



2nd Floor Main Street Arcade  
82 Grafton Street  
PO Box 7129 Cairns Qld 4870  
T 1800 062 608 | 07 4031 7688  
F 07 4041 2134  
enquiry@cclc.org.au  
[www.cclc.org.au](http://www.cclc.org.au)  
ABN 87 237 848 993

Our Ref:  
Your Ref:

23 November 2018

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Ms Easten

### **SUBMISSION ON THE HUMAN RIGHTS BILL 2018**

The Cairns Community Legal Centre Inc. welcomes the opportunity provided by the Legal Affairs and Community Safety Committee to contribute to this important inquiry into human rights for Queenslanders.

#### **Background to the Centre**

The Centre was established in 1991 and incorporated in January 1993.

The Centre is a not for profit community organisation that provides legal services and referral for the benefit of people in the community experiencing disadvantage. The objectives of the Centre are:

- to provide free and accessible legal services
- to promote legal and social change to remove injustice and inequality
- to provide community legal education programs
- to encourage community participation in the provision of community legal centre services
- to develop and support self-help strategies and alternate methods of dispute resolution
- to encourage development of a multi-disciplinary approach to the solution of client's problems

This is for the benefit of those socially or financially disadvantaged members of Far North Queensland.

#### **Our experience**

For many years we have provided legal assistance across a broad range of areas. Relevantly: government decisions or processes; discrimination; domestic and family violence; child protection; elder abuse; guardianship; administration; and mental health legal work. The specialist Disability Discrimination Legal Service of the Centre is part of a national network of disability discrimination advocacy services. The Centre's Mental Health Review Tribunal Service provides representation at hearings including for involuntary treatment, for minors and at the intersection of the health and criminal justice systems.

This works assists us to understand the needs and concerns of people who because of their disadvantage are more vulnerable to challenges which have a human rights dimension.

*For people in the community experiencing disadvantage*

*We acknowledge the traditional custodians of this land, elders both past and present.  
We also extend our respect to other Indigenous Australians who are within our service area.*

## INTRODUCTION

1. The Centre supports the primary aim of the Bill to ensure that respect for human rights is embedded in the culture of Queensland (and ultimately throughout Australia).

In our view, this would entail the Bill favouring discussion, awareness raising and education about human rights. This in turn would be supported by strengthening the rule of law and principles such as: legality; accountability; and the right to be heard, in methods used by government agencies to assess their relations with the society they serve.

In giving support to the Bill, the Centre also adopts the reasoning of the United Nations Development Programme where human development means the process of expanding choices and opportunities so that every person can live a life of respect and value:

Human rights help to clarify the scope of development objectives while paying special attention to those who may suffer discrimination. The value of using human rights as a framework for development is that human rights protect the basic well-being of all persons, including those who are disadvantaged, and/or are excluded from participating in the development process.

The capacity to make claims and to demand accountability is an important capacity for most people. ...This can affect people's vulnerability...

A human rights approach seeks to develop people's capacity to demand accountability in two ways: by defining a minimum scope of legitimate claims (human rights); and by enhancing the accountability mechanisms and processes through which they protect these claims (e.g., the justice system).<sup>i</sup>

The Bill defines a minimum scope of legitimate claims, and goes some way towards enhancing accountability.

2. The Centre is supportive of enhancements the Bill provides to the Victorian Charter:
  - To provide for a complaint to the Queensland Human Rights Commission
  - To protect rights to health and education
  - To recognise the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

## ISSUES

### Promotion of human rights

3. The Centre asks that any strategy for cultural change:
  - a. Adopt the vision for Queensland pre-school learning for children to connect with and contribute to their world, for example so that children:
    - develop a sense of belonging to groups and communities and an understanding of the reciprocal rights and responsibilities necessary for active community participation;
    - respond to diversity with respect;
    - develop awareness of bias;
    - learn about others' cultures;
    - become aware of fairness;
    - become socially responsible,<sup>ii</sup>

and that human rights learning be embedded in school curriculums<sup>iii</sup>.
  - b. Include a robust communication and awareness-raising strategy, workplace initiatives, and professional development opportunities in the same way Queensland has committed to the recommended cultural change strategy to put an end to domestic and family violence.<sup>iv</sup>

4. The Centre respectfully submits that parliamentarians have an important human rights role in the policy setting and budget approval processes including for long term commitments to human rights education for children and a cultural change strategy in the broader Queensland community.
5. The Centre also understands the Bill will promote human rights by:
  - Discussion about human rights between the judiciary, the legislature and the executive (the dialogue model).
  - Tasking QHRC with deepening knowledge and awareness of human rights and strengthening the capacity of rights-holders and duty-bearers.

In our view, this legal framework will be part of and support cultural change over time which is necessary to effect human rights on a day to day basis.

#### **A piggyback cause of action**

6. The Centre submits that the Bill adoption of the dialogue model complemented by the dispute resolution function of the QHRC (ADR) be enhanced by a standalone cause of action.
7. The Centre agrees the Bill enhances justice system mechanisms and processes to protect legitimate human rights claims because the Bill:
  - Promotes access to justice by the use of ADR as an alternative to the formal court system and this is especially important for people in the community experiencing disadvantage.
  - Allows decisions of the Supreme Court exercising the referral and declaratory role to be positioned in a more theoretically supportable way in the broader legal context.
8. The Centre notes that the United Nations Development Programme identifies challenges of ensuring access to justice through ADR include:

##### Ineffective enforcement of ADR decisions

... Mediation awards have no enforceability under law. Since no rules of evidence or laws are followed in a mediation hearing, and there are no legal representation of the parties, enforcement of mediation awards is not compatible with the law. Because there is no punitive action for violating the award, there are instances where the agreement reached during mediation is broken, and parties go back to the beginning of the problem, which, along with extensive delays, may also cause the community to lose confidence in mediated settlements.

##### Unpredictability of ADR decisions

The essence of mediation is that parties in dispute agree on a solution that is acceptable to both in that specific instance without the decision necessarily being legally correct. Since ADR often lacks formal procedures in decision-making and there is a lack of substantive laws to follow, outcomes of decisions primarily depend on negotiations between the parties as well as the mediation skills of the mediator/panel.  
...

##### Lack of political will and funding

It is often a challenge to obtain state ... funding for ADR mechanisms. Though ADR itself is not costly, funds are needed to train mediators and ensure proper monitoring of ADR processes. It is also necessary to have political commitment on the behalf of the State to establish and support ADR processes...<sup>v</sup>

And these challenges have been given a local context in a review of the state of access to justice in Australia<sup>vi</sup>.

#### *Recommendation*

9. The Bill be amended to provide either of or preferably both of:
  - A justice remedy (for instance via a right of referral of unresolved matters from the QHRC to the Queensland Civil and Administrative Tribunal) to settle a human rights dispute and remedies to redress this, when a complaint is not resolved at the QHRC level.

- A remedy even if the applicant is unsuccessful on the primary cause of action but is successful in respect of the piggyback claim of unlawfulness under the Human Rights Bill.

### Conclusion

Overall the Centre supports the Human Rights Bill.

We thank the Committee for the opportunity to contribute to the inquiry into the Human Rights Bill.

### Contact Details

Correspondence in relation to this submission can be directed to:

The Principal Solicitor  
Cairns Community Legal Centre Inc.  
PO Box 7129  
Cairns Qld 4870

T 07 4031 7688

Email [enquiry@cclc.org.au](mailto:enquiry@cclc.org.au)

Yours faithfully

**CAIRNS COMMUNITY LEGAL CENTRE INC**



per: Kellie Garden | Principal Solicitor

---

<sup>i</sup> United Nations Development Programme, *Programming for Justice: Access for All A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005) 3.

<sup>ii</sup> Australian Government, *Belonging, Being and Becoming – The Early Years Learning Framework for Australia* (2008) and State of Queensland, *Queensland Curriculum & Assessment Authority* (2018).

<sup>iii</sup> Australian Human Rights Commission, *Human Rights Examples for the Australian Curriculum* (2014).

<sup>iv</sup> The Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever* (2015).

<sup>v</sup> United Nations Development Programme, *Programming for Justice: Access for All A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005) 98-9.

<sup>vi</sup> Law Council of Australia, *The Justice Project Final Report Introduction and Overview* (2018) 41.