

22 November 2018

Committee Secretary  
 Legal Affairs and Community Safety Committee  
 Parliament House  
 George Street  
**BRISBANE QLD 4000**



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Dear Committee

## Human Rights Bill 2018

We value the opportunity to make a submission to the Legal Affairs and Community Safety Committee in response to the Human Rights Bill 2018.

### About LawRight

LawRight is an independent community legal centre and the leading facilitator of pro bono legal services in Queensland, directing the resources of the private legal profession to increase access to justice. The Chief Justice of Queensland, the Honourable Catherine Holmes is the Patron of LawRight.

LawRight identifies vulnerable people with unaddressed legal need and how we can connect with them. We collaborate with the civic, community and health organisations that our clients engage with and form strategic partnerships with pro bono legal professionals at these connection points. This enables LawRight to increase access to the justice system, improve health and well-being and increase access to housing, income and legal rights.

With over 40 member law firms and 100 volunteer barristers, we deliver over 25,000 hours of pro bono assistance annually through our:

- **Self Representation Services** in the Supreme, District Court and Magistrates Court, Federal Court and QCAT;
- **Outreach Legal Services** at homeless, health and refugee organisations;
- **Health Justice Partnerships** at the Mater Young Adults Health Centre and Wuchopperen Health Service – a community controlled service in Cairns;
- **Advocacy and Duty Lawyer Services** at the Mental Health Review Tribunal and QCAT;
- **Pro Bono Connect** –assessment and referrals for pro representation for vulnerable clients and matters in the public interest; and,

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- **Student clinics** partnering with six Queensland law schools to host over 70 students annually in clinical legal education placements and a further 70 law students as volunteers.

## Value of Human Rights

LawRight welcomes the Human Rights Bill 2018 (**the Bill**) which, if passed, will provide for a fairer and more just society, providing better protection for minorities and vulnerable cohorts in particular. We consider that a Human Rights Act has the potential to lead to significant improvements in the quality of law making and service delivery by public authorities, consistent with the experience in other jurisdictions.<sup>1</sup>

We welcome the inclusion of some economic, social and cultural rights, including the right to education and the right to health, as well as emphasis within the draft legislation of the importance of protecting the cultural rights of Aboriginal and Torres Strait Islander People. We encourage government to consider the inclusion of further economic, social and cultural rights, noting that, according to s95 of the Bill, additional human rights will be considered in the first review of the Act.

Through our **Homeless Persons' Legal Clinic**, LawRight provides outreach legal assistance to people experiencing or at risk of homelessness. Homelessness of itself raises a number of human rights concerns, particularly relating to the right to housing and the right to an adequate standard of living.

The United Nations Special Rapporteur on Extreme Poverty and Human Rights recently raised concerns that people living in poverty are more vulnerable to breaches of their civil and political rights, for example through lack of legal representation, criminalisation of homelessness, and financial barriers to accessing justice. It is our experience that in the Queensland context, current laws do not provide adequate safeguards for particularly vulnerable cohorts, who face multiple barriers to achieving access to justice. Importantly, existing anti-discrimination legislation does not provide any protections to people on the basis of homelessness. Drawing on principles such as universality and human dignity, human rights can serve to elevate and legitimise the interests of marginalised members of the community. We consider that a Human Rights Act would allow for improved protections for minorities and vulnerable cohorts.

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<sup>1</sup> Australian National University, The Human Rights Act 2004 (ACT): The First Five Years of Operation (May 2009); Government response [http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government\\_Response\\_first\\_5\\_yrs\\_PDF.pdf](http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf); MB Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006.

## Limitations of Human Rights

International human rights law is very clear that while most rights are able to be limited in certain exceptional circumstances, a small number of rights are absolute. The following rights outlined in the Bill should not be subject to limitations for any reason as no circumstance justifies their derogation:

- The right to recognition as a person before the law, set out in s15(1) of the Bill;
- The right to protection from torture and cruel, inhumane or degrading treatment, set out in s17 of the Bill;
- Freedom from slavery or servitude, set out in s18 of the Bill;
- Freedom from imprisonment due to an inability to fulfil a contract, set out in s29(8) of the Bill; and
- Prohibition against the retrospective operation of criminal laws, set out in s35 of the Bill.

We therefore suggest that s13 of the Bill be amended to reflect that certain rights are absolute and may not be limited.

We note that, by virtue of section 9(4)(c) the Bill has limited application to Courts and Tribunals, except when acting in an 'administrative capacity'. Administrative capacity is not further defined. Courts and tribunals play a vital role in the full realisation of human rights, particularly civil and political rights. We therefore suggest that the Bill be amended to provide clarity about the term 'administrative capacity'.

LawRight's **Mental Health Law Practice** assists people experiencing mental illness to understand their legal rights about involuntary treatment they are receiving and to advocate for their views, wishes and preferences in the Mental Health Review Tribunal. Final decisions by the Tribunal have a significant impact on the human rights of patients who may be subject to ongoing treatment against their consent (against their will or without their consent). However, our experience is that in addition to final decisions, a wide variety of Tribunal functions and processes can play a significant role in the extent to which a client's human rights are fulfilled. For example, notice periods, access to materials relied upon for hearings and accurate recording of proceedings.

## Human Rights Recourse

The UN Human Rights Committee has said that the effective protection of rights must include accessible and effective remedies to vindicate those rights.<sup>2</sup> We commend the inclusion of a complaints mechanism in the Bill, which goes some way to ensuring accountability for human rights violations. We further advocate for a standalone cause of action so that victims of human rights abuses may bring an action against perpetrators.

As it stands, the Bill provides in s 59 that relief or a remedy for human rights breaches may only be sought where legal proceedings on some other ground of unlawfulness are brought, and that such a remedy may not include damages. To legitimise the protection of human rights provided in the Bill, and to ensure accountability for human rights breaches when they occur, it is vital that victims have appropriate and adequate recourse. A standalone cause of action is provided for in the ACT Act and has also been recommended in the context of Victoria.<sup>3</sup>

The International Covenant on Civil and Political Rights, to which Australia is a party, provides that State Parties undertake to 'ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy'. The Human Rights Committee has stated that an effective remedy generally entails appropriate compensation.<sup>4</sup> Reparation can also include restitution, rehabilitation, and measures of satisfaction such as public apologies, public memorials, guarantees of non-repetition changes in relevant laws and practices, as well as bringing perpetrators to justice.

We suggest that the available remedies should not exclude damages where appropriate. For the sake of clarity and legitimacy, we also suggest that the Bill be amended to provide a non-exhaustive list of examples of specific remedies to which victims of human rights breaches may be entitled.

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<sup>2</sup> UN Human Rights Committee, General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant UN Ref CCPR/C/21/Rev.1/Add.13.

<sup>3</sup> MB Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006

<sup>4</sup> UN Human Rights Committee, General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant UN Ref CCPR/C/21/Rev.1/Add.13, para 16.

### Appropriate resourcing

We submit that the introduction of this legislation requires a commitment by government to appropriately resource advocates, including community legal centres, whose assistance may be necessary to pursue complaints, particularly on behalf of vulnerable people who are unable to advocate for themselves. Appropriate resourcing of legal and non-legal supports is critical to ensuring that vulnerable cohorts are protected by this legislation.

It is well established that marginalised members of the community face a range of barriers to accessing and navigating legal processes, including financial barriers, emotional or psychological impediments, mental illness, disability, and poor literacy and numeracy. Without appropriately funded support services, vulnerable cohorts are not likely to pursue a complaint, significantly undermining the intention of this important legislation. Resources will also be required by government agencies to enable them to appropriately respond to human rights commitments.

We also recommend that the Queensland Human Rights Commission should have the power to instigate investigations into and prepare independent reports on systemic human rights violations. Our experience is that many vulnerable cohorts are unable to self represent or are not likely to pursue legal claims or complaints that may be available to them. It is important that human rights violations are nonetheless attended to by the Commission.

LawRight operates a number of **Outreach Legal Clinics** and **Health Justice Partnerships** across Queensland, co-located at homeless services, mental health services, community health services and hospitals.

Members of vulnerable cohorts, including people experiencing homelessness, victims of domestic violence, First Nations people and people with mental health concerns experience multiple barriers to engaging with a legal process without appropriate support. Many of our clients face complex mental and physical health concerns, have limited literacy, and have life long negative experiences with authority and/or government. The lived experience of our client base means they often decline to proactively engage in a complaint or legal process.

In our experience, vulnerable and disadvantaged members of our community require specialised ongoing support to understand their rights and communicate the nature of their complaints. Without timely and ongoing support, many of our clients are unable to access their legal protections or the legal complaints process.

LawRight's **Self Representation Service** assists self represented litigants involved in proceedings in the Federal Court, District and Supreme Courts, and the Queensland Civil and Administrative Tribunal. The service was established due to the significant access to justice barriers faced by disadvantaged people navigating the justice system without representation. In our experience, legal assistance can serve to reduce the financial burden of pursuing rights, reduce the anxiety and stress associated with navigating in legal processes, and improve the likelihood that a person successfully asserts their legal position. In many cases, legal and non-legal support is vital to the full realisation of human rights such as the right to a fair hearing and the right to equality before the law. An evaluation of the Self Representation Service has shown that investment in these supports also has significant cost savings in the administration of systems.

## Conclusion

In summary, LawRight's position on the Human Rights Bill 2018 is as follows:

- **Support**  
We welcome the proposed legislation, which we expect will lead to improvements in law making and service delivery by public authorities, as well as providing better protections for vulnerable cohorts.
- **Absolute rights**  
Consistent with international human rights law, we suggest that the Bill be amended to clarify that certain human rights ought not to be subject to limitations in any circumstances.
- **Complaints**  
We commend the inclusion of a complaints mechanism in the Act and we advocate for a standalone cause of action against entities responsible for human rights violations.
- **Remedies**  
We suggest that the Bill be amended so that damages are not excluded from available remedies.
- **Resources**  
The introduction of this legislation requires a commitment by government to appropriately resource advocates, including community legal centres, whose

assistance may be necessary to pursue complaints, particularly on behalf of vulnerable people who are unable to advocate for themselves.

- **Investigations** We recommend that the Commission should have the power to instigate investigations into and prepare independent reports on systemic human rights violations it has identified.

We appreciate the opportunity to provide feedback on this important draft legislation.

If you have any questions about this submission or require further information, please do not hesitate to contact Sue Garlick at [REDACTED]

Yours faithfully



Sue Garlick

**Joint Director**



Linda Macpherson

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