

Submission to Legal Affairs and Public Safety Committee
of the Queensland Parliament
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Human Rights Bill 2018

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Submission about the Human Rights Bill 2018

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Abstract

Australian Governments of all political persuasions have ratified the Conventions, Treaties and Covenants comprising International Human Rights Law, over many years. The hope of having rights, any rights, has been lost for many Australians, and remains an indictment on Australian Governments that the human rights they've agreed with, and had a part in formulating, have not been passed on to all Australians. Although I question the need to record and codify human rights, because natural or human rights exist in spite of and prior to what governments decide, I don't doubt that the Human Rights Bill 2018 will become law in Queensland. I can't ignore the reality that human rights will be legislated, without having a say, or better, hopefully, having input. I question what human rights are legislated, and believe it should be all, or none. I question why some people will have human rights, and others will have none or few. I question the ability to appeal breaches of human rights, and believe if breaches are to be investigated then adjudication about whether there have actually been breaches must be considered by a competent, knowledgeable, resourced Court of Law - and not another government appointed body which is beholden to the government of the day for its funding, staffing and very existence - which must also have the power to assess the financial effects of the breaches, so that those who breach others' human rights do not act with impunity.

The need for Human Rights legislation in Queensland

I understand that International Human Rights Law comprises all those Treaties, Conventions and Covenants which the international community has developed together primarily in the United Nations.

Successive Australian Governments, whether Liberal / National / LNP or Labor / Greens Governments have ratified all of what comprises International Human Rights Law. The Universal Declaration of Human Rights, a lifetime ago, was a milestone, but it took 2 horrific World Wars to recognize individuals and groups needed and deserved the respect of governments, and safeguards to protect their thoughts, their beliefs, their values, and their fundamental needs. It was governments that had sacrificed people in their quest to impose their political and social ideologies.

Little of what has been ratified has been legislated.

Legislation incorporating some human rights was passed in Queensland in response to the Forde Inquiry, or properly known as the Commission of Inquiry into Abuse of Children in Queensland Institutions.

Unfortunately, the legislation cherry picked some human rights, which favoured some children, those in care, custody or detention, but all other children were not afforded the same rights. It is the cherry picking of human rights to suit the specific situations nominated by the government of the day, which creates inequities and unequal treatment. The inequitable treatment of children became particularly evident when a few Queenslanders sought to have their human rights recognized when engaged in a battle with government. Despite bringing their human rights to the attention of government, they were never addressed and apparently completely ignored.

Human rights are natural and some Common Law rights recorded and codified

I've been challenging myself over whether there's a benefit to making a submission to this public consultation by the Committee. My challenge is believing that anything that's said by the public will make any difference whatsoever to the proposed legislation. In a unicameral Parliament where any political party that has the majority, can pass any legislation they like, so long as they're prepared to accept the consequences of invoking the wrath of affected people and groups.

This legislation, if passed, will no doubt invoke the wrath of many, and will be undoubtedly, in my view, subject to amendments or repeal by another government. Legislating human rights has both passionate advocates and dissenters. It is the absence of rights of almost any nature in Australia that is our greatest shortcoming. Although others will say Parliaments are the bastions of upholding rights, so often Parliaments are also the source of the greatest limits on freedoms and rights through so much legislation and regulations. Human rights sit above, before and prior to all other acts and omissions of Parliaments. Compared with other countries, Australia is governed still more along the lines of the penal colony of a far-off power, except that the power exists only within this country and that power rests with our Parliaments. People have rights that precede, predate and are prior to even Parliaments. It is long overdue that all our rights were respected and upheld.

Which rights should people have

Special interest and narrow interest groups continually lobby for change that's important to them. Disability advocates will see the great merit in lobbying for rights for the disabled. Prisoner advocates will lobby for rights of those in custody, or serving jail terms. Migrant advocates will lobby for better services and conditions and access by migrants. The Parliament

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can be encouraged to look at human rights on narrow, but still important, sectional needs by the special interest groups, but Parliament needs to represent the interests of all Queenslanders.

In representing all Queenslanders, it is beholden on Parliament to incorporate all International Human Rights Law into legislation. Cherry picking who receives the benefit of their human rights, and therefore who doesn't, is not what a representative Parliament ought to do.

When I, as part of a group, sought to avail ourselves of our human rights, we found they were not available to us, except if we sought to have those rights that existed, and which individuals in other countries had availed themselves of, we would need to find the support and resources to take our matters before the High Court of Australia. It seemed incredible that a few people had human rights in Queensland, but not the majority, and not all people in the State. Even then, in knowing those human rights had been available to a few, but not to us, when we needed those rights to safeguard and protect us, was soul-destroying.

Rather than merely incorporating a few, select, human rights into legislation, it is my submission that all the following ought to be incorporated:

- Universal Declaration of Human Rights
- Convention against Discrimination in Education
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child

Experience with human rights

I have given a number of presentations over the years about human rights. A submission was put to the Federal Parliament's Joint Parliamentary Inquiry into Treaties in 1997, and appeared twice before the Committee, the second time as a return invitation. Most presentations related to the CRoC (the Convention on the Rights of the Child).

I worked with others to extract and record all the human rights of parents, students, staff and schools, which was then supplied to enrolling school students.

It was the absence of any protections of our human rights together with any avenue of appeal that we realised that long held beliefs that we had freedoms in Australia were hollow, and without substance. It is not until your back is against the wall, and you seek to draw on what you believe to be your rights, and find not only that they don't in fact exist, despite successive Federal Governments ratifying Treaties, Conventions, Covenants, etc, and then also realise that restrictive legislation defines what can and cannot be considered by Human Rights bodies. I came to realise we need justice to prevail, so that claims of breaches of human rights can be heard independent of government.

Receiving and Hearing alleged breaches of our human rights

It has been my experience that Governments which must provide support for appeal mechanisms can manipulate, or limit funding, or cause changes to be made to the structure of bodies empowered to hear claims and appeals.

It has been my experience that an appeal to a Minister against a decision of a majority government appointed Board, was compromised by a conflict of interest within the group appointed to advise the Minister. Because the group appointed to advise the Minister was not advertised publicly, and was not transparent, it became a partisan review of the Appeal. That partisan review was accepted by the Minister, and consequently, I and others suffered personally.

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It's clear to me, and it is my submission that breaches of human rights, as with other matters in which the Government is the proponent of legislation, must be heard independently of government. It is my submission that breaches of human rights must be heard by a competent, properly resourced and knowledgeable Court of Law.

It is also my belief that human rights are not just intangible, without financial effects. So often, and I've experienced it personally and with others, that those governments, bureaucrats and others that affect other individuals and groups, and especially affect their human rights, do so with impunity. It's far too easy for governments, especially, and others, who and which are very powerful, have the time and seemingly the money at their disposal (despite it often being the public's money, and in limited supply), can grossly affect the lives, needs, interests, aspirations and property of individuals and groups, but never have to feel the consequences of those actions, as the affected individuals and groups invariably do. Governments and bureaucrats must be accountable. Governments and bureaucrats and others who affect the human rights of individuals or groups must not be impune from the consequences of their actions. There needs to be a mechanism by which the reasonable financial effects on affected people and groups can be assessed, and those effects assessed and imposed as a consequence. I do not suggest that financial consequences should be unlimited, but that financial consequences must be real. In addition, a competent Court hearing allegations that human rights have been breached, ought to encourage the parties to conciliate and where necessary an offending party, apologise, publicly if necessary.

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Human Rights implications for Students, parents and the Centre of Learning

Booroobin believes that international human rights treaties and conventions are the foundations for people living and relating to each other. These must be integral to the operation of a School of in our case, a Democratic Centre of Learning. Further we accept that rights and education are engaged in a mutually defining process, each essential to the enhancement of the other. Booroobin believes that education underpinned by human rights, also assists Human Rights Conventions and Treaties ought to be enacted through legislation. The Centre of Learning is "*oriented in such a way as to contribute to the enjoyment of all human rights by every member of society*". The Booroobin Sudbury Democratic Centre of Learning, and previously the School, makes education available, accessible, acceptable and adaptable for its Students, with the full knowledge and agreement of their parents, and supported by the elected, selected qualified and life experienced Staff. The focus of planning and operation of the Centre of Learning is in the best interests of each child.

Young people at Booroobin know and have their rights affirmed all the time. They know that they exercise choice in their learning, supported fully by their custodial parents.

Booroobin and its natural, learning environment supports the enjoyment of learning, and the development of critical thinking and meta cognitive skills, which becomes a natural lifelong pursuit. Other educational practices do not go far beyond helping children to memorise and accurately regurgitate facts under exam conditions. Booroobin Students have that choice and have availed themselves of that choice. Quantifiable educational outcomes can jeopardise a general commitment to learning, whereas the core objective of learning from Booroobin's perspective is to support young people in their preparation for life as effective adults in ways that integrate the core objective of a rights based approach to education which is the development of the ability to learn and to continue learning throughout life.

Following are applicable sections of international human rights law as contained in Conventions and treaties and ratified by the Australian government. Also shown is how The Booroobin Sudbury School – a Centre of Learning complied with the Treaties and Conventions, even before Australia became a signatory in the case of the Convention on the Rights of the Child (CRC).

All of the following Conventions and Treaties are available at Booroobin. Most are on computer, particularly the server in the Administration room.

Parents rights to freedom of choice

International human rights law requires the State to respect the freedom of parents and communities to establish and operate schools.

It is not the role of the State to give birth, nurture, clothe, feed, house, and raise children and protect them from personal harm. This is the role of the family. The State cannot replace parents in loving and supporting their children and giving them warmth and comfort. Neither can the State pass on sound personal advice, values, skills, morality nor family life. The imperatives of the State are different from the family's fundamental role in raising children and supporting their development from dependency to independence. Likewise, the State must allow parents free choice in educating their children according to their values and beliefs. International human rights laws were designed to ensure liberty for the individual as a balance against the might and powers of the State being used against individuals.

The following international human rights laws must be implemented, as well in education. These laws have been breached. The Booroobin Sudbury Democratic Centre of Learning was Founded by parents, their children and teachers and opened in 1996 for the benefit of children and in the best interests of each child. The School was operated in accordance with its Constitution. For the period 1996 to 2003, 60% of the School Staff have been parents of some Students, who have applied like any other applicants, and undergone all of the screening, interview, election and probationary processes like any other applicants.

Universal Declaration of Human Rights:

Parents have a prior right to choose the kind of education that shall be given to their children.

UNESCO Convention against Discrimination in Education 1960:

The State Parties to this Convention agree that:

(b) It is essential to respect the liberty of parents, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to minimum educational standards, and secondly, to ensure the religious and moral education of the children in conformity with their own convictions.

International Covenant on Economic, Social and Cultural Rights (1966):

The State Parties to the present Covenant undertake to have respect for the liberty of parents to choose for their children Schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions

International Covenant on Civil and Political Rights (1966):

The State parties to the present Covenant undertake to have respect for the liberty of parents

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.... to ensure the religious and moral education of their children in conformity with their convictions.

Convention on the Rights of the Child (1989)

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

No part of (articles 28 and 29) shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions

Human rights in educational content

The Democratic Centre of Learning consistently refers to Natural Learning, and a Natural Learning Curricula, involving the development of whole of life skills, study and research, that is directed to and by the whole person who is respected as an equal, even if not as life experienced as others.

In an educational environment where everyone knows they have rights, including human rights, and are able to make choices, with the full knowledge of parents in the case of Students, and knowing that choices and personal responsibility involve consequences, Students have consistently chosen to learn naturally as opposed to selecting the available Queensland State Curricula, while experiencing and also learning through the democratic mechanisms that are reflective of the free enterprise, open, civil, democratic Australian society, and through which they are learning about themselves and the world around them, and gradually narrowing their range of interests. The success, to date, of Graduates and past long term Students who completed their years of Schooling at Booroobin has supported the Founders' beliefs, trust and respect for young people in general that they have the ability to learn to become independent at School and develop into effective adults with diverse interests, knowledge and skills coupled with high emotional intelligence and a developed work ethic, who contribute to and not take away from the Social and Human Capital of the wider community. These past Students, along with younger long term enrolled Students, are also demonstrably fulfilling the aims of the Adelaide Declaration of National Goals in Schooling in the 21st Century. This is entirely different from education systems that work from the bases of reward and punishment for following or not following the directions of others. Punishments in such systems can sometimes only lead to exclusion from School in some way if it is related to not accepting direction to only learn from set curricula. As Booroobin is focused on the learner and learning, exclusion through expulsion has not happened, to date. Exclusion or expulsion will not happen when Students are evidently learning as demonstrated through personal changes and adapting to the School's community norms, including the Centre of Learning community's democratically decided Rules, as detailed in the accessible Law Book and Management Manual. The Rules contained within the Law Book provide a good guide for the nature and culture of the community. These Rules are not simply the casting of responsibility of some people onto others. The Rules give rights along with responsibilities. A far higher level of respect is due to the Student and Staff, whose constitutionally delegated responsibility it is to consider Motions, debate and decide all Rules over 2 Centre of Learning Meetings, coincidentally in a parliamentary fashion, which they have done since the day the

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School commenced in February 1996, when no Rules existed. This respect and trust, and free, equal and just process is given by parents when they take the several steps necessary to enroll their Student children and pay Fees for their attendance. This is supported by the Objects of the Constitution, enacted in its day to day operation by the School, including “Object 3.9 To acknowledge and support racial, social, cultural and religious diversity and to encourage the equal treatment of all people irrespective of race, religion, gender, age, ability, sexual preference, political orientation or economic background.”

The Booroobin Sudbury Centre of Learning complies with the following international human rights laws.

UNESCO Convention against Discrimination in Education (1960)

The State Parties to this Convention agree that (a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial and religious groups, and shall further the activities of the United Nations for the maintenance of peace.

International Covenant on Economic, Social and Cultural Rights (1966)

The State Parties to the present Covenant agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Convention on the Elimination of all Forms of Discrimination against Women (1979)

State Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on the basis of equality of men and women (c.) The elimination of any stereotyped concept of the roles of men and women at all levels, and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods

Convention on the Rights of the Child (1989)

State Parties agree that the education of the child shall be directed to (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c.) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilisations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of

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indigenous origin; (e) The development of respect for the natural environment.

Children's rights to be heard, impart information and express their views on matters that affect them

Parents enroll their student children in Booroobin with the full knowledge that their children are afforded human rights, and therewith the ability to make choices. They are aware that Staff are available to teach to the available common Queensland State Curriculum, as well as knowing that many Students choose natural learning activities instead, and achieve their goals. They do this free from coercion, threats, sanctions or punishments by the school, and they study, research, discuss, debate, present motions and submissions to Centre of Learning Meetings and Budget Committees, seek assistance from other students, or Staff or parents or tutors approved by the Centre of Learning Meeting and establish autonomous Centre of Learning Corporations with others with approval of the Centre of Learning Meeting in pursuit of knowledge about their own interests and the democratic mechanisms of the Centre of Learning in which their student children will be involved. Parents are aware they can talk with Staff at any time about any matters about their student children, with their student children present. These options are advertised. Parents of enrolled students who are parties to Enrolment Contracts and pay Fees are satisfied with the Centre of Learning. They have the option to withdraw their student children at any time they are not satisfied.

The right of children to choose and participate in decision making about those things that affect them and their ability to exercise freedom of choice to decide the kind of education they would like is recognised by the CRC. Students and staff have academic freedom.

Booroobin is wholly focused on learners and learning, and running its business as smoothly as possible to allow learning to happen. Booroobin supports young people in their preparation for life as effective adults. It hopes that Students at the Centre of Learning are generally happy. These comply with a rights based education and international human rights law.

Human rights are focused on the learner, just as Booroobin's focus is on its enrolled Students. With human rights underpinning the planning and operation of the Centre of Learning by parents, their children, and teachers, this led to a much improved educational environment along with other factors such as a specifically selected campus offering a natural learning environment, together with resources decided and purchased by or donated by many good intentioned members of the wider community to the Centre of Learning community, supported by Staff selected according to a range of definitive criteria and elected to their roles. Rights based democratic education ensures that Booroobin's students not only are assured their rights at the Centre of Learning, but they fully experienced the rights and benefits of an open, civil, democratic society at the Centre of Learning – rights that were not available to them elsewhere. In the past, some parents, in particular, regarded Booroobin as a place of respite for their Student children, where they could recover the effects of other educational institutions on them, without telling the School as it was then, and when they had recovered their self esteem, were prepared to look adults in the eyes, found they had a voice that people would listen to, were respected, could smile, and were trusted, treated fairly and justly, or reduced or completely eliminated their courses of drugs and stabilised, and learnt more about personal responsibility and independence as opposed to dependence based education, withdrew their Student children and sent them again into mainstream education. It was undoubted that they would do well, because most were highly intelligent when they enrolled, and when they left.

In 2003, our Students' voices regarding the alleged absence of natural justice and procedural fairness in the processes and decisions to cancel their school's accreditation are completely absent from the judicial hearings. The Submission from all the Students of the School addressed to the Hon. Anna Bligh, Minister for Education that they initiated, debated, decided and wrote¹, received no comment or acknowledgment from either the Non-State Schools Accreditation Board, who were undoubtedly acting only in terms of the governing legislation, but in ignorance of their higher responsibilities under international human rights law as a Statutory Board of the Queensland State Government; or the Queensland Minister for Education; or the Panel of secretly appointed people formed to advise the Minister. In that Submission they clearly expressed the view they had chosen not to accept an imposed curriculum: *"..... we are all independent people who are capable of taking responsibility for our own learning. We know where we want to go in our lives, and are pursuing our interests"*. *"We don't want to be judged by others, categorized into age groups, told what to learn, how to learn, and when to learn it."* and stating *"We feel we have learnt more being here than we did in any other School"*. They requested the Minister *"... to allow our school to continue running"*. Students views were not sought when they walked 100kms over 26 hours, with the support of staff, parents, family and friends, to the Queensland Parliament House after weeks of training to deliver letters of support and Petitions to the Queensland Minister for Education.

Despite a range of so called behavioral, learning and other factors and reasons for students leaving other schools to enroll at Boorobin, no student has been refused enrollment from 1996 to 2003. No Student has ever been expelled.

Universal Declaration of Human Rights

*.... the United Nations has proclaimed that childhood is entitled to special care and assistance
....*

.... convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

.... Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child

Convention on the Rights of the Child (1989)

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local

¹Students' Submission dated September 18, 2003annexed hereto

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custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

States Parties shall respect the right of the child to freedom of thought, conscience and religion.

Academic freedom and institutional autonomy

Staff and students throughout education are entitled to academic freedom under Article 13 of the International Covenant on Economic, Social and Cultural Rights. This has been firmly stated by the Committee on Economic, Social and Cultural Rights (CESCR) of the United Nations Economic and Social Council². These rights in international human rights law must be implemented by governments at all levels.

The evidence is readily available that educational freedom does not lead to laziness or an absence of learning. In fact, the opposite happens, as young people learn they need to be responsible for themselves and self-reliant. A long list of diverse, real-life based, holistic, learning activities in which some 14 students engaged during 2002 is indicative of this. Unlike other education providers where activities are arranged for Students, Booroobin has always prided itself that its Objects have been implemented, because a rights-based, democratic education supports students developing initiative, enterprise and self-assessment through self-directed learning. Those activities listed, whilst supported by Staff and the School as it then was, at times through its democratic mechanisms, were variously researched, studied, discussed, debated, decided, planned, arranged, organised and sometimes funded by Students. These activities did reflect more than minimum educational standards.

Learning activities reflect more than and are not restricted by the 8 Key Learning Areas, and are age, ability and experience related, because the Students initiated and undertook the activities. Those activities that not all students participate in, they are nonetheless exposed to through observation and the open, direct, verbal and written communication that exists. It is these self-directed, self-initiated, self-assessed real-life based learning activities that students choose, with their parents' support, that have contributed to long-term Students' and Graduates' achievements in life, further education, work and enterprise after they Graduate at the Centre of Learning.

Booroobin is a self-managing, learning community which is serious about its role in supporting its Students, Staff and parents in lifelong learning. The Centre of Learning has high standards and expectations of Students. Booroobin has consistently applied *Object "3.8 To create and maintain a flexible learning structure in The Booroobin Sudbury School so that students will be free to adhere to traditional learning pursuits or create new ones."* of its Constitution. Booroobin acknowledges that each student learns differently, at different rates and at different ages, and this is in the best interests of each child. There has never been an expectation that Students will direct their own learning in such a way as to conform to mainstream processes. Most Students and their parents have experienced mainstreamed education in State and non-state schools and then exercised their rights and freedom of choice, to make a purposeful, informed decision to select Booroobin, based chiefly on curricula *"which is determined by the interests of students and staff, in which equal status shall be given to all pursuits."* and *Object "3.7 To provide a learning environment based on the principle that learning is best fostered by self-motivation, self-regulation and self-assessment."* Academic freedom similarly reflects that there is more than one way to achieve desired educational outcomes.

The human rights based education environment at Booroobin enables Students to take control of their lives, and become independent, with Students self-assessing their progress

²CESR 21st session November 15 to December 3, 1999.

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and gauging what further work is warranted to achieve their desired goal. Students, whose critical thinking, views, voices and votes are integral to their self directed learning, can readily describe to interested listeners what activities they do, and what they believe their achievements are.

Specific legal obligations

Booroobin provides an educational model that fulfills government's legal obligations for education under various international treaties of availability, accessibility, acceptability and adaptability.

In relation to article 13 (2), of the ***International Covenant on Economic, Social and Cultural Rights*** the CESCR stated:

States have obligations to respect, protect and fulfill each of the “essential features” (availability, accessibility, acceptability, adaptability) of the right to education. By way of illustration, a state must respect the availability of education by not closing private Schools