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Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
Queensland

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

To Committee Members

RE: Human Rights Bill 2018

Thank you for the opportunity to provide input into consideration of this bill.

Civil Liberties Australia applauds the leadership shown by the Queensland Government by moving towards becoming the third Australian jurisdiction to have human rights enshrined in law.

The Queensland Government leads New South Wales, South Australia, Western Australia, Tasmania and the Northern Territory on this issue (and of course the Australian Government). As a nation-wide organisation, Civil Liberties Australia commends you on showing the way to these states.

Based on our observations within Australia and internationally, the three key benefits of human rights laws are: prosperity, protection and process.

Prosperity - Human rights are the basic building blocks of life. They are what enable people to achieve their full potential in life and better protecting rights in law will enable more Queenslanders to achieve their best.

Protection - Human Rights also can provide protection. It is often the little people, usually powerless, who benefit from a Human Rights Act.

Process - Human rights legislation ensures better, more reasoned, more transparent, more balanced decision making from the three branches of government when human rights considerations are at the forefront, as opposed to an afterthought.

Having made these points in support of the leadership shown by the Queensland Government, we raise the following issues and questions we believe warrant consideration.

Proposed section 37 – right to health services

The formulation of this right is not the same as set out in the International Covenant on Economic, Social and Cultural Rights, which Australia has ratified.

The International Covenant recognises ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. However, section 37 merely requires that no one be discriminated against in access to health services and that no one be refused emergency medical treatment that is immediately necessary to save the person’s life or to prevent serious impairment to the person.

The formulation in the Bill does seem to dramatically narrow the focus on health services whereas the position under international law explicitly extends the scope to include underlying determinants of health, such as food and nutrition. For further information on this issue we commend to you the United Nations report on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health:

<https://www.ohchr.org/en/issues/health/pages/srrihealthindex.aspx>

The questions we believe need enquiring into are:

- why was the formulation of the right to health not modelled on the International Covenant?
- what greater protection, if any, does the proposed formulation in the Bill provide patients over and above existing protections provided by existing anti-discrimination laws?

Other rights currently missing

We note that there are a range of other rights set out in the International Covenant on Economic, Social and Cultural Rights which are not in the bill. One key example is the right to adequate food and clothing. Another is the right to adequate housing.

The question we pose is:

- why are these rights not included?

Proposed section 59 – legal proceedings

We urge consideration of a stand-alone cause of action as opposed to the ‘piggy back’ cause of action proposed in the current draft of section 59.

Here we ask:

- what is the point in legislation to create a right without at the same time legislating to create a remedy in circumstances where that right is infringed?

- why has monetary compensation been removed as a possibility? There may be circumstances in which the most appropriate and acceptable remedy is for a financial compensation payment to be made. We note the explanatory notes do not in fact explain why monetary damages should not be available as an option.

Yours truly,

Dr Kristine Klugman OAM
President

25 November 2018

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Getting rid of civil liberties.



Bringing them back again.