



AASW(Qld) submission to the Human Rights Bill 2018 Queensland

Submission-November 2018

© Australian Association of Social Workers
Queensland Branch Office– Brisbane
5/43 Vanessa Boulevard
SPRINGWOOD, QLD 4127
PO Box 1024

SPRINGWOOD QLD 4127

T 07 3090 3718

E aaswqld@asw.asn.au
www.aasw.asn.au

Enquiries regarding this submission can be directed to:

Queensland Branch President:
Ellen Beaumont

Queensland Branch Manager
Ms Mere Vitale
Email: aaswqld@asw.asn.au

Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 11,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, social inclusion, and discrimination. The Queensland Branch has over 2000 members and covers the region from the southern border north to Rockhampton. The branch has engaged with providing public submissions to the Queensland Government on many issues that social workers are involved with.

The social work profession

The social work profession is committed to pursuing social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social, and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

At the very core of the social work profession "principles of human rights and social justice" (AASW *Code of Ethics*).¹ A commitment of social work is to "promote policies, practices and social conditions that uphold human rights and that seeks to ensure access, equity, participation and legal protection for all"². Social work is thus uniquely placed to provide a compelling and evidence based perspective on the criticality of human rights in our society.

"The principles of human rights and social justice are central to social work theorising, ethics and practice. These are concepts that bind. They are the values that sustain and nourish us and are at the heart of our work and cannot be shed even in these increasingly complex times."³

Our submission

The Queensland Branch of the Australian Association of Social Workers (AASWQ) congratulates the Queensland Government for introducing the Human Rights Bill 2018 (the Bill).

AASWQ recognises that the Bill provides a robust framework, drawing on the appropriate International Conventions. We are particularly pleased to see the Queensland Government adopt the range of treaties that have been included.

AASWQ submits the following suggestions to further strengthen the Bill to meet our human rights obligations.

¹ AASW Code of Ethics 2012

² Ibid.

³ Briskman ,L *Social work and the human rights of asylum seekers* in Victorian Social Work Vol 4 No2 July 2010

Recommendations

Rights of people seeking asylum and refugee status - In implementing Section 17 of the Act the Queensland Government consults with key organisations providing support to people seeking refuge and asylum based in Queensland to develop policies that can better support these individuals who currently have limited access to support and associated funding.

Rights of families to protection- Section 26 be expanded to include a sub point that specifies that “Every person has the right, without discrimination, to the protection that is needed to keep them safe from domestic and family violence.”

Cultural rights - generally - Section 27 be expanded to include “the right, in community, with other persons of that background, with any other member of the community, including social and other forms of media, to enjoy their culture, to declare and practise their religion and to use their language”.

Humane treatment when deprived of liberty - Section 30 be strengthened to better reflect the recommendations from the Queensland Youth Detention Centres Report particularly with regards to ensuring consistency with the recommendations regarding frameworks for practice.

Rights of people who identify as trans and gender diverse - The Queensland Government includes a specific section that recognises the rights of people who identify as trans and gender diverse groups to ensure freedom from discrimination.

Rights of people to housing - The Queensland Government includes a statement in line with Article 25 (1) of the UN Convention on Housing.

Complaints mechanism - In relation to complaints mechanism the Queensland Government review the findings and experiences of Victoria to consider ways to further ensure people have access to appropriate legal proceedings.

Breaches of human rights - The Queensland Government consider the inclusion of provision for compensation.

Appropriate resourcing - The Queensland Government develop a robust implementation strategy that is informed by experts in the relevant fields to ensure the whole community understands the implications of the Act, using a universal education framework. In doing so that attention is paid to ensuring culturally appropriate community education occurs; along the required resources to ensure the effectiveness of this significant Act.

Response to the Human Rights Bill

Rights of people seeking asylum and refugee status

In relation to people seeking asylum and refuge, while it is recognised that there is federal legislation in relation to this, the policies of the Australian Government for offshore detention continue to contravene the Convention relating to the Status of Refugees. The current Bill includes a section on Protection from torture, cruel, inhumane and degrading treatment. We submit that there needs to be inclusion of ways that our Queensland Government can ensure that we are not party to practices that contravene the rights of individuals seeking asylum and refugee status. The current section 17 could be further strengthened to ensure that people living in Queensland do not continue to experience degrading and punitive action through the policies of the Commonwealth.

Recommendation:

AASWQ recommends that - In implementing Section 17 of the Act the Queensland Government consults with key organisations providing support to people seeking refuge and asylum based in Queensland to develop policies that can better support these individuals who currently have limited access to support and associated funding.

Rights of families to protection

Section 26 refers to the protection of families and children, stating that families are entitled to protection from society and the State. We believe that Section 26 needs to make explicit reference to protection of families from family and domestic violence which continues to be a key issue in Queensland. The right to protection from family or domestic violence is seconded by Section 29 of the Bill, the right to security of person.

Recommendation:

AASWQ recommends that - Section 26 be expanded to include a sub point that specifies that "Every person has the right, without discrimination, to the protection that is needed to keep them safe from domestic and family violence."

Cultural rights - generally

Section 27 relates to not being denied the right in community with other persons of that background to enjoy their culture, to declare and practise their religion and to use their language. This could be further strengthened in that this is quite narrow and does not include the rights to participate in our broader community without fear of discrimination or lack of access to services and support.

Recommendation:

AASWQ recommends that -Section 27 be expanded to include "the right, in community, with other persons of that background, with any other member of the community, including social and other forms of media, to enjoy their culture, to declare and practise their religion and to use their language".

Humane treatment when deprived of liberty

Section 30 relates to the humane treatment of individuals when deprived of liberty. In particular, this Section refers to the humane treatment of 'an accused person who is detained or a person detained without charge'. We suggest that this Section should be strengthened to ensure that those who have been charged or convicted of crimes also receive humane treatment while in detention. This recommendation is made in light of recent human rights abuses investigated in Don Dale Youth Detention Centre and the reported abuse of detainees with disabilities in prisons across Australia by Human Rights Watch.

Recommendation:

AASWQ recommends that - Section 30 be strengthened to better reflect the recommendations from the Queensland Youth Detention Centres Report particularly with regards to ensuring consistency with the recommendations regarding frameworks for practice.

Rights of people who identify as trans and gender diverse

Members of the LGBTIQ+ (lesbian, gay, bisexual, transgender, intersex, queer or questioning, and asexual) community, particularly individuals who identify as transgender, intersex, and non-binary, continue to experience discrimination and marginalisation in our community. Explicit recognition of the rights of people identifying as transgender and gender diverse is crucial to redress systemic level barriers, including access to basic rights and needs.

Recommendation:

AASWQ recommends that - The Queensland Government includes a specific section that recognises the rights of people who identify as transgender and gender diverse to ensure freedom from discrimination.

Rights of people to housing

Article 25 (1) of the UN Convention on Housing requires that *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”* With the lack of housing affordability and homelessness continuing to increase, we argue that it is timely for the Queensland Government to explicitly include the rights of people to adequate standard of living. In line with this, the need for a basic income that facilitates this is imperative. AASWQ submits that this would provide the foundation for more targeted and inclusive policies to redress the wicked problems of homelessness and poverty.

Recommendation:

AASWQ recommends that - The Queensland Government includes a statement in line with Article 25 (1) of the UN Convention on Housing.

Complaints mechanism

It is recognised that the Bill introduces a complaints mechanism which is integral to the proper application of this Bill.

AASWQ supports the need for the Human Rights Act to have a standalone cause of action so people can enforce their rights in a tribunal or a court, similar to the ACT’s Human Rights Act. This will ensure that Queenslanders can take action when they have been treated unfairly.

The current Bill only allows claims to be raised in legal proceedings if there is another ground on which to challenge the decision or action. It is understood that a recent independent review of the Victorian Charter recommended introducing a standalone cause of action to address this failing.

Recommendation:

AASWQ recommends that - The Queensland Government review the findings and experiences of Victoria to consider ways to further ensure people have access to appropriate legal proceedings.

Breaches of human rights

AASWQ, supports the view of the Human Rights for Queensland campaign that the Human Rights Bill would be strengthened by ensuring that people whose rights are violated have an 'effective remedy'. These remedies should be determined by a court or tribunal to ensure they can be enforced, and are aimed at effectively preventing, stopping or providing redress for rights abuses.

An effective remedy might include putting a stop to a proposed law or action which would breach human rights, requiring a decision-maker to consider a person's human rights properly and make their decision again, or providing compensation for a person who has been treated unfairly. The Bill currently prevents a court or tribunal ordering that compensation be paid.

Recommendation:

AASWQ recommends that - The Queensland Government consider the inclusion of provision for compensation.

Appropriate resourcing

AASWQ recognises the investment proposed by the Queensland Government to appropriately resource in the Bill. We do however draw on the work of other States to highlight the need for greater investment to effectively resource this crucial initiative and ensure its success and effectiveness. It is recognised that when the Victorian Charter was introduced the government allocated \$6.7 million over four years to fund the implementation of the Charter. Resources were allocated to their Human Rights and Equal Opportunity Commission and were used to establish a Human Rights Unit within the Department of Justice and assist the Victorian Police and Corrections to understand and embed charter obligations. Grants totalling \$971,362 were made to the community sector and local government so they could undertake work to educate the community and the not-for-profit sector about human rights and the Charter.

AASWQ argues that any Human Rights Act will only have real impact if each arm of government and the community understands how the Act applies to them. To this end we argue that sufficient resources are required to ensure that each government department reviews their laws, policies and practices to ensure their compliance with human rights and for community education.

Recommendation:

AASWQ recommends that - The Queensland Government develop a robust implementation strategy that is informed by experts in the relevant fields to ensure the whole community understands the implications of the Act, using a universal education framework. In doing so that attention is paid to ensuring culturally appropriate community education occurs; along the required resources to ensure the effectiveness of this significant Act.

Conclusion

AASWQ has welcomed the opportunity to input into strengthening the current Human Rights Bill 2018. We look forward to continuing to support the work of the Queensland Government in this crucial area.