



People with Disability Australia (PWDA)

**Submission to the Queensland Parliament, Legal Affairs &
Community Safety Committee:
The Queensland Human Rights Act 2018**

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About People with Disability Australia

1. **People with Disability Australia (PWDA)** is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.
2. PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.
3. We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.
4. PWDA is also a founding member of Disabled People's Organisations Australia ([DPO Australia](#)) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. DPO's are organisations that are led by, and constituted of, people with disability.

Introduction

As a national peak body for people with disability and Disabled Person's Organisation (DPO), People with Disability Australia (PWDA) congratulates the Queensland Government for introducing the *Queensland Human Rights Act 2018* ("The Bill"). PWDA strongly supports the introduction of a Human Rights Act in Queensland.

The introduction of the Bill, once approved, brings Queensland ahead and surpasses Victoria's *Charter of Human Rights and Responsibilities*, in achieving and supporting Human Rights for all community members; by ensuring a human rights culture is fostered across all arms of government, including policy frameworks, service delivery and new laws. It also brings Queensland closer to the full implementation of the *United Nations Convention on the rights of Person's with Disability (UNCRPD)*.

Recommendations for the Human Rights Act 2018

PWDA supports the Human Rights framework proposed in the Bill, however, in order to be truly effective the Human Rights Act must be legally enforceable. The Bill

should give people the means to take legal action should they be treated unfairly. In addition, the Bill needs to guarantee provisions for people with disability to ensure effective and full access to justice and equality before the law, as equal citizens, in any form of legal proceedings.

In its current form, the Bill does not effectively guarantee these rights, therefore PWDA have listed the following recommendations.

1. Making a Complaint to a Court or Tribunal

Whilst PWDA recognises that having non-judicial means by which to resolve breaches of human rights may deliver satisfactory outcomes for some, as currently proposed in the Bill. It should also be noted that under the Bill as it currently stands, the Human Rights Commission cannot:

- 1. Make a legally binding finding about whether a government agency, body or a particular law, breaches human rights.*
- 2. Award remedies to address the harms caused by a breach of Human Rights.*

Therefore, the Human Rights Act needs a standalone cause of action in order that people can uphold their rights in a tribunal or court. Similar to the Victorian Charter, the Bill only allows for claims to be raised in legal proceedings if there is another ground on which to challenge the decision or action. A recent review of the Victorian Charter recommended amending the Charter to include a standalone cause of action, such as exists in the ACT, and for complaints to be made to a tribunal and not the Supreme Court.¹

Recommendation:

1. The Bill must include a standalone cause of action so that breaches of the Human Rights Act can be heard at QCAT or the Supreme Court.

2. Access to Justice and Equality before the Law

It is noted that clause 15 of the Human Rights Act – Recognition and equality before the law, subsection (5), provides that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

In addition, in clause 32 – Rights in Criminal Proceedings, subsection (25) Person must have the right to have free assistance of specialised communication tools and technology and assistants if the person has speech difficulties that require assistance.

¹ Young, M.B (2015), Commitment to Culture – Review of the Charter of Human Rights and Responsibilities Act 2006, recommendations 23 & 27.

That whilst both clauses go some way to ensure that certain people with disability might not necessarily be disadvantaged or discriminated against during legal and criminal proceedings, the Act is not strong enough in ensuring that a person with disability does indeed have full access to and equality before the law in order to ensure full due process rights as per Article 13 of the UNCRPD² which states:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The Victorian Human Rights Commission along with the Judicial College, developed a set of guidelines to help judges make decisions that align with the Victorian Charter of Human Rights and Responsibilities.³

South Australia has enacted a Disability Justice Strategy, which supports access to justice and equality before the law for people with disability across all legal settings.⁴

New South Wales has recognised and reviewed the need for a Disability Justice Strategy (2017), which PWDA also supported.⁵

² UNCRPD, accessed at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-13-access-to-justice.html>

³ Benchmark Guidelines for Judges in Victoria, accessed at <http://www.judicialcollege.vic.edu.au/disability-access-bench-book>

⁴ South Australia Disability Justice Plan, accessed at, <https://www.agd.sa.gov.au/projects-and-consultations/disability-justice-plan>

⁵ Submission to the NSW Justice Department, Disability Justice Strategy, accessed at: <https://pwd.org.au/our-work/submissions/submission-archive-2017/>

Recommendations:

1. That Clause 15 subsection (5) include a specific guarantee to procedural and age-appropriate accommodations (reasonable adjustments) in all legal proceedings including, as witnesses, in investigations and other preliminary stages.
2. That the Act include provision for the appropriate training to all people working within the legal and judicial field, including police officers and prison officers, on disability awareness and disability access to justice.
3. That the Act include provision to support the Human Rights Commission to create a set of guidelines for the judiciary on how to interpret the Sentencing Act and the Evidence Act in accordance with the Human Rights Act.
4. That the Act include provision for a Disability Justice Strategy to ensure the full and effective recognition of people with disability before the law.

3. Consequential amendment to the Corrective Services Act 2006 (Qld), Clause 126

PWDA does not support the proposed consequential amendments to the *Corrective Services Act 2006* (Qld) provided for in clause 126 of the Bill. This provision sanctions a breach of the human rights of a prisoner detained on remand or without charge in circumstances where this is justified on the basis of consideration of the security and good management of the corrective services facility. We do not consider that this consequential amendment is appropriate, nor is it necessary in light of the recognition, in Clause 13 of the Bill, that human rights can be reasonably limited.

PWDA notes the significant over-representation of people with disability within the Queensland criminal justice system, with research indicating that approximately 10% of Queensland prisoners have intellectual disability.⁶ We also note the extreme vulnerability of people with disability in this environment, given the current inadequate measures in place to ensure that prisons are a safe, accessible and appropriate environment for people with disability.⁷ Of particular concern, people with intellectual disability can be subjected to solitary confinement within prisons to protect them from harm from other prisoners.

Recommendation:

⁶ Queensland Department of Corrective Services. 2002. *Intellectual Disability Survey*. This is consistent with more recent Australia-wide research, which established that 9 – 10% of prisoners approaching release had an intellectual disability in the context of the representation of people with intellectual disability within the general Australian population of 1 – 2%: Australian Institute of Criminology. (2016). 'Transition from prison for people with intellectual disability: A qualitative study of service professionals', 2.

⁷ Human Rights Watch. (2017). *"I Needed Help, Instead I Was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia*.

1. PWDA submits that Clause 126 should be omitted from the Bill.

Conclusion

PWDA thanks the Committee for the opportunity to make a submission to this inquiry. PWDA strongly supports the passage of the *Queensland Human Rights Act 2018*, at the earliest opportunity.