

26 November 2018

Mr Peter Russo MP
Chair, Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

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

Dear Mr Russo

Re: Human Rights Bill 2018

The Queensland Branch of the Royal Australian and New Zealand College of Psychiatrists (RANZCP QLD Branch) welcomes the introduction of the Human Rights Bill 2018 to Queensland Parliament.

The RANZCP QLD Branch supports a Human Rights Act for Queensland which protects the rights of Queenslanders, including those with a mental illness and those with intellectual and developmental disabilities. A Queensland Human Rights Act should complement and strengthen the obligations the Commonwealth Government has to the international human rights treaties it has ratified. The RANZCP QLD Branch considers there are many cases where people with mental illness experience breaches of their human rights, and this is detailed in our previous [submission to the inquiry into a Human Rights Act for Queensland](#) in 2016, which is attached. We support-in-principle the Human Rights Bill 2018, yet consider the proposed model, which only applies to 'public entities', does not provide adequate protection for Queenslanders.

We welcome the explicit recognition of cultural rights in the Bill and, in particular, the distinct cultural rights of Aboriginal and Torres Strait Islander peoples. We also welcome the inclusion of the right to health services and the right to education. In addition to these rights, we would like to see the inclusion of rights for people with mental illness or mental disabilities, and people with disabilities. The United Nations Convention on the Rights of Persons with Disabilities, 2006, is the first international treaty that embeds the rights of people with disabilities, including mental disabilities, in the international human rights law.

The RANZCP QLD Branch believes all persons with mental disorders have the right to access equality in healthcare and treatment without stigma or discrimination, and to be treated with dignity and respect. It is widely accepted that good, accessible mental health care and treatment can help prevent a person's condition from worsening. Yet the RANZCP QLD Branch regularly hears from carers and consumers about difficulties accessing public psychiatric care, including stories of people who are turned away because they are not unwell enough. A strong Human Rights Act that provides rights for people with disabilities



could pave the way for better access to high quality mental health and support services and improved social inclusion.

We are pleased that the Bill extends human rights obligations imposed on government to functional public entities. However, we are concerned that the Bill does not capture private entities, even when they are delivering important human services such as education and health services. For example, the Bill does not appear to protect the rights of private patients in private hospitals. The RANZCP QLD Branch considers that patients' human rights, especially vulnerable patients such as those with mental illness, should be protected by the Bill and not be dependent upon whether they are being treated in a public or private entity.

Similarly we consider children's human rights, including the right to education should not be determined by whether they attend a public or private school. The Bill states that 'a non-state school is not a public entity' (Clause 9(1)(h)), and would therefore not be bound by the Act. However, Clauses 10(1)(b) and (d) state that in deciding whether a function of an entity is of a public nature, it may consider 'whether the function is connected to or generally identified with functions of government', and 'whether the entity is publicly funded to perform the function'. Given that private schools and private hospitals receive substantial public funding, and arguably provide a public function, it is not clear why they are not considered public entities. The RANZCP QLD Branch is concerned that the exclusion of private schools from the Bill, will allow private schools to continue to exclude children with additional support needs. A Queensland Human Rights Act should protect the right of all children to access education appropriate to their needs, regardless of whether the education is being provided by a private or public entity.

The RANZCP QLD Branch is concerned that the primary remedy for a contravention of the Bill is limited to dispute resolution. We consider that a Human Rights Act must ensure people whose rights are violated have access to effective remedies, including access to the Queensland Civil and Administrative Tribunal and the full range of judicial remedies, including declarations, injunctions and orders to cease the offending conduct. We note that the Bill's proposed enforcement action known as the 'piggyback cause of action' would only be able to occur where a claim of unlawfulness under the Human Rights Act is unlawful under an existing piece of legislation. Even where such a cause exists, the cost of seeking legal remedies may be beyond the means of many members of the community, and we are concerned their claim of unlawfulness would be unremedied and unnoticed.

We consider that the Bill's proposed system of redress for human right breaches should be stronger to ensure that these human rights are upheld. The RANZCP QLD Branch recommends the Bill provide the Queensland Human Rights Commission and Commissioner with a range of powers and functions, including the ability to:

- make recommendations to the Premier and Attorney-General or the relevant Minister who oversees the Commission
- promote and raise public awareness about human rights
- publicly name entities who breach the Human Rights Act, for example, naming in Parliament
- hold entities legally accountable for violating a provision in the Human Rights Act.



We support the inclusion in the Bill of a requirement for subsequent reviews of the Act when it comes into operation.

If you would like to discuss any of the issues raised in this submission, please contact QLD Branch Policy Officer, [REDACTED] via [REDACTED] or by phone on [REDACTED].

Yours sincerely

A handwritten signature in blue ink that reads 'Brett'.

Prof Brett Emmerson AM
Chair, RANZCP Queensland Branch