • 122 – Environmental Defenders Office (Qld) Inc • 126 – Endeavour Foundation <p>The following submitters expressed concern about the limitations of the dispute resolution process:</p> <ul style="list-style-type: none"> • 074 – Uniting Church of Australia – Queensland Synod • 085 – The Royal Australian & New Zealand College of Psychiatrists <p><u>039 - The Joint University of Queensland Law Academics, TC Beirne School of Law:</u> Expressed concern that while the Bill provides that participation in conciliation does not impact on a person’s legal right to seek other relief or remedy, that it is not sufficiently clear in the Bill that any settled agreement entered into does not limit, exclude or release the parties from any legal rights, obligations or causes of action;</p>	<p>The QHRC will have the discretion to allow a complainant to be legally represented at a conciliation conference.</p> <p>A complainant must attend a conciliation conference in person unless they are a child or a person of impaired capacity, or if the commissioner consents to another person attending for the complainant.</p> <p>The commissioner may give consent for the complainant to be represented at a conciliation conference if it is appropriate in the circumstances; the representation would help the conciliation and the representative has sufficient knowledge of matters relating to the complaint to effectively represent the complainant.</p> <p>The commissioner may give consent for a complainant to be represented subject to conditions the commissioner considers reasonable and may withdraw the consent of the conditions are not complied with.</p> <p>This approach to legal representation is considered appropriate, as it is intended that conciliation is a relatively informal process where vulnerable parties are not disadvantaged by the formality of the proceedings.</p> <p>In addition to a representative, a person may be helped at a conciliation conference by an interpreter, or another person</p>

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>Considered that clause 89 notices should require the Commissioner to remind the parties of their confidentiality responsibilities and make clear that no other obligations other than those agreed in the conciliation conference will flow to either party as a result of their participation in the conference or any agreement reached.</p> <p>Submitted that the dispute resolution functions under the Bill should be made available for other breaches of human rights included in other Queensland statutory protections of rights (e.g. the Charter of Victims' Rights in Schedule 1AA of the <i>Victims of Crime Assistance Act 2009</i>).</p> <p><u>091 - Australian Lawyers for Human Rights</u> Supported the dispute resolution provisions submitting that these provisions are essential in ensuring that individuals are provided with the opportunity to enforce their rights under a human rights legislative framework and in providing substance and weight to a Human Rights Act as a meaningful and operative law.</p> <p><u>071 - Children and Young People with Disability Australia</u> Submitted consideration should be given to the impact of allowing public entities to be legally represented in conciliation, to ensure that a power imbalance is not created.</p> <p>Submitted that the following terms should be defined: 'agent' (clause 64), 'support person' (clause 82), 'as soon as practicable' (clauses 88 and 89). Submitted that clause 64 be amended to allow systemic complaints including from organisations.</p>	<p>necessary or desirable to make the conference intelligible to the person (for example, a person with appropriate cultural or social knowledge). (see clauses 82, 83, and 84)</p> <p>The impact of any agreement made at a conciliation conference conducted by the QHRC under the HR Act on the legal rights of the parties will be determined by the nature and terms of the agreement. However, the Bill expressly provides (clause 87) that a person's participation in conciliation does not affect a right the person may have in relation to a contravention of section 58(1).</p> <p>It is not intended to extend the complaints process to matters outside the scope of the HR Act.</p> <p>Issues raised by submitters that are non-legislative in nature but may improve the disputes resolution process, will be raised with the QHRC, once established, for their consideration.</p>

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>090 - The Office of the Public Guardian</u> Queried how the Commissioner’s consent to representation will operate, whether it will extend to a legal representative or legal guardian, and whether a person represented is still required to attend. Submitted that clause 82 (attendance by complainant) should be amended to make specific reference to the attendance of a guardian (under the <i>Guardianship and Administration Act 2000</i>).</p> <p><u>132 - Immigrant Women's Support Service</u> Submitted that clause 84 should be amended to stipulate that a person who has limited or no proficiency in English must be helped at a conciliation conference by a credentialed interpreter. Anyone who is not a credentialed interpreter should not assist communication in a conciliation conference due to potential conflict of interest, unequal power dynamics and lack of knowledge of legal terminology.</p> <p><u>136 – Respect Inc and Scarlett Alliance</u> Recommended a provision clarifying that sex workers and other marginalised community members can lodge a complaint through a representative organisation.</p> <p><u>089 – Dr Bridget Lewis, Dr Hope Johnson and John O’Brien</u> Recommend the definition of ‘complainant’ should be redrafted to remove confusion.</p> <p>Notes that by defining ‘discrimination’ with reference to s 7 of the Anti-Discrimination Act 1991, the Bill sets up an exhaustive list of prohibited grounds for discrimination. Recommend that the Bill include a non-exhaustive list of prohibited grounds of discrimination.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
REVIEW OF THE ACT			
41.	Proposed topics for inclusion in the review of the HR Act including remedies, additional rights, and resourcing (Clause 95)	<p>The following submitters considered that the review should consider whether a stand-alone cause of action and/or damages or other remedies should be available:</p> <ul style="list-style-type: none"> • 018 – Disability Law Queensland • 035 – Townsville Community Legal Service Inc • 074 – Uniting Church of Australia – Queensland Synod • 075 – Caxton Legal Centre • 103 – Queensland Law Society • 133 – Unicef Australia • 041 – Youth Advocacy Centre <p>Form Submission D submits that the periodic review of the Bill is unlikely to be observed and any submissions or findings which expose matters embarrassing to the State government will result in the reviews being discontinued, as has happened with the review of the QCAT Act.</p> <p><u>013 - David Solomon</u> Submitted that the five year review should consider whether some or all rights may be better protected by making them enforceable in courts and entrenching the rights constitutionally. The submitter refers to and relied upon the examples of this occurring in New Zealand and Canada.</p> <p><u>024 - Australian Lawyers Alliance</u> Submitted that, in addition to the other subject matters for review, the review should consider whether there should be a right to a healthy environment.</p>	<p>The Attorney-General must ensure an independent review of the operation of the HR Act up to 1 July 2023 is undertaken as soon as practicable after that date (clause 95) and table a copy of the reviewer’s report in the Legislative Assembly within 14 sitting days after receiving the report.</p> <p>Although the terms of reference for the review are not fixed and are to be decided by the Attorney-General, the Bill sets out (see clause 95(4)) a number of matters must be considered by the independent review, that is:</p> <ul style="list-style-type: none"> • whether additional human rights should be included in the HR Act; <p>(This consideration will include a consideration of the rights included in the international covenants and conventions listed in the Bill, and any other human rights that are not listed.)</p> <ul style="list-style-type: none"> • whether further or different provision should be made in the HR Act about proceedings that may be brought or remedies that may be awarded in relation to acts or decisions of public entities made unlawful because of the HR Act; <p>(This consideration will include an examination of the options available under the legislative scheme as it stands</p>

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>041 - Youth Advocacy Centre</u> In relation to the proposed amendments to the <i>Youth Justice Act</i>, submitted that the first review should consider the need for segregation to occur as a priority.</p> <p><u>080 - Anti-Discrimination Commission Qld</u> Submitted that the review should consider whether further rights from the United Nations Declaration on the Rights of Indigenous Peoples should be included. The submitter further noted that the review should also consider the impost on public entities of compliance, and resourcing generally.</p> <p><u>085 - Royal Australian & New Zealand College of Psychiatrists</u> Indicated support for the requirement for reviews of the Act.</p> <p><u>091 - Australian Lawyers for Human Rights</u> Submitted that reviews of the Act should occur more regularly (recommended every 3 years) which would allow government, civil society and other feedback regarding the effectiveness of the legislation, identify hurdles to compliance and allow for adaptation to international best practice.</p> <p><u>103 - Queensland Law Society</u> Submitted that the consideration of the inclusion of further rights should be a priority for the scheduled reviews of the legislation.</p> <p><u>116 - Griffith University</u> Submitted that the review of the Act should consider where further rights be included from the UN Declaration on the Rights of Indigenous Peoples; UN Declaration on Violence Against Women; UN Declaration on Sexual Orientation and Gender Identity; ILO Conventions and Declarations.</p>	<p>as well as other options, such as the possible introduction of a stand-alone cause of action.)</p> <ul style="list-style-type: none"> whether the amendments made by the HR Act to the <i>Corrective Services Act 2006</i> and the <i>Youth Justice Act 1992</i> are operating effectively, or whether further or different provision should be made for the interrelationship between the HR Act and those Acts. <p>This provision was inserted in response to concerns about the amendments to the YJA and CSA not being time-limited. It will ensure that the operation of those provisions is included in the review of the HR Act.</p> <p>The Attorney-General will have the discretion to include other considerations in the terms of reference for the independent reviewer.</p>

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
AMENDMENTS TO THE <i>YOUTH JUSTICE ACT 1992 (YJA)</i> AND <i>CORRECTIVE SERVICES ACT 2006 (CSA)</i>			
42.	<p>Concern about amendments to the <i>YJA and CSA</i> (clauses 126 and 183)</p>	<p>The following submitters expressed concerns or otherwise made submissions in relation to amendments to the <i>Youth Justice Act 1992</i> and/or the <i>Corrective Services Act 2006</i>:</p> <ul style="list-style-type: none"> • 024 – Australian Lawyers Alliance • 031 – Queensland Nurses & Midwives Union • 032 – Bar Association • 041 – Youth Advocacy Centre • 067 – People with Disability Australia • 069 – Amnesty International Australia • 075 – Caxton Legal Centre • 076 – Queensland Advocacy Incorporated • 090 – Office of the Public Guardian • 091 – Australian Lawyers for Human Rights • 093 – Queensland Council for Civil Liberties • 101 – Human Rights Law Centre • 103 – Queensland Law Society • 117 – Community Legal Centres Queensland • 127 – Sisters Inside Inc <p><u>024 - The Australian Lawyers Alliance</u></p> <ul style="list-style-type: none"> • Indicated it did not support the amendments as drafted, and proposed alternative drafting: <ul style="list-style-type: none"> ▪ In relation to the <i>Corrective Services Act 2006</i>, the submitter suggested that the word ‘or’ be replaced with ‘and’ to ensure the chief executive is compelled to consider both the safe custody and the welfare all prisoners when making decisions. Further the word ‘also’ should be inserted in clause 5A(2) after the word 	<p>The Bill proposes to amend the YJA and the CSA to clarify that other factors, relevant to determining how to act or make a decision under the YJA or the CSA, may be taken into account in addition to human rights considerations under the Bill.</p> <p>The intended effect of the amendments to both the YJA and the CSA is that an act or decision made under these Acts, taking into consideration the additional factors, will not be unlawful under the HR Bill, only because these additional factors were considered.</p> <p>The submissions indicating a view that the amendments are not necessary in light of clause 13 (the general limitations provision) in the Bill are noted.</p> <p>The specific recommendations to amend the drafting of the proposed amendments to the CSA and the YJA contained in clauses 126 and 183 of the Bill will be further considered.</p> <p>The first review of the HR Act requires consideration of the amendments to the YJA and CSA (see clause 95(4)) and in particular whether the amendments are operating effectively, or further or different provision should be made for the interrelationship between this Act and those Acts.</p>

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		<p>'consideration', to ensure the chief executive officer does not contravene s58(1) 'only because the chief executive's consideration <u>also</u> takes into account the factors listed in s2(a) and (b) together with the factors in cl 13 of the Bill; and</p> <ul style="list-style-type: none"> ▪ In relation to the <i>Youth Justice Act</i>, the submitter suggested the word 'also' should be inserted in clause 263(8) after the word 'consideration', to ensure that the chief executive does not contravene clause 58(1) 'only because the chief executive's consideration <u>also</u> takes into account the factors listed in (8) (a) and (b) together with the factors in cl 13 of the Bill. <p><u>031 - Queensland Nurses and Midwives Union</u> Submitted that new clause 5A(2)(b) of the <i>Corrective Services Act</i> should be extended to allow consideration of safe custody and welfare of all 'staff, visitors and volunteers'.</p> <p><u>032 - Bar Association of Queensland</u> Opposed the amendments, submitting that clause 13 (the general limitations provision) already permits relevant decision-makers to consider these factors.</p> <p><u>093 - Queensland Council for Civil Liberties</u> Also submitted that clause 13 was sufficient. If the amendments were to remain, the Queensland Council for Civil Liberties suggested it be subject to a sunset clause.</p> <p><u>091 - Australian Lawyers for Human Rights</u> Did not consider the amendments were necessary or appropriate due to clause 13.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>041 - Youth Advocacy Centre</u> Submitted a sunset clause would be appropriate in relation to the consequential amendments of the <i>Youth Justice Act</i> regarding segregation of convicted and accused children. In the alternative, Youth Advocacy Centre submitted that the first review should consider the need for segregation to occur as a priority.</p> <p><u>075 - Caxton Legal Centre</u> Submitted the amendments should be removed to avoid the erosion of rights of prisoners. Alternatively, the amendments should be time-limited.</p> <p><u>076 - Queensland Advocacy Incorporated</u> Submitted that it was not appropriate to sanction a breach of the human rights of a prisoner and it is not necessary in light of the general limitations provision in clause 13.</p> <p><u>101 - Human Rights Law Centre</u> Expressed concern as to the difficulty in predicting how a court might interpret these provisions, given it is unclear what they are intended to do. The submitters suggested the amendments be removed, or if they remain, be redrafted so that the decision maker must also take into account the safe custody and welfare of all prisoners when considering the security and good management of corrective services facilities.</p> <p><u>103 - Queensland Law Society</u> Submitted that amendments to the <i>Youth Justice Act 1992</i> and the <i>Corrective Services Act 2006</i> are unnecessary because of the operation of clause 13. "These 'carve out' provisions undermine the fundamental principle that human rights belong to all individuals." The submitter also contends that the amendments are "unnecessary, will create uncertainty</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>and single out the human rights of the individuals the bill seeks to protect. In particular, Aboriginal and Torres Strait Islander persons, persons with a disability and persons from low-income backgrounds, are all significantly over represented in prisons and youth detention centres. Further the amendments are unprecedented and would degrade the potential of producing a landmark piece of legislation.”</p> <p><u>117 - Community Legal Centres Queensland</u> Indicated reservations about the amendments to the <i>Youth Justice Act</i> and the <i>Corrective Services Act</i>, with particular concerns about the proposed amendments to the <i>Corrective Services Act</i>:</p> <ul style="list-style-type: none"> • given the Bill’s recognition that rights can be limited, the consequential amendment to the <i>Corrective Services Act</i> is unnecessary and clause 126 of the bill should be omitted. • if the amendment remains in the Bill, the submitter recommends that the following amendments be made to the clause: <ul style="list-style-type: none"> ▪ <i>the ‘or’ at the end of the proposed section 5A(2)(a) in the CSA be replaced with the word ‘and’;</i> ▪ <i>the word ‘also’ be inserted into section 5A(2) to ensure the chief executive or officer does not contravene the clause 58(1) responsibility ‘only because the chief executive’s or officers’ consideration <u>also takes into account</u>’ the factors together with the factors in clause 13 of the Bill.</i> <p><u>120 - The Queensland Family and Child Commission</u> Recommends clear policy and procedural frameworks be established for chief executive decision making in the best interests of the child.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
IMPLEMENTATION/ RESOURCES / FUNDING			
43.	Implementation – request for adequate resourcing and support, including education and training, to be provided	<p>The following submitters indicated that adequate resources should be allocated to ensure each government agency reviews laws, policies and procedures to ensure compatibility with human rights prior to commencement, and to educate the community:</p> <ul style="list-style-type: none"> • 003 - Gillian Hall; • 008 – The Public Advocate; • 009 – Shay Dougall; • 077 – Eugene White; • 094 – Queensland Mental Health Commission • 106 – the Australian Christian Lobby; • 123 – ANTaR Q Inc • 126 – Endeavour Foundation • 127 – Sisters Inside <p>The following submitters indicated the need for education to the community about human rights:</p> <ul style="list-style-type: none"> • 040 – The Australian Association of Social Workers • 126 – Endeavour Foundation • 031 – The Queensland Nurses & Midwives Union <p><u>008 - Public Advocate</u> Submitted that proper resourcing will be required for the implementation of the Bill, for both the Commission and existing agencies. The submitter referred to and relied on the outcomes of the reviews conducted in ACT and Victoria regarding resourcing.</p>	<p>The Queensland Government has committed \$2.298 million over four years (\$0.6 million per year ongoing) for the ADCQ (to be renamed the QHRC) to support the operation and administration of the HR Act.</p> <p>Departments and government agencies will be responsible for preparing for and implementing on an ongoing basis their obligations under the HR Act within current resources.</p> <p>Subject to passage of the Bill, the commencement of the HR Act will be staged to allow government agencies and affected non-government entities to prepare for implementation. The provisions which impose obligations on public entities, the courts and parliament, are proposed to commence on 1 January 2020.</p> <p>Under the Bill the ADCQ will be rebranded as the QHRC in recognition of its central role in ensuring human rights are understood and protected in Queensland. The provisions establishing the QHRC are proposed to commence in mid 2019 and will allow the QHRC to commence high level community education about human rights before the substantive provisions of the Act commence.</p>

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>025 - Law Right</u> Submitted that there should be appropriately funded services to support vulnerable people to make a complaint. Adequate resources should be made available to community legal centres for this purpose.</p> <p><u>031 - Queensland Nurses & Midwives Union</u> Submitted that resources should be given to enable parliamentary committees to compare Fundamental Legislative Principles with the Bill (when enacted), giving sufficient regard to Aboriginal and Island traditional custom.</p> <p><u>033 - Local Government Association of Queensland</u> Submitted that resourcing should be allocated to the local government sector to facilitate discussion, awareness raising or education about human rights.</p> <p><u>037 - Cairns Community Legal Centre Inc</u> Recommends a robust communication and awareness-raising strategy, workplace initiatives, and professional development opportunities.</p> <p><u>039 - Joint University of Queensland Law Academics, TC Beirne School of Law</u> submitted:</p> <ul style="list-style-type: none"> • implementation of the Act will require the development of valuable, practical resources tailored to specific contexts, needs and policy settings; • there should be a Judicial Benchbook, judicial training and policy guidelines; • government should invest in strategic partnerships between government and experts to facilitate the development of resources, the 	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>dissemination of expert knowledge and the development of a human rights culture;</p> <ul style="list-style-type: none"> • a larger initial investment is needed to ensure that a human rights culture can develop and to avoid significant spending on compliance costs such as internal legal advice and litigation; • specialist lawyers within Community Legal Centres should be funded. <p><u>040 - Australian Association of Social Workers</u> Submitted that consultation should be undertaken with refugee organisations to support asylum seekers, in relation to clause 17 – the right to freedom from torture and cruel, inhuman and degrading treatment.</p> <p><u>041 - Youth Advocacy Centre</u> Noted the need for comprehensive and ongoing community education, including ‘child-friendly’ options.</p> <p><u>044 - A Human Rights Act for Queensland</u> Submitted that the government must allocate sufficient resources to ensure that each government department reviews their laws, policies and practices to ensure their compliance with human rights and for community education.</p> <p><u>067 - People with a Disability Australia</u> Submitted that the Bill should include provision for the appropriate training to all people working within the legal and judicial field, including police officers and prison officers, on disability awareness and disability access to justice.</p> <p><u>075 - Caxton Legal Centre</u> Submitted that the government should commit to adequate resourcing of the community legal and legal aid services to provide advice, representation</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>and community legal education services following the introduction of the Act.</p> <p><u>076 - Queensland Advocacy Incorporated</u> Submitted that the Queensland Government should commit adequate resources to implement and realise the Act, including to ensure proper dissemination of information and training. Further, the submitted noted that each government department should be adequately resourced to conduct a review of legislation, policy and practices.</p> <p><u>084 - Queensland Council of Social Service</u> Submitted that resources and training should be devoted specifically to ensuring people experiencing vulnerability understand their rights and the mechanisms available to ensure those rights are protected, as well as adequate funding and support for the community sector organisations that will be included in the definition of 'public entity'. The submitter notes that community organisations would expect to receive resources and training on a consistent basis and not just as a one-off.</p> <p><u>096 - Micah Projects</u> Submitted that adequate resources should be allocated to ensure that the Act is implemented fully across government and the non-government sector.</p> <p><u>106 - Australian Christian Lobby</u> Noted that no additional budgetary provision has been made for public entities to comply with the Bill. The submitter also referred to the position in Victoria, noting delays in judgements addressing human rights. This will lead to delays in an already overstressed judicial system in Queensland.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>101 - Human Rights Law Centre</u> Submitted that the Queensland Government should allocate adequate resources to develop a human rights culture across government, including training and education within government. Adequate resources should also be allocated to engage, educate and empower the community through community awareness campaigns, targeted training to advocates and support workers and primary and secondary school education. Additional resources should be made available to community legal centres.</p> <p><u>103 - Queensland Law Society</u> Submitted that government departments and agencies should be required to report on the implementation of the human rights legislation in their annual reports.</p> <p><u>110 Cherish Life Queensland</u> Submitted that the proposal was expensive to fund.</p> <p><u>114 - Women’s International League for Peace and Freedom, Australian Section</u> Recommends that the Queensland community is included in the ‘dialogue’ model.</p> <p><u>116 - Griffith University submitted:</u></p> <ul style="list-style-type: none"> • long-term meaningful investment should be provided for community legal and community advocacy organisations, especially disabled peoples organisations, and people with lived experience of mental health, domestic and family violence, sexual and gender minorities, foster care, prison, homelessness and poverty; • there should be a baseline survey of Parliamentarians, the appointment of specialised researchers, and the appointment of a legal advisor 	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p>(modelled on the Human Rights Advisor to the Victorian Parliamentary Committee;</p> <ul style="list-style-type: none"> • there should be an Indigenous Audit Committee comprised of Indigenous Australians and empowered to examine relevant portfolio estimates from the point of view of impact on Indigenous people; • there should be a Women’s Audit Committee or Standing Committee on Women’s Affairs; • there should be adequate resourcing in the public sector including a Human Rights Unit in DJAG. The Minister should stipulate that the State Budget and Departmental Annual Reports must be audited annually against the standards in the ICCPR and ICESCR. Government must allocate sufficient resources to ensure government departments review their laws, policies and practices to ensure their compliance with human rights. <p><u>117 - Community Legal Centres Queensland</u> Submitted that the HR Act will only have real impact if each arm of government and the community understands how it applies to them, and that the Queensland Government must allocate sufficient resources.</p> <p><u>118 - United Nations Association of Australia</u> Supports the staged approach to implementation.</p> <p><u>120 - Queensland Family and Child Commission</u> Recommended that policy and procedural frameworks for human rights complaints are responsive to and inclusive of the perspectives of children and young people.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>122 - Environmental Defenders Office (Qld) Inc</u> Submitted that adequate resources should be provided to support the Act, to educate the community, government, courts and parliamentarians, and in particular marginalised and vulnerable groups. The submitter also noted that public authorities should be educated on human rights and should be required to report against human right performance indicators.</p> <p><u>123 - ANTaR Q Inc</u> Submitted that adequate resourcing is necessary to ensure that each government entity reviews its laws, policies and practices to ensure compliance with human rights and for community education.</p> <p><u>124 - Spinal Life Australia (124)</u> Submitted that human rights action plans be developed in place of departmental action plans that are currently required under the <i>Disability Service Act</i>. The submitter also emphasises the need for human rights to be taken into account in government procurement processes (for example, to ensure services are accessible).</p> <p><u>130 - Yourtown</u> Submitted that it seeks to engage with government as to what can be done to ensure that appropriate measures, such as training and education and streamlined administrative process are in place to ensure the smooth implementation of the Bill within the organisation.</p> <p><u>134 - AgForce Queensland</u> Requested a review of existing legislation to consider the implications of clause 24 regarding property rights.</p>	

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>145 - Brisbane North Community Legal Service</u> Submitted that human rights require a cultural change and sufficient resourcing is needed across the entire regime and a comprehensive public education program. The submitter noted that prevention and early intervention before escalation of issues will lead to revenue saving but nonfinancial benefits as greater social and community harmony.</p>	
OTHER ISSUES RAISED			
44.	Non-compliance of existing legislation	<p><u>006 - Odin's Warriors Motorcycle Club</u> Expressed the view that the <i>Serious and Organised Crime Amendment Act 2016</i> allows for the 'reverse onus of proof' in the application of the law and is therefore in breach of the rights in criminal proceedings (to be presumed innocent until proved guilty according to law).</p> <p>Expressed the view that existing provisions of the <i>Serious and Organised Crime Amendment Act 2016</i> (i.e. those that specify 'what clothing I must not wear in public') are already breaching human rights, because they will not fall within the meaning of a reasonable and justifiable limit as contemplated by the Bill.</p> <p><u>60 - Russell Wattie</u> Notes that existing laws, such as the <i>Serious and Organised Crime Amendment Act 2016</i>, are currently breaching human rights and questions whether these laws will be re-assessed for compatibility with human rights. The Government has shown a historical propensity to not follow laws on law making, such as the <i>Legislative Standards Act 1992</i>.</p>	<p>It is not proposed to provide advice about the compatibility of existing legislation with the Bill in this context. Such advice would need to be based on a proper and thorough examination following commencement of the Bill. Any assessment at this stage is likely to be misleading.</p> <p>However it is important to note that the Bill recognises that human rights are not absolute and must be balanced against other rights and public policy issues of significant importance.</p> <p>The general limitations clause (clause 13) sets out the framework for deciding whether a limit is reasonable and justifiable. It includes consideration of factors such as the nature of the right and the purpose of the limitation.</p> <p>Factors that support the imposing of limits on a human right that are consistent with a free and democratic society (that have been recognised in international law) include:</p> <ul style="list-style-type: none"> • public interest considerations including national security and public safety; • protection of the rights of others.

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	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
			(See above for a further discussion of the operation of the general limitations clause.)
45.	Termination of pregnancy (clause 106)	<p><u>048 – Professor Colin Apelt</u> Believes that the right to life is inconsistent with the savings provision stating that the Act does not affect any law relating to termination of pregnancy;</p> <p>Is concerned that the Termination of Pregnancy Act is incompatible with the rights to freedom of conscience, thought, religion and belief and to peaceful assembly and freedom of association.</p> <p><u>079 – Ian Joyner</u> Believes the right to life is inconsistent with the Termination of Pregnancy Act (and the savings provision in the Bill)</p> <p><u>098 – Graham Preston</u> Asserts that the Bill cannot be valid as it does not prevent termination of pregnancy Is concerned that the right to life and the savings provision re termination of pregnancy creates a double standard.</p> <p><u>078 - Jaime Hungerford-Morgan</u> (Termination of pregnancy) Does not support the inclusion of the savings provision clause 106 and submits that the <i>Termination of Pregnancy Bill 2018</i> is incompatible with the Bill, which protects born and unborn humans.</p>	<p>Under Queensland law, a child becomes a person capable of being killed when it has completely proceeded in a living state from the body of the mother.</p> <p>There are a number of rights that could potentially create confusion about who is a person and the right to a termination of pregnancy.</p> <p>The right to life is provided in clause 16, which states that every person has the right to life and has the right not to be arbitrarily deprived of life. It is not intended that this right provide a determining statement as to when life begins.</p> <p>The right to privacy has also been associated with the right to a termination of pregnancy.</p> <p>The savings provision at Clause 106 is intended to clarify that the Bill does not affect any law relating to termination of pregnancy or the killing of an unborn child.</p>

Human Rights Bill 2018

	Issue	Submission Key Points	Department of Justice and Attorney-General (DJAG) Response
		<p><u>027 – Grace Field</u> Advocates for a new right so that unborn child with heart beat should have a right to life.</p> <p><u>029 – Christine Hodgkinson</u> The Bill is in conflict with the Termination of Pregnancy Bill.</p> <p><u>043 – Dr Timothy Coyle</u> Clause 20 (freedom of conscience) is inconsistent with the Termination of Pregnancy Bill which compels doctors which a conscientious objection to refer a person on for an abortion; Supports right to life - Refers to the Termination of Pregnancy Bill removing the right to life for unborn human beings;</p> <p><u>047 – Rev. Stefan Slucki</u> Notes inconsistency re the Termination of Pregnancy Bill.</p> <p><u>050 – Unborn Children’s Advocacy Network</u> The Bill is in conflict with the Termination of Pregnancy Bill 2018, which effectively removes all human rights for human beings before birth. Passage of the Human Rights Bill 2018 through parliament would concede that the Termination of Pregnancy Bill was incompatible and subject to repeal. It is not functionally possible for both Bills to exist in-force concurrently.</p> <p><u>054 – Hannah Berardi</u> Termination of Pregnancy Bill is inconsistent with right to life (clause 16), right to protection from torture etc (clause 17), and right to protection of families and children (clause 26).</p>	

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		<p>'Person' should refer to the unborn as well as born to ensure unborn humans have the same rights.</p> <p><u>106 – Australian Christian Lobby</u> Dictionary should be amended to define 'person' and 'born alive' to take into account babies who survive a termination procedure;</p> <p><u>110 – Cherish Life Queensland</u> The Bill should be amended to extend the right to life to unborn human beings. Note the Termination of Pregnancy Bill. The current Bill does not afford all human beings the right to life; Submissions made as to inconsistency with the Termination of Pregnancy Bill.</p> <p><u>107 – Professor Nicholas Aroney and Professor Richard Ekins</u> (Savings clause/ Termination of Pregnancy) represents the approach of the Bill that arbitrarily excludes certain matters from the Bill's application. The savings clause in clause 106 contradicts the suggestion that the Bill offers a comprehensive statement of human rights.</p> <p><u>143 – Margaret Anne Travers</u> (Supports right to life) Notes the Termination of Pregnancy Bill effectively legalises abortion and removes the right to life for unborn human beings; (Supports right to public assembly) Notes the Termination of Pregnancy Bill imposes a 150 metre exclusion zone around abortion clinics; (Supports right to freedom of conscience) Notes the Termination of Pregnancy Bill compels doctors with a conscientious objection to refer for abortion thereby removing their freedom of conscience.</p>	

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		<p><u>046 – Professor Heather Douglas</u> Supports clause 106 – savings provision – Supports provision protecting the reproductive rights of women.</p>	
46.	Recommended legislative changes	<p><u>031 - Queensland Nurses & Midwives Union</u> Recommended amending the <i>Hospital and Health Boards Act 2011</i> to insert a new provision which applies to a health practitioner’s consideration of clause 37 (right to health) and provides that a health practitioner does not contravene clause 37.</p> <p><u>142 – Queensland Teachers Union</u> The <i>Education (General Provisions) Act 2006</i> could be amended by adding a new provision (based on amendments to the <i>Corrective Services Act 2006</i> and <i>Youth Justice Act 1992</i>) to ensure that the Department is able to exclude students which pose a risk to the health or safety of others.</p> <p><u>61 - Michelle O'Flynn</u> The Bill should amend other legislation to remove the term “unjustifiable hardship” used in regard to students with disability.</p> <p><u>075 - Caxton Legal Centre</u> Proposed amendment to the <i>Anti-Discrimination Act 1991 (ADA)</i>: the Bill should amend the ADA to include being a victim of family/ domestic violence as a protected attribute under section 7 of the ADA.</p> <p><u>116 - Griffith University</u> Proposed amendment to the <i>Anti-Discrimination Act 1991 (ADA)</i>: the Bill should amend the ADA to prohibit discrimination on the attribute of property ownership.</p>	These submissions for further amendments to other legislation are noted.