

A Submission to Queensland Parliament – A Human Rights Act for Queensland

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INTRODUCTION

This year we celebrate the 70th anniversary of the *Universal Declaration of Human Rights*. In an address by The Elders at the University of London, it appears that people are less enthusiastic about human rights today than they were 20 years ago. Perhaps this is because the good work done by activists and advocates falls upon deaf ears. I believe this is Queensland's opportunity to renew hope with a clear statement that you are listening to the people of this country—those you are in office to serve.

Human rights are complex, ambiguous and difficult to enforce, but does that mean we surrender this fight and accept anything less? No. Respect, dignity and equality must be at the forefront of our minds. If people do not understand what these terms mean, they must be educated. Enacting the Human Rights Act in Queensland will enable the Anti-Discrimination Commission to evolve and extend its reach and offer a hand to our most vulnerable.

For the purpose of this submission, I have limited my submission to certain rights which primarily impact Aboriginal peoples, Torres Strait Islander peoples; women; elderly; and children: the right to education, cultural rights and the right to protection from torture and cruel, inhuman or degrading treatment, and proposed two additional rights: to protect the elderly and the environment. These fundamental rights go to the heart of the endemic issues we are currently experiencing in Australia.

I appreciate that migrant families face similar issues and my desire to see their rights protected is equally important. However, I have refrained from speaking to these issues directly as my knowledge and experience is too limited to add any real value to the

conversation.

RIGHT TO EDUCATION

As it stands today, Australia is not doing enough. *The Children's Report*¹ was released by the Australian Child Rights Taskforce on 1 November 2018. This report sadly demonstrates the extent to which this country is failing our children – particularly the most vulnerable and disadvantaged.

Of even greater concern, this is not new information.

This year, Australia was ranked in the bottom third of OECD countries on educational equality across early, primary and secondary education.² Parental occupation, migration background, gender, and schools are all factors that influence inequality. Equally, these are all factors that overlap with human rights.

Evidence shows that the overall political, economic, social, cultural and institutional context influences a child's education from pre-birth all the way through to secondary school and beyond. This is particularly evident where Aboriginal and Torres Strait Islander children, children with disability and children from single parent households are concerned. In addressing this inequality, the UNICEF Innocenti Report Card highlights, government systems and schools can either of two roles:

1. Narrowing the gaps created by children's different starting points and early childhood experiences; or
2. Accentuating inequalities and creating new ones.³

It is not enough for governments to purport to recognise the right of education, when it is little more than a strategic move or idealistic policy. Educational equality **cannot** be effected without due consideration of, and action in accordance with, human rights. It is time that law is enacted, and educational institutions become responsible for ensuring they are a place where children feel safe, respected and heard.

The current system is failing our children, and this must be addressed. There needs

¹ Australian Child Rights Taskforce & UNICEF. *The Children's Report: Australia's NGO coalition report to the United Nations Committee on the Rights of the Child*. Available online at: <https://www.unicef.org.au/Upload/UNICEF/Media/Documents/Child-Rights-Taskforce-NGO-Coalition-Report-For-UNCRC-LR.pdf>

² UNICEF Innocenti Report Card 15. *An Unfair Start: Inequality in Children's Education in Rich Countries*. Available online at: https://www.unicef-irc.org/publications/pdf/an-unfair-start-inequality-children-education_37049-RC15-EN-WEB.pdf

³ Ibid.

to be a system where schools are accountable for properly considering the rights of the children, and a process for children and families to seek to resolve any breaches formally if schools fail to do so.

In The Children's Report, one young person wrote: "Australia is failing children in many ways. We aren't safe, we don't know our rights and we aren't taken seriously. There needs to be rules in place to protect children. But the important bit is to actually follow through and act on the rules."

The Children's Report also reflected children are not listened to or believed over adults, escalating the risk of institutional harm. This needs be considered. The Human Rights Act will only be a positive step towards improving our children's futures, if the children are listened to and respected for they are our leaders of the future and we, as adults, must lead the way as positive, compassionate and inclusive role models.

CULTURAL RIGHTS

In July 2017, Australia was criticised by the UN Committee on Economic, Social and Cultural Rights in this country's treatment of Aboriginal and Torres Strait Islander peoples. High levels of disadvantage continued to be experienced across all socioeconomic indicators.

Queensland is a culturally rich state where indigenous culture is visible and celebrated. However, behind apparently optimistic appearances, Aboriginal and Torres Strait Islander peoples continue to be over-represented in out-of-home care and human rights abuses, often taken away from family and culture and placed into non-indigenous homes even where family is available to care for the child.⁴

One young Aboriginal advocate for children in out-of-home care expressed the view: "that Aboriginal and Torres Strait Islander children and young people are 'just another statistic for funding, to be honest', and that the government's consideration of the critical issues they face is limited to 'ticking a box'." The current child protection system fails to adequately preserve "Aboriginal and Torres Strait Islander children's cultural and linguistic identity or connection to community."⁵

Of what significance is National Sorry Day if the mistreatment of Aboriginal and Torres

⁴ Verass, S. *The women fighting against a rising tide of Indigenous child removals*. Online at <https://www.sbs.com.au/nitv/feature/women-fighting-against-rising-tide-indigenous-child-removals>

⁵ Above n,1.

Strait Islander peoples continues where new generations continue to be stolen from their families? Making amends requires us to act differently, not just say “sorry” and then continue with the same mistreatment.

The cultural rights set out in the Human Rights Bill are of great significance that extend beyond human rights. The indigenous culture in Australia is the oldest living culture in the world. It must be protected, and Aboriginal and Torres Strait Islander peoples must be able to live it with pride and honour. Otherwise, it will gradually become lost forever and this would be a grave tragedy.

The Bill correctly identifies that Aboriginal and Torres Strait Islander peoples do hold traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings, and their kinship and connection to the land must be protected. These cultural rights **MUST** be recognised and protected at law. Too much harm has already occurred.

Displacement, cultural oppression and racism are eating away at the hearts of indigenous people around the world. “Persistent racism coupled with Australia’s history of colonisation, violent dispossession and the removal of Aboriginal and Torres Strait Islander children from their families, cultures and lands has had profound generational impacts on Aboriginal and Torres Strait Islander children and their ability to grow up strong in their culture.”⁶

The suicide rate for Aboriginal and Torres Strait Islander children and young people is five times higher than their non-Indigenous peers.

It is time for this government to act and start changing these statistics.

PROTECTION OF FAMILIES AND CHILDREN

I do have concerns about the current wording of section 26(3): “Every person born in Queensland has the right to a name and to be registered, as having been born, under a law of the State as soon as practicable after being born.”

I believe this section needs to be amended to also recognise customary law of the Aboriginal and Torres Strait Islander peoples, in the event that First Nations parents either choose not to register a birth under State law and subscribe to Australian citizenship or fail to do so for reasons of circumstance.

Aboriginal and Torres Strait Islander peoples have never ceded sovereignty of this land and there have been fears expressed to me that such registration may risk them doing

⁶ Ibid.

so. Additionally, some hold beliefs that in registering the birth of their children, they then lose their independence and become government property. The government must work in consultation with the indigenous elders before imposing such law upon them.

Section 28(3) provides that “Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.” I fear that section 26(3) in its current wording increases the risk of, or actually imposes, forced assimilation. These people have a *right* to choose whether to become Australian citizens. I do not believe it is consistent with human rights to enforce this upon them, and certainly not without proper consultation with the elders of each community.

I also accept this is not an easy dilemma to resolve. On page 19 of the Children’s Report, the challenges are highlighted: “Without a birth certificate, individuals can face difficulties enrolling in school, accessing health services and social security, gaining employment, obtaining a tax file number, applying for private and public housing, obtaining a driver’s licence, joining sporting clubs, and opening a bank account.”

If such a significant number of Aboriginal and Torres Strait Islander children are denied the opportunity to fully participate in Australian society because their birth has never been registered, then Australian society needs to change—not the Aboriginal and Torres Strait Islanders. We must find a way to accommodate the truth and honour in customary law.

For as long as history reflects, there has ongoing incidents of a dominant civilised society imposing its law on tribal people. Surely we are not going to continue being so ignorant?

PROTECTION FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

According to the Australian Bureau of Statistics Personal Safety Survey,⁷ one in four women have experienced emotional abuse since the age of 15, one in five women have experienced sexual violence since the age of 15, and one in two women have experienced sexual harassment during her lifetime.

Children have been subjected to forced sterilisation and forced medical interventions—including invasive and irreversible surgeries—without their informed consent or evidence of medical necessity.⁸

⁷ Australian Bureau of Statistics. (2017). Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS. Retrieved from: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

⁸ Above n, 1.

The Children's Report reflected on children experiencing higher levels of risk and, in 2014, 72.3% of people aged 16–27 who identify as LGBTIQ shared that they had experienced abuse because of their gender identity and/or sexuality. It goes on to state that children with a disability are three to four times more likely to experience sexual abuse and less likely to be believed and are 3.4 times as likely to experience violence compared to other children.⁹

The Report also shows that Aboriginal and Torres Strait Islander women are 45 times more likely to experience family violence, 32 times more likely to be hospitalised as a result of family violence, ten times more likely to die from violent assault, and 3.7 times more likely than other women to experience sexual violence.¹⁰ I personally believe there is a strong correlation between these statistics and the cultural oppression addressed in the preceding section (which has been shown to cause lateral violence and is not a reflection on character), combined with the ongoing threats to funding sustainability and level of mistrust between government and indigenous people.

Queensland Police also must be mentioned in this section as the media reports on rogue officers leaking personal details of a domestic violence victim to her perpetrator or engaging in police brutality. Whereas there have been some court cases against police struck out in Victoria, and there are good public policy reasons for limiting human rights, the balance must always be weighted on a case by case basis. These incidents fall far short of the standard of care expected and absolutely outside public policy. The implementation of a Human Rights Act in Queensland would be a clear statement that this behaviour by a public officer will no longer be tolerated or swept under the carpet.

Each of these abhorrent breaches of human rights must be subjected to much greater scrutiny than is currently the case.

PROPOSED RIGHT: THE RIGHT OF ELDERS TO BE PROTECTED

Elder abuse is a significant concern and another fundamental breach of human rights. A five-year review of data from the Elder Abuse Prevention Unit elder abuse Helpline indicated that around 60% of abuse is perpetrated by the son or daughter of the victim, while over 20% (1,341) of reported abuse was a result of someone else, whether that was a neighbour, friend, worker, carer or other (including self-neglect).¹¹ In the 2013-

⁹ Ibid.

¹⁰ Above n, 1.

¹¹ Elder Abuse Prevention Unit. *The EAPU Helpline: Results of an investigation of five years of call data*. https://www.eapu.com.au/uploads/research_resources/EAPU%20Helpline_%20Results%20of%20an%20investigation%20of%20five%20years%20of%20call%20data_2015.pdf

2014 Elder Abuse National Annual Report, reported higher rates of elder abuse in Queensland than any other Australian state.¹²

The World Health Organisation, defines elder abuse as “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.” And, it “can take various forms such as financial, physical, psychological and sexual. It can also be the result of intentional or unintentional neglect.”¹³

I am not certain that the right to protection from torture, and cruel, inhumane and degrading treatment or any other right currently provided in the Bill adequately covers the rights of elders (and even those with a disability) to be protected from this form of abuse. I propose that this right not to be subjected to these forms of abuse be more clearly set out in the Human Rights Bill.

PROPOSED RIGHT: THE RIGHT TO THE PROTECTION AND ENJOYMENT OF OUR NATURAL ENVIRONMENT

One would think it goes without saying that people living in Australia, and for the purposes of this submission—Queensland, have a right to the enjoyment of our natural environment. However, we can no longer deny that the protection of our natural environment is a human rights issue. Though, I’m certain there are many corporations and government agencies that profit from precious natural resources that may wish to argue otherwise.

During a keynote address to the World Innovation Summit for Health (WISH) on 14 November, Mary Robinson, Chair of The Elders, former President of Ireland and former United Nations High Commissioner for Human Rights stated that climate change and planetary health are two interlinked issues that “constitute existential threats if they are not addressed rigorously and urgently.”¹⁴

Climate change poses a real and significant risk to human health, including a greater likelihood of disease, injury and death, under-nutrition from diminished food production in poorer regions, loss of agricultural crops and animals from floods and fires, increased risks

¹² Elder Abuse Prevention Unit. Elder Abuse National Annual Report 2013-2014. https://www.eapu.com.au/uploads/research_resources/Elder%20Abuse%20National%20Annual%20Report%2013-14.pdf

¹³ World Health Organization. *Elder Abuse: What is Elder Abuse?* Retrieved 25 Nov. 2018 from: http://www.who.int/ageing/projects/elder_abuse/en/

¹⁴ Robinson, M. 2018. *The time for talking is over: a call to action on climate change and planetary health.* Available online: <https://theelders.org/article/time-talking-over-call-action-climate-change-and-planetary-health>

from food- and water-borne diseases.¹⁵

Australia is a party to the Paris Convention on Climate Change and the Department of the Environment and Energy appear to be implementing strategies to meet its targets, including supporting industry and farmers to adopt good environmental practices. However, consumers are still largely unaware of the reality of climate change. I believe framing it in a human rights construct with proper education will help lead sustainable change. “We only have 12 years to take the necessary, radical action to ... avert a rise in global temperatures above 1.5 degrees that would have catastrophic consequences for global health.”¹⁶ As author Derek Bell says, “[a] human rights approach to climate change shifts attention to the individual victims of climate change. It focuses on ‘the harms suffered by particular individuals’ and ‘[puts] a human face on climate change’, which ‘reminds us that climate change is about suffering’.”¹⁷

Climate change is also impacting upon people’s right to own property and live where they choose. We risk becoming climate-induced refugees in our own country. Coastal areas are being eroded as sea levels rise, Australia is experiencing high levels of drought and at increasing risk of devastating bushfires, and many areas are becoming temporarily or permanently uninhabitable, threatening the livelihoods and wellbeing of people in the affected communities.

This is not only devastating our farmers. It also places our vulnerable and oppressed communities at a further disadvantage. A study conducted in the United States assessed the impact of climate change on tribal communities being displaced through forced relocation and inadequate government mechanisms to support the loss of community, culture, health and further injustice.¹⁸ While this article deals primarily with tribes in the US, it acknowledges similar challenges around the world.

It is not only climate change that threatens global health, but our modern way of living also. As people move away from the natural environments to work in built-up cities, most lose a meaningful connection to nature. I have experienced this personally. Growing up on farm in country Victoria, I was free to play, run and dream with creative potential. I had the opportunity to develop a deep connection with, and gratitude for, the natural environment. This stayed with me while I made my way into a white collar world, however the airconditioned offices and long hours slowly depleted my mental and physical health until I burned out. We need nature for our very survival. Just as the trees provide us with oxygen

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Bell, D. *Climate Change and Human Rights*. Wiley interdisciplinary reviews. 2013, Vol.4(3), p.159-170.

¹⁸ Maldonado, J. K., Shearer, C., et al. *The impact of climate change on tribal communities in the US: displacement, relocation, and human rights*. *Climatic Change* (2013) 120:601–614.

to breathe, spending time in nature has been shown to induce feelings of connection, wellbeing and satisfaction in life, facilitate healing and diminish anxiety, stress and depression.

For the reasons I have outlined above, I would like to see environmental protection framed within this human rights instrument. In 2008, the United Nations Human Rights Council made a resolution that was two-fold: firstly the Council recognised that “climate change-related impacts have a range of implications for the effective realization of human rights,” and “that human rights obligations and commitments have the potential to inform and strengthen international and national policy-making.”¹⁹

As well as bringing climate change into the human rights conversation, an inclusion of environmental protection in the Human Rights Bill will protect the resources we have left, help inform planning and development to ensure there are adequate green spaces and also assist in managing climate risk. This is a necessary action for our immediate to short-term future as well as our children’s future.

OPT-IN PROVISION FOR PRIVATE BUSINESS

In addition to what is currently provided for in the Bill, I would also like to see the inclusion of an opt-in provision.

Much like the *Privacy Act 1988* (Cth) where private sector organisations can volunteer to be subject to the Australian Privacy Principles, I believe numerous private sector organisations and small business may be interested in registering under human rights legislation to promote human rights and be accountable at law for respecting them.

HUMAN RIGHTS IN QUEENSLAND

Queensland is in the fortunate position of being able to see what has worked in Victoria and the ACT and what hasn’t. Many resources have been made available by the Victorian Equal Opportunity and Human Rights Commission for example, that can be drawn from.

The 2017 Report on the Operation of the Charter of Human Rights and Responsibilities released in August this year has indicated that the Charter is “increasingly being used effectively as a litigation tool across a range of legal issues.”²⁰ This is a positive outcome.

¹⁹ Above N. 14.

²⁰ Victorian Equal Opportunity and Human Rights Commission. *2017 Report on the Operation of the Charter of Human Rights and Responsibilities*. Available online at:

The report also reflects that the courts have strengthened the Charter through interpreting and clarifying its broad scope of issues.

In summing up, I commend Queensland Parliament for taking this proactive step in seeking to implement a Human Rights Act, and leading the way with the inclusion of economic, social and cultural rights and a dispute resolution process. It is a positive step forward for renewed faith in the journey towards peace, equality and inclusiveness.

Yours sincerely,

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