



**SUBMISSION TO THE LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE
ON THE HUMAN RIGHTS BILL 2018**

The Right Education (clause 36) and Other Matters

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Expression of support for the Bill

1. We welcome the introduction of the *Human Rights Bill* to Parliament, and we commend the Palaszczuk Government for initiating this important reform for Queensland.
2. We endorse the submission of the University of Queensland's TC Beirne School of Law. We note, in particular, the importance of **adequate resourcing for community legal centres** and the Queensland Human Rights Commission to facilitate vulnerable persons' engagement with the complaints process.
3. We also support calls for a **standalone cause of action** to be incorporated into the Bill, following the ACT model (see *Human Rights Act 2004* (ACT) s 40C).¹

The Right to Education (clause 36)

4. We welcome the addition of a right to education in the Bill. We are supportive of rights concerning both school and vocational education. However, there are some concerns we share regarding the specific wording of the proposed provisions.

Clause 36(1) – School education 'appropriate to the child's needs'

5. Clause 36(1) states: 'Every child has the right to have access to primary and secondary education **appropriate** to the child's needs.' (emphasis added). This wording is broadly consistent with the equivalent section of the *Human Rights Act 2004* (ACT) (s 27A(1)).
6. Of course, what constitutes 'appropriate' education in respect of a child with disabilities or special needs is often contested.

¹ See also the Submission of the Human Rights Act for Queensland.

7. In practice, the focus of education providers is not on ensuring a child with disabilities or special needs has access to an 'appropriate' education, but rather on promoting **inclusive education**.
8. The policies and practices of the Queensland Department of Education demonstrate a firm commitment to inclusive education. According to the Department's *Inclusive Education Policy*,² 'inclusive education' means 'that students can access and **fully participate in learning, alongside their similar-aged peers**, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs.' (at 1)
9. The *Inclusive Education Policy* further states: 'Our commitment means that children and young people across Queensland, from all social, cultural, community and family backgrounds, **and of all identities and abilities can**:
 - a. **attend their local state school** and education centre and be welcomed;
 - b. access and participate in a high quality education and **fully engage in the curriculum alongside their similar aged peers**;
 - c. learn in a **safe and supportive environment**, free from bullying, discrimination or harassment; and
 - d. achieve academically and socially with reasonable adjustments and **supports tailored to meet their learning needs**.' (at 1)
10. This commitment to inclusive education is consistent with the provisions of the *United Nations Convention on the Rights of People with Disabilities*.³ Article 24 creates a right to 'inclusive education' which is directed towards 'the **full development of human potential** and sense of dignity and self worth' and **effective participation** in society. In particular, article 24(2) states that persons with disabilities **should not be excluded from the general education system**, but rather should receive '[e]ffective individualised support... in environments that maximize academic and social development, consistent with the goal of full inclusion.'
11. It is important that the right to education in Queensland is consistent with best practice and international human rights standards.
12. Therefore, we recommend that the commitment to inclusive education be acknowledged in clause 36(1), so that it reads: **Every child has the right to have access to primary and secondary education that is appropriate to the child's age and inclusive of their needs**.
13. We also recommend that an additional sub clause (1A) be added which **defines 'appropriate' and 'needs'**. 'Appropriate' should be defined as: enabling students to access and fully participate in learning, supported by reasonable adjustments and

² Queensland Department of Education, *Inclusive Education Policy*, 2018: available at <http://ppr.det.qld.gov.au/pif/policies/Documents/Inclusive-education-policy.pdf>

³ <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>

teaching strategies tailored to meet their individual needs, with the goal of full inclusion. 'Needs' should be defined as 'educational, social, physical, intellectual and emotional needs on an equal basis with others in the communities in which they live.' These definitions have been drafted based on article 24 of the *Convention on the Rights of People with Disabilities*.

Recommendation 1: Clause 36(1)

That clause 36(1) be re drafted, so that it reads:

Every child has the right to have access to primary and secondary education that is appropriate to the child's age and inclusive of their needs.

Recommendation 2: Clause 36(1A)

That an additional sub clause (1A) be added which reads:

In this section

appropriate means enabling students to access and fully participate in learning, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs, with the goal of full inclusion.

needs means educational, social, physical, intellectual and emotional needs on an equal basis with others in the communities in which they live.

Clause 36(2) – Vocational education 'equally accessible to all'

14. Clause 36(2) states: 'Every person has the right to have access, **based on the person's abilities**, to further vocational education and training that is **equally accessible to all**.' (emphasis added)
15. We note the differences between proposed clause 36(2) and the equivalent sub section in the *Human Rights Act 2004* (ACT) (s 27A(2)) which states: 'Everyone has the right to have access to further education and vocational and continuing training.' Section 27A(3)(a) adds: 'everyone is entitled to enjoy these rights without discrimination.'
16. We prefer the wording of the ACT provision for three reasons.
17. First, s 27A(2) of the *Human Rights Act 2004* (ACT) is consistent with international human rights law. The *Convention on the Rights of Persons with Disabilities* states at article 24(5): States Parties shall **ensure that persons with disabilities are able to access** general tertiary education, vocational training, adult education and lifelong learning **without discrimination and on an equal basis with others**. To this end,

States Parties shall **ensure that reasonable accommodation is provided** to persons with disabilities.'

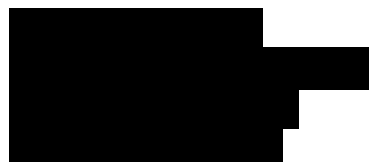
19. Secondly, by making a person's right to access vocational education and training conditional on their 'abilities', **clause 36(2)** allows for discrimination against a person based on impairment, making it **inconsistent with Queensland's anti-discrimination legislation**.
20. Section 7(h) of the *Anti Discrimination Act 1991* (Qld) prohibits discrimination on the grounds of impairment. Section 8 extends this prohibition to discrimination on the basis of a characteristic that a person with impairment has; a characteristic that is imputed to a person with impairment; and a characteristic that a person with impairment is presumed to have.
21. If a vocational education provider excluded a person with Down Syndrome from a vocational education program because they believed the person would not have the 'ability' to complete the course, they may well be acting unlawfully (in breach of anti discrimination law). This is because they are effectively discriminating against that person on the basis of a characteristic imputed the person or a characteristic they are presuming the person has (low IQ).
22. Thirdly, the provision seems internally inconsistent: vocational education and training cannot be 'equally accessible to all' whilst also being conditional on imputed or assumed 'ability'.
23. Therefore, we recommend that the Queensland provision mirror the equivalent sub section in the *Human Rights Act 2004* (ACT), so that it reads: **Everyone has the right to have access to further education and vocational and continuing training without discrimination**.

Recommendation 3: Clause 36(2)

That the Queensland provision mirror the equivalent sub section in the *Human Rights Act 2004* (ACT), so that it reads: **Everyone has the right to have access to further education and vocational and continuing training without discrimination**.

Please do not hesitate to contact us with any queries regarding this submission.

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