



EDO Qld.
Environmental Defenders Office
*Using the law to protect
our environment.*

30 Hardgrave Rd WEST END, QLD 4101
tel +61 7 3211 4466 *fax* +61 7 3211 4655
edoqld@edo.org.au www.edo.org.au/edoqld

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Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
Sent via email only: lacsc@parliament.qld.gov.au

Dear Chair and Committee Members

Submission to the Human Rights Bill 2018 Inquiry

We welcome the opportunity to provide submissions to the inquiry into the committee's consideration of the Human Rights Bill 2018.

We congratulate the Queensland Government for meeting their commitments to Queenslanders by introducing this momentous Bill into Queensland Parliament.

Environmental Defenders Office Qld

The Environmental Defenders Office Qld (EDO Qld) is an independent community legal centre specialising in empowering the community to protect their environment and health through the use of the law. We achieve this through working with all sectors of the community to provide advocacy, education, representation and advice on environmental laws and access to justice. Through this role EDO Qld is an appropriate entity to provide commentary and deliberation in relation to the recognition and protection of human rights dimensions of the environment.

Our submissions are provided in this letter in summary, in detail in the **Appendix**.

Key features of the Bill we support:

1. Establishing statutory recognition and protection for 23 human rights, including the right to: recognition and equality before the law; taking part in public life; cultural rights for Aboriginal peoples and Torres Strait Islander peoples and cultural rights more generally; right to a fair hearing; right to education and right to health services.
2. Providing mechanisms to ensure public functions are compatible with human rights, including providing:
 - an obligation on public entities (defined in clause 9) to act and make decisions in a way that is compatible with human rights; and
 - (with some exceptions) that it is unlawful for a public entity:

- to act or make a decision in a way that is not compatible with human rights (clause 58(1)(a)); or
 - in making a decision, to fail to give proper consideration to a human right relevant to the decision (clause 58(1)(b)).
3. Providing for a ‘Queensland Human Rights Commission’ to provide a dispute resolution process for dealing with human rights complaints, and to promote acceptance and public discussion around human rights (replacing the Anti-Discrimination Commission).
4. Providing a power to ‘piggy-back’ a claim of unlawful contravention of the Human Rights Act onto another independent cause of action against a public entity (like a right to seek judicial review of a government decision). However, we recommend that a stand-alone legal remedy for contravention of the Bill would be more helpful.
5. Providing a means of embedding discussion of and respect for human rights in the culture of the Queensland public sector and broader society.
6. We note with support the inclusion of human rights which have not been reflected in similar statutory human rights legislative instruments enacted in Australia, namely the Victorian *Charter of Human Rights and Responsibilities Act 2006* (‘the Charter’) and the ACT *Human Rights Act 2004* (‘the ACTHRA’), namely:
- clause 27 – cultural rights – generally;
 - clause 28 – cultural rights – Aboriginal peoples and Torres Strait Islander peoples;
 - clause 36 – the right to education; and
 - clause 37 – the right to health services.
7. We strongly recommend that in addition to the rights protected in the current Bill, the Bill should be amended to include the following clearly specified rights:
- right to a healthy environment;
 - right to public participation in decision making;
 - right to public access to information; and
 - right to transparency and accountability in governance and decision making.

Overall, this Human Rights Bill would be highly beneficial to Queenslanders through helping to safeguard the basic freedoms and protections that all human beings are entitled to.

However, we strongly recommend that the right to a healthy environment, as an essential human right, must be included in the Bill.

EDO Qld considers that every one of us deserves recognition of our basic right to a healthy environment, such as the right to clean air and water. Without a clean, healthy environment, the basic human rights to life, health, work and education all cannot be fully realised.

As stated in principle 1 of the Rio Declaration, human beings are "at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."

Most modern democracies have included a right to a healthy environment in their foundational texts.

Through introducing a human right to a healthy environment, the government will be required to consider in a more fulsome way how proposed legislation or policy might impact on people, including the environment those people are dependent on for their livelihoods or health.

By providing a requirement for the consideration up front of the impact a proposed project, law or policy might have on the human right to a healthy environment, there is less chance that litigation might be undertaken to challenge that project, law or policy on the basis of the impacts to the right to a healthy environment.

Too often the rights of more marginalised Queenslanders are not given as strong a weight as the rights of others; for example, rural Queenslanders, including indigenous people, frequently suffer impacts to their air and water quality which would not be allowed to occur in urban Queensland. A Human Rights Act would help to address this imbalance in the concern for the environmental needs of marginalised people versus those in cities.

EDO Qld would welcome the opportunity to present to the Committee in the public hearing of this inquiry.

Yours faithfully

Environmental Defenders Office (Qld) Inc



Revel Pointon

Senior Solicitor

Environmental Defenders Office (Qld) Inc

APPENDIX – EDO QLD submissions in detail

1. Queenslanders (and all people) deserve recognition of their human rights under law

In absence of constitutional protection, legislation is desirable

The Universal Declaration of Human Rights (1948) declares that:

“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.¹

Most modern democracies have considered these rights too important to be left as moral norms and have thus entrenched human rights in their constitutions, such that Australia is now the only democratic western country that does not have explicit human rights in our constitution.

Australia has instead relied on a collection of implied rights in our constitution and commitments through international treaties that are given limited effect through legislation.

This piecemeal implementation has not given full and comprehensive recognition and protection to these fundamental rights. While constitutional recognition of human right would be preferable, and commensurate with the importance of these rights, in the absence of such protection it is appropriate and desirable for our human rights to be protected through legislation.

Legislative protection has been the path followed by ACT and Victoria, as well as the United Kingdom, New Zealand, Canada and Hong Kong. Canada and Hong Kong have now moved on to enshrine their human rights commitments into their constitutions.

Queensland Parliament unicameral system needs extra check and balance to protect human rights

Human rights are above the politics of the day and provide a fundamental reference against which legislation can be tested.

This role is particularly important in Queensland’s unicameral parliamentary system as there is not a house of review to guard against legislative overreach.

Queenslander’s expect human rights to be upheld

Queensland has a jagged history of human rights. We were the first State to abolish the death penalty in 1922; and yet in 2013 we also passed the notorious *Vicious Lawless Association Disestablishment Act 2013* (Qld) (**VLAD Act**) which infringed the internationally agreed right to freedom of association, created mandatory punishment, the potential waiving of bail and parole and a reversal of the onus of proof. Recently there were also attempts to erode many community rights to participate in decision making process, particularly with respect to developments which pose environmental impacts.²

¹ Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

² *Mineral and Energy Resource (Common Provisions) Act 2014* (Qld)

Of note, in response to the removal of community rights and the passing of the VLAD Act, Queensland saw significant dissent from all sectors of the community, including from academics,³ the legal profession,⁴ community groups,⁵ and particularly with respect to the latter laws, from the Australian Human Rights Commission⁶ and even the former NSW director of public prosecutions.⁷ The then Queensland Government, which passed these Acts, was voted out in 2015 after only one term of government, being replaced by the current government which ran on a platform of transparency and accountability.⁸ This goes towards demonstrating the value that Queenslanders hold for human rights, and the expectation that exists that these rights will be upheld. A Human Rights Act would support the clear articulation of those rights which Queenslanders already expect our society to reflect.

A Human Rights Act will not necessarily create a bar on legislation which infringes fundamental rights, but would ensure that the justification for such infringement is brought forward to the time of passing.

Putting the recognition, protection and promotion of human rights into daily life in Queensland
Human rights are not currently clearly on the agenda of public authorities or parliamentarians, or broadly through the community and media in Queensland. The establishment of a Human Rights Act will assist in the concept of human rights entering into the daily parlance of our society, with a widespread recognition and understanding of what those rights are and how we should expect them to be upheld. This is particularly likely to occur where there are specific requirements for the drafters, parliament and the judiciary to consider the Human Rights Act when analysing laws, as well as through placing a duty on public authorities to uphold the Human Rights Act when undertaking their work.

³ Gabrielle Appleby 'Bikies crackdown: did the Constitution fail Queensland?', *The Conversation* (online), 21 October 2013 <<https://theconversation.com/bikies-crackdown-did-the-constitution-fail-queensland-19359>>; Graeme Orr 'A shocking case of government overreach', *Brisbane Times* (online), 24 October 2013 <<http://www.brisbanetimes.com.au/comment/a-shocking-case-of-government-overreach-20131023-2w1vs.html>>; Chris McGrath 'Mining coup in Queensland removes public objections rights', *The Conversation* (online), 22 September 2014 <<https://theconversation.com/mining-coup-in-queensland-removes-public-objection-rights-31737>>.

⁴ Melinda Howells and Andree Withey 'Lawyer Peter Callaghan continues to debate Qld's anti-bikie, sex offender laws', *ABC News* (online) 25 October 2013 <<https://ljiq.files.wordpress.com/2013/11/article-131025.pdf>>; Stephen Keim 'Stephen Keim SC: Campbell Newman's anti-bikie laws make Queensland look ridiculous' *Independent Australia* (online), 23 February 2014 <<https://independentaustralia.net/politics/politics-display/stephen-keim-sc-campbell-newmans-anti-bikies-laws-make-queensland-look-ridiculous,6205>>; Amy Park 'A voice against threats to mining objections right is Qld' *Lawyers Alliance* (online), 31 July 2014 <<https://www.lawyersalliance.com.au/opinion/a-voice-against-threats-to-mining-objection-rights-in-qld>>.

⁵ Eddie Clarke 'Submission to VLAD Taskforce on Freedom of Association' *Queensland Council for Civil Liberties* (online), 1 December 2009 <<http://qccl.org.au/downloads/submission-to-vlad-taskforce-on-freedom-of-association-pdf/>>; 'Queensland Taskforce on Organised Crime Legislation Submission- VLAD Act' *Rule of Law* (online), 18 August 2015 <<http://www.ruleoflaw.org.au/queensland-organised-crime-vlad-act/>>; Kathy McLeish and Matt Wordsworth 'Mining law amendments restrict rights to object to lease applications, sparking anger from opponents' *ABC News* (online), 12 September 2014 <<http://www.abc.net.au/news/2014-09-12/late-night-amendment-changes-right-of-qld-landholders-mining-lea/5741032>>; Melody Labinsky 'Small victory for landholder rights' *Queensland Country Life* (online), July 16 2015 <<http://www.queenslandcountrylife.com.au/story/3295457/small-victory-for-landholder-rights/>>.

⁶ 'Freedoms and Rights concerns in QLD bikie Laws' *Australian Human Rights Commission* (online), 18 October 2013 <<https://www.humanrights.gov.au/news/stories/freedoms-and-rights-concerns-qld-bikie-laws>>.

⁷ Simon Santow 'Tough QLD anti-bikie laws pass through Parliament' *ABC News* (online), 16 October 2013 <<http://www.abc.net.au/am/content/2013/s3869934.htm?site=southqld>>.

⁸ Peter Wellington, 'Letter Exchange to Anastacia Palaszczuk', 5 February 2015 <<http://www.peterwellingtonmp.com/Letter%20Exchange%202015.pdf>>.

The ACT Government has itself acknowledged that the passing of the Human Rights Act in the ACT has:

- increased awareness of human rights issues throughout Government;⁹
- had a ‘positive impact on political debate and consideration of policy issues by Government’;¹⁰ and
- provides ‘an impetus for agencies to properly consider human rights obligations and consult within and across different areas of government on the implications of their bills’.¹¹

Queensland deserves benefits of Human Rights Act

Sir Anthony Mason, then the Chief Justice of the High Court, in 1988 summarised the various benefits that can flow from a Bill of Rights, and of course equally from a Human Rights Act, as follows:

- It deters Parliament from abrogating the rule of law, thereby presenting a constitutional obstacle to the use of parliamentary power as a means of a totalitarian system;
- It ensures that the power of the majority in Parliament cannot be used to override the rights of minorities and individuals;
- It offers more secure protection of individual and minority rights from the exercise of power by institutions and pressure groups operating through government machinery;
- It offers principled and reasoned decision-making on fundamental issues;
- It reinforces the legal foundations of society, thereby enhancing the role of the law in society;
- It has a major educative role in promoting greater awareness of, and respect for, human rights.¹²

The benefits proposed by Sir Mason are invaluable in the operation of a democratic society. EDO Qld considers that these outcomes are not adequately provided for in Queensland law, and therefore that Queensland is, indeed, in need of a Human Rights Act.

⁹ ACT Justice and Community Safety Directorate, Government Response: Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation (March 2012), p.24, <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf>.

¹⁰ Ibid, 2.

¹¹ ACT Justice and Community Safety Directorate, ‘Economic, social and cultural rights in the Human Rights Act 2004 – Section 43 review’ (November 2014) ACT Government, 26, <http://cdn.justice.act.gov.au/resources/uploads/JACS/ACT_Government_s_43_Review_Report.pdf>.

¹² Sir Anthony Mason, ‘A Bill of Rights for Australia’ (1989) 5(1) Australian Bar Review 79, 88.

2. We support the inclusion of all rights reflected in International Covenants, in addition to recognition of other essential rights

EDO Qld considers that a Queensland Human Rights Act should recognise, promote and protect all of those rights reflected in the United Nations International Covenant on Civil and Political Rights and United Nations Covenant on Economic, Social and Cultural Rights. Australia is a party to these treaties and therefore we have an obligation to fulfill our commitment to reflect these rights in our laws.

In addition to these rights, Queensland would benefit greatly from recognising specifically the:

- (a) right to a healthy environment;
- (b) procedural rights to:
 - public participation in decision making;
 - public access to information; and
 - transparency and accountability in governance and decision making.
- (c) rights of Aboriginal and Torres Strait Islander people of Queensland.

(a) The right to a healthy environment

As humans, our health and wellbeing is inextricably linked to the health of the environment we live in and depend on. River water contaminated by toxic products can contaminate the water we drink and make us sick. Air emissions from polluting industries can cause us to suffer severe illnesses and lead to death. Vegetables or grains grown on land contaminated with toxic material from a previous user can poison us. As human beings, we therefore deserve recognition of this link, and our consequent right to a healthy environment.

Right to a healthy environment should be explicit

The right to a healthy environment was initially formally recognised in the *Stockholm Declaration* and *Rio Declaration*.¹³ There is broad recognition now that the protection of the environment 'is a vital part of contemporary human rights doctrine and a sine qua non for numerous rights, such as the right to health and the right to life.'¹⁴

In the international community, complaints concerning abuses of human rights due to impacts to the environment have often been grounded in other rights, such as the right to life, health or

¹³ *Declaration on the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1972); *United Nations Declaration on Environment and Development*, UN Doc A/CONF.151/5/Rev.1 (1992).

¹⁴ *Gabcikovo Nagymaros Project (Hungary v Slovakia)* (Separate Opinion of Vice President Weeramantry) [1997] ICJ 97, 110 [Separate Opinion]; Asia Pacific Forum Secretariat, *Human Rights and The Environment Background Paper* (September 2007) Asia Pacific Forum <http://www.mcmillan.ca/Files/SOCarroll_HumanRightsandtheEnvironment.pdf>; Human Rights and Equal Opportunity Commission, *Human Rights and Climate Change Background Paper* (April 2008) *Human Rights and Equal Opportunity*, 3, <https://www.humanrights.gov.au/sites/default/files/content/pdf/about/media/papers/hrandclimate_change.pdf>.

property.¹⁵ It is recognised, however, that a right to a healthy environment needs to be explicit, rather than being only exercisable through reference to other existing rights.¹⁶

The Advisory Council of Jurists of the Asia Pacific Forum have noted that existing trends and environmental law instruments have not been adequate in supporting the recognition of a clear and specific right to, as they refer to it, ‘an environment of a particular quality’.¹⁷ By specifically recognising a right to a healthy environment, the right can more efficiently and effectively be realised, in a way that will assist mutually the more effective achievement of most other rights, such as the right to life.

The right to a healthy environment, recognised in various different formulations, has been recognised in the constitutions of numerous countries around the world. EDO Qld has asked our colleagues in the international program of Earthjustice for assistance with the experience of human rights internationally, particularly with regard to the environment. A copy of their advice to us is **Appendix 2**. As demonstrated through their advice, the introduction of a Human Rights Act in Queensland would bring Queensland into line with the rest of the world and assist in meeting Australia’s international obligations under treaties and conventions we have signed. As we have not entrenched this right in our Australian constitution, it is appropriate that Queensland, in taking up the opportunity to legislate for human rights, includes this right to a healthy environment in our Human Rights Act.

The benefits of a right to a healthy environment

The passing of a Human Rights Act would be a step forward in the effectiveness of Queensland laws in protecting our human right to a healthy environment, and would also help to protect the rights of those whose lives are impacted by environmental abuses. The Special Rapporteur on human rights and the environment states:

‘Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.’¹⁸

Recognising the right to a healthy environment in a Queensland Human Rights Act would assist in ensuring:

- *More robust decision making around new laws and proposals involving environmental impacts*

The protection of the right to a healthy environment will likely require government to consider more fully how proposed legislation, policy or projects might impact on the environment on which we depend for our livelihoods and health. While environmental impacts are a required consideration in project assessment generally, considering these impacts from the point of view

¹⁵ Joint report of the Office of the High Commissioner for Human Rights and United Nations Environment Programme, ‘Human Rights and the Environment: Jurisprudence of Human Rights Bodies’ Background Paper No.2, January 2002

<http://www.unep.org/environmentalgovernance/Portals/8/publications/UNEP_Compndium_HRE.pdf>.

¹⁶ Advisory Council of Jurists, ‘Human Rights and the Environment Final Report and Recommendations’ (September 2007) Asia Pacific Forum, 33,

<http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Asia_Pacific_Forum_of_NHRIs_1_HR_and_Environment_ACJ_Report_Recommendations.pdf>.

¹⁷ Ibid.

¹⁸ John Knox, Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment), United Nations Human Rights, Office of the High Commissioner, accessed online 21 April 2016,

<<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>>

of a human right to have a healthy environment provides a requirement to consider the links between the possible environmental harm that a project may cause, and the impact this will have to those humans who will be affected by this harm. This is in comparison to the current separate considerations of environmental impacts, and human impacts, such as noise and amenity.

- *Less likelihood of litigation where right to a healthy environment considered upfront*

By providing a requirement for the consideration up front of the impact a proposed project, law or policy might have on the human right to a healthy environment, there is less chance that litigation might be undertaken to challenge that project, law or policy on the basis of the impacts to the right to a healthy environment.

- *Address the injustices in environmental protection measures for marginalized Queenslanders*

The rights of marginalised Queenslanders, including those whose livelihood is dependent on a healthy environment, such as farmers, are not given as strong a weight as the rights of others. They frequently suffer impacts to their air and water quality which would not be allowed to occur in urban Queensland. For example, we are aware that air monitoring and standards for particle emissions from activities in rural Queensland are typically less rigorous than for urban Queenslanders. A Human Rights Act would help to address the imbalance between needs of rural Queenslanders and those living in cities. The right would act as a reminder to public authorities in their decision making, as well as proponents when considering their activities, that rural people deserve the same protections to the health of their environment as those in urban areas.

Case Study

A case study provided by the Human Rights Law Centre demonstrates the necessity for a right to a healthy environment, and the interdependence of other human rights on the right to a healthy environment being protected: *‘Mulga Bore is a small community in Central Australia, which has a school with approximately 45 children enrolled. Water from Mulga Bore is high in nitrates, containing nitrate at 150 per cent of the rate in the World Health Organisation’s standards for developing countries. This problem was [allegedly] known to the Australian Government for some time and yet it did not act. In February 2008, the water stopped running and Mulga Bore School had no water. The result of this failure to provide a healthy environment is that the school has been closed down and students are no longer able to enjoy their right to education.’*¹⁹

Right to a healthy environment should be for current and future generations

In recognising the right to a healthy environment, we also recognise that it is not just our current generations who should enjoy this right, future generations of Queenslanders, our children and grandchildren, also have a right to their environment remaining healthy. This recognition is also demonstrated in the Commonwealth Government’s National Strategy for Ecologically Sustainable Development.²⁰ Through this recognition, we will ensure that the decisions we make today will not compromise the health of the environment over the long or short term.

¹⁹ Human Rights Law Centre, Right to a Healthy Environment, Factsheet, accessed online 21 April 2016, <<http://www.hrlrc.org.au/files/fact-sheet-right-to-a-healthy-environment.doc>>. See also: Russell Skelton, No water, blackouts, Mulga Bore’s students get a lesson in neglect, 28 February 2008, online <http://www.theage.com.au/news/national/a-lesson-in-neglect/2008/02/27/1203788442683.html>

²⁰ ESD Steering Committee, *National Strategy for Ecologically Sustainable Development* (December 2012) Council of Australian Governments <<http://www.environment.gov.au/about-us/esd/publications/national-esd-strategy-part1>>.

Providing for human rights has been found to improve law, not open floodgates to litigation

The consideration of the introduction of rights or forms of redress is always met with concern that the granting of these rights will lead to an increase in litigation. It is important to note that to our knowledge there is no evidence of an enduring increase in litigation occurring in response to the human rights instruments that have been introduced through Victoria and the ACT, nor through the United Kingdom or New Zealand which have greater recourse to courts for breaches of their Acts compared to the Australian Acts.

In reviewing the success of the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Victorian Charter) and other human rights instruments, Professor George Williams notes that human rights legislation has not increased the volume of court business.²¹ He considers the Victorian Charter ‘has been a success without giving rise to the litigation and other problems sometimes associated with the United States Bill of Rights’.²²

Similarly, he notes that, in response to the United Kingdom Human Rights Act, the Scottish courts have had a rise in ‘little over a quarter of 1 per cent of the total criminal courts caseloads’.²³

Rather, a Human Rights Act can help to ensure that laws, policies and decision making are all more robust and of a higher standard, and thus that human rights abuses do not arise; leading in turn to fewer appeals to courts for assistance.²⁴ Professor Williams considers that the Victorian Charter is indeed designed in a way that ensures it does not lead to a significant increase in litigation, however the intention of the Act is that it does have a significant impact on the performance of the courts when undertaking their work.²⁵

(b) Procedural rights – the right to:

- **public participation in decision making;**
- **public access to information; and**
- **transparency and accountability in governance and decision making.**

Public participation in decision making, including through submission, review and appeal rights, has been demonstrated to improve decision making outcomes, through increasing the social licence of the policy, law or project, and through broadening the critique of the proposal under consideration and testing it against the values and concerns of the society it will impact.

The NSW Independent Commission Against Corruption (ICAC) has identified community participation in decision making through appeal rights as of vital importance to a transparent and accountable governance, and particularly in the planning system. ICAC found that the “absence of third party

²¹ ²¹ George Williams, ‘The Victorian Charter of Human Rights and Responsibilities: Lessons for National Debate’, (2006) 46 *Papers on Parliament* 81, 81-95.

²² Ibid.

²³ Ibid.

²⁴ George Williams, ‘The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’, (2006) 30(3) *Melbourne University Law Review* 880, 893.

²⁵ Ibid, p.894.

appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system.’²⁶

Other reasons why recognition and protection of the right to public participation in decision making is important include that it:

- encourages greater public debate around decision making of concern to the community;
- improves and aids the form by which public participation is provided for, through better and more consistent policies and procedures being developed to facilitate meaningful public participation;
- allows multiple views and concerns to be expressed and ‘provide a forum where collective rights and concerns can be weighed against the rights and concerns of the individual’;²⁷
- facilitates consideration of local knowledge which may not be held by or be accessible to the decision maker;²⁸ and
- improves decision-making and ensures greater transparency and accountability within the decision-making process, through the requirement to ensure the public has access to adequate and relevant material to assist in providing input into the decision making process.

The Rio Declaration recognizes that environmental issues ‘are best handled with participation of all concerned citizens’ and that ‘each individual shall have appropriate access to information concerning that environment that is held by public authorities’... ‘and the opportunity to participate in decision-making processes’. Further it states that states ‘shall facilitate and encourage public awareness and participation by making information widely available’.²⁹ The rights were also recognized specifically from the perspective of ‘environmental democracy’ in the Aarhus Convention adopted in Europe in 1998.³⁰

These rights have been considered to be derivatives of other rights, such as the right to participate in public life.³¹ EDO Qld considers there is a benefit in clearly defining these three procedural rights as particular rights to be recognized, protected and promoted. This will ensure these rights are understood and not lost within the broader concept of participation in ‘public life’. These rights should not be limited to only environmental matters, as they are beneficial to the fulfilment of all human rights and the operation of a well-functioning democratic society.

As discussed above, the value that Queenslanders place on these rights is demonstrated in the community reaction to the reductions in legal rights to participate in decision making, and the current government’s winning platform mounted on transparency and accountability.

²⁶ Independent Commission Against Anti-Corruption (ICAC), Anti-Corruption Safeguards and the NSW Planning System (2012) Independent Commission Against Corruption. <<http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012/file>>.

²⁷ Judge Christine Trenorden, ‘Third-Party Appeal Rights: Past and Future’ (Paper presented at the Town Planning Law Conference, Western Australia, 16 November 2009).

²⁸ Ibid.

²⁹ United Nations Declaration on Environment and Development, UN Doc A/CONF.151/5/Rev.1 (1992) art 10.

³⁰ United Nations Economic Commission for Europe, ‘*Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*’, June 1998 <<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>>.

³¹ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, UNTS 171 (entered into force 23 March 1976) art 25.

Existing procedural rights need stronger protection

There are rights under our current Commonwealth and Queensland laws to access information, and for the public to participate in decision making. However, through our work assisting clients in accessing these laws it has become clear that effectiveness of these rights is proportionate to the willingness of the government of the day to promote transparency and accountability in governance.

By their nature, laws providing for access to information must have caveats to ensure that confidential information is not released. Under a government that is unsympathetic to the rights of the community to access information, these caveats can be easily used to deny access in a way that far exceeds the required level of discretion.

Further, while our laws do frequently provide for public participation in decision making, there is no overriding law or policy which declares that this is a right that we as a society recognise and protect. These rights can therefore be eroded or removed at the whim of the politics of the time, with little recourse other than consistently re-opening the discussion as to the need for these rights to exist. This is a drain on the resources of community groups, like the EDO Qld, as well as of government. Queensland would benefit greatly for the discussion to be put to rest, and these rights to be enshrined in a Human Rights Act for our state.

(c) Clear recognition of the rights of Aboriginal and Torres Strait Islander people of Queensland needed

EDO Qld also recognizes that the rights of indigenous Australians should be clearly recognised in a Human Rights Act, as peoples who have suffered immense discrimination under the western legal system imposed upon them.

We support the inclusion of a specific provision to recognize cultural rights of Aboriginal and Torres Strait Islanders provided in the Bill.

We recommend that the special rights of Aboriginal peoples of Queensland could be reflected in the preamble, as provided in the Victorian and ACT Human Rights Acts, as well as through the recognition, protection and promotion of clear rights provided for in the body of the Act.

4. Measures to support the effective operation of the Human Rights Act

We support that the Bill provides for a 'Queensland Human Rights Commission' to provide a dispute resolution process for dealing with human rights complaints and to promote acceptance and public discussion around human rights (replacing the Anti-Discrimination Commission). For a Human Rights Act to be effective in achieving its purpose of recognising, promoting and protecting human rights, it must be supported by an independent body to oversee its implementation and to address complaints.

(a) Appointment or grant of power to an independent Human Rights Commission

The Human Rights Commission will assist in increasing access to justice for those not willing or able to bring actions before the court. A broader range of complaints will therefore be considered than that which would potentially be brought before a court. It will also help to filter complaints so that fewer matters are likely to be taken to the court.

This role is undertaken under the ACT Human Rights Act by the ACT Human Rights Commission. In Victoria complaints can be heard through various mechanisms, including the Victorian Civil and

Administrative Tribunal, public authorities directly, particular topic specific commissioners, or the Victorian Ombudsman. The various avenues available for having complaints heard in Victoria has been found to be beneficial, particularly for complaints to be heard by those specializing in an area, such as the Mental Health Complaints Commissioner.³² We suggest further thought be given to the most appropriate mechanisms available in Queensland to hear human rights complaints, and whether a single Human Rights Commission focused on human rights complaints, or a varied system such as in Victoria, would be more appropriate.

Ideally the independent body would also be empowered and resourced to monitor and report on systemic human rights issues and advise on recommended responses to human rights decisions from Queensland and other jurisdictions. We support that the body could also provide alternative dispute resolution assistance to complainants as another means of addressing human rights abuse complaints that is low cost and effective, as long as appropriate ADR methods are used to address power imbalances between those concerned. This was a recommendation also for improvement on the utility of the Victorian Charter.³³

(b) Free-standing cause of action for breach of the Act

The Human Rights Bill provides the ability to ‘piggy back’ a claim of breach of human rights on another legal action. We recommend that the Bill should be amended to support its objectives by providing a clearly framed cause of action for breach of the Act, and affordable and accessible means to remedy the breach. The ACT has a free-standing remedy, however damages are not recoverable under their Act.³⁴ Similarly, the Victorian Charter provides, in section 39, for the right to seek relief or remedy for a breach of the Charter by a public authority, but only where relief or remedy is sought with respect to an act or decision under another instrument. The learnings from the Victorian Charter demonstrate the need for this remedy to be free-standing and not dependent on bringing another cause of action.

In a review of the Victorian Charter undertaken by the Victorian Equal Opportunity and Human Rights Commission section 39 was found to be ‘inaccessible and inadequate’ in ensuring the Charter achieves its purpose.³⁵ The review recommended that, so that the protection of human rights can be achieved effectively through the Charter, the Charter be amended to provide a direct right of action under the Charter. The review further recommended that the Victorian Civil and Administrative Tribunal be utilised for hearing claims under section 39, as a low cost forum through which complaints can be heard.³⁶ Queensland can learn from this by ensuring we provide a free-standing action for breach of the Act.

³² Michael Brett Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report (September 2015), 107-108.

³³ Michael Brett Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report (September 2015), 99.

³⁴ *Human Rights Act 2004* (ACT), section 40C.

³⁵ Victorian Equal Opportunity & Human Rights Commission, Eight-Year Charter Review, Position Paper: Legal Proceedings and Remedies, http://www.humanrightscommission.vic.gov.au/media/k2/attachments/Position_Paper_Legal_Proceedings_and_Remedies_edited_JB.pdf

³⁶ *Ibid*, p. 128.

(c) Education throughout the community is necessary to develop a ‘human rights culture’

A law alone is not enough to create cultural change; government needs to invest in the development of a human rights culture. This was established also in the 2015 review of the Victorian Charter, whereby it was determined that the Victorian Government needed to focus more resources into the development of a culture of recognition, promotion and protection of human rights in the state, to ensure the Charter’s intent was being effectuated throughout decision makers and the broader community.³⁷

Adequate resources must therefore be provided to support the Human Rights Act, to educate the community, government, courts and parliamentarians. Further, special effort should be made to empower marginalised and vulnerable groups such as Aboriginal and Torres Strait Islander communities as to how the Act could assist them to protect their human rights.

(d) Public authorities must be supported in playing key role in upholding human rights

The daily decisions of public authorities are a good place to concentrate attention on ensuring that human rights are adequately upheld in Queensland. Firstly, public authorities must be educated on human rights so that they understand how they are required to recognize, protect and promote these rights. To support the introduction of the Human Rights Acts in New Zealand and the United Kingdom, we understand that the two governments published handbooks and other supporting literature for public authorities. This information was designed to increase the awareness of human rights issues and to provide guidance on how to conduct functions consistently with the human rights standards of their respective Acts.

EDO Qld supports inclusion in the Bill of obligations placed on public authorities under the Victorian and ACT Human Rights Acts, whereby public authorities are obliged to act compatibly with human rights, and to give proper consideration to relevant human rights when making a decision.³⁸ We further recommend that in Queensland public authorities should be required to report against human right performance indicators. This will ensure that human rights remain a consistent consideration in the decision making of public authorities, as well as making sure that their implementation is transparent and government is made accountable to this implementation. These recommendations also apply to private entities as far as they are undertaking a public role.

(e) Appointment of a Parliamentary Committee to scrutinize legislation

A parliamentary committee should be empowered to scrutinize new legislation for their compliance with human rights. For example, a Queensland Human Rights Act could establish a Joint Parliamentary Human Rights Committee to undertake reviews of laws, as established in the UK and at a Commonwealth level in Australia.

The Committee should have a power to declare incompatible legislation to be invalid and unable to be passed unless adequate explanation is provided as to why the breaches of human rights proposed are necessary in that instance. We recommend that the Human Rights Act or explanatory material

³⁷ Michael Brett Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report (September 2015), p. 5.

³⁸ *Human Rights Act 2004* (ACT), ss 30, 40B; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 32, 38.

could suggest potential scenarios which may give rise to providing sufficient reason to allow a breach of the Act, and those scenarios which would not be considered to be sufficient.

New Bills must similarly be accompanied by a Statement of Compatibility to demonstrate compliance with the Human Rights Act.

(f) Courts should be empowered to interpret legislation against the Human Rights Act

Through the Victorian and ACT Human Rights Act, courts are required to undertake the interpretation of legislation in a way that is compatible with human rights, and may do so using jurisprudence from international jurisdictions to assist their interpretation.³⁹ Similarly, in Queensland, we support that courts should be obliged to consider international jurisprudence to interpret the Human Rights Act and any other Act. This is essential to ensure that the courts can access the wealth of insight provided by previous consideration given to human rights through other jurisdictions, to prevent Queensland from having to start from scratch.⁴⁰

The courts should be empowered to criticize legislation as far as it proves to be incompatible with a Human Rights Act. This power is provided in the ACT Human Rights Act, which gives courts the right to issue a declaration that legislation is incompatible with the Act. However, there is no requirement for the ACT government to review their legislation in light of the declaration of incompatibility, which is a necessary power to ensure the declaration of the court is given meaningful effect.

We support the inclusion of a requirement in a Queensland Human Rights Act to implement remedial mechanisms that ensure incompatible legislation is reviewed by the Queensland government and changed to be consistent with the Human Rights Act. Further, the Human Rights Act should specifically be made to prevail over other legislation to the extent of any inconsistencies.

³⁹ *Human Rights Act 2004* (ACT), ss 30, 31; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 32.

⁴⁰ *Kracke v Mental Health Review Board & Ors* [2009] VCAT 646, paras 201-2 (Bell J)