Antarhumanrightsqld22112018

AUSTRALIANS FOR NATIVE TITLE AND RECONCILIATION (ANTaR) QLD

A SUBMISSION TO THE LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

PARLIAMENT OF QUEENSLAND

concerning

A HUMAN RIGHTS ACT FOR QUEENSLAND

Brisbane, 26 November, 2018

INTRODUCTION

1. The Mission of ANTaR as a national movement is ... *to generate in Australia a moral and legal recognition of, and respect for, the distinctive status of Aboriginal and Torre Strait Islander Peoples as First Peoples; to agree to work for the protection of First Peoples rights, including their relationships to land, self-determination, the maintenance ad growth of their unique cultures.*

2. The following, empirically observed, common experiences of First Peoples of Australia, as a population group, since the beginnings of British colonisation are these:
    - Invasion
    - Dispersion and Displacement
    - Disenfranchisement
    - Social Exclusion
    - Discrimination (systemic, localised, individual)
    - Transgenerational trauma
    - Intergenerational poverty

Limited gains have been made across recent decades in addressing the latter 4 of the above points. Each of the 7 points attracts controversy in the Australian community overall.

3. Since the 1990s, it has been increasingly recognised by the non-Aboriginal members of ANTaR that this mission is meaningless or a hollow mockery if the pressing challenges of justice, rights and reconciliation are not addressed with conviction and impact.

4. Matters addressed in this submission relate specifically to the circumstances of Aboriginal and Torres Strait Islander Peoples of Queensland, the First Peoples of this state. Because of the range of these very circumstances, the scope of attention is necessarily broad and risks superficiality at every stage.

1. THE INTENT, SCOPE AND CONTENT OF THE BILL

1.1 The Human Rights Bill, as tabled in the House, is welcomed. A positive change to its title is recommended. We propose that it be titled *The Charter of Rights and Responsibilities.* This would not detract from the content yet would rightly frame the bill as a tangible expression of civic mutuality and reciprocity – the essence and aspiration of a mature, rights based society.

1.2 If underpinned by insightful, capable education and community engagement, the implementation of the bill will, as in the Victorian experience, serve as a valuable, positive template for legislative drafting. It is noted here that the Baillieu Liberal government had

the ability to repeal the Victorian Act initiated by its Labor predecessor – yet chose not to do so.

1.3 It is imperative that the Queensland Act protects rights to health services and education – as well as adding a complaints mechanism. The latter must be easily understood and conveniently accessible to the public.

1.4 Why include health services and education? Our population health analysis makes clear that the social and economic determinants of health are crucial to our understanding of accessible, relevant and effective health services. Despite the advances in federally funded, First Peoples controlled primary care services across the state, significant numbers of First Peoples do not access needed services for many cultural and economic reasons.

1.5 Further to the social and economic determinants, the capricious actions of the government of the day need to be noted – and not repeated. Witness the action of the LNP government in 2013 when a decision was made in Brisbane to close down Queensland Health's drug and alcohol rehab services as well as sexual health services – in the 6 most rural-remote regions of the total 16 regions of Q Health. The community consequences of this were devastating and never acknowledged publicly by that government.

1.6 The challenges to the public education system of Queensland remain enormous. The tyranny of distance is just the beginning. To maintain best current standards in core curriculum as well as to be locally and culturally relevant to all local communities is a major challenge. Locally experienced problems in schools and vocational training need the default option of an easily accessed human rights complaints process.

1.7 The envisaged Human Rights Commissioner will need to have broad powers to examine and report on human rights issues, especially concerning the failure of public entities. This will be a central role in holding the government to account for the performance of public entities.

1.8 The Human Rights Act should also provide for appropriate redress for complainants who have been treated unfairly by a public entity.

1.9 The envisaged Human Rights Commission should be adequately resourced so that its full range of mandated responsibilities can be carried out – in relation to government agencies and to government-funded entities in the non-government and private sectors.

1.10 A Queensland Human Rights system needs a stand-alone cause of action so that people's rights can be enforced in a tribunal – as currently in the Australian Capital Territory. It appears that the current bill only allows claims to be raised in legal proceedings if there is another ground on which to challenge the decision or action. A recent independent review of the Victorian Charter has recommended introducing a stand-alone cause of action to address this failing.

1.11 The Queensland Act should ensure that people whose rights are violated have an effective remedy. Such remedies should be determined by a court or tribunal to ensure that they can be enforced and are aimed at effectively preventing, stopping or providing redress for rights abuses. Such remedies need to include financial compensation where directly applicable – where the offence has had clear financial consequences for the complainant. This does not appear to be possible in the current bill.

1.12 The Human Rights Act will only have real impact if each arm of government and the wider community understands how the Act applies to them. Again, it is imperative that the government allocates resources to ensure that each government entity reviews its laws, policies and practices to ensure compliance with human rights and for community education. There are vested interests in Queensland who detest the very notion of a Human Rights Charter. They will misprepresent it with all possible means. The government must not default in making the case and implementing the Commission with capacity and integrity.

2. HUMAN RIGHTS AND THE FIRST PEOPLES OF QUEENSLAND TODAY

2.1 We in Queensland, among the liberal democracies, Commonwealth countries and other OECD nations, are late starters in forming a human rights element into our polity and society. The old debates concerning flagrant abuses of the rights of First Peoples will not be revisited here. It is however pertinent and sufficient to point to a range of evidence-based, indisputable consequences of the settler-colonial era across the geography and society of today's Queensland. ANTaR Qld is not in the business of finger-wagging or victimhood. We are rather a diverse fellowship of people from all quarters who take the positive route of pursuing justice, rights and reconciliation with (never instead of) First Peoples. Fundamentally, we are committed to the principles of the UN Declaration on Human Rights (1948) and the UN Declaration on the Rights of Indigenous Peoples (2009). We find, through our wider community education programs (Sea of Hands) and broad engagement with First Peoples across Queensland, a readiness to be informed and motivated to constructive action for the benefit of all.

3. SPECIFIC HUMAN RIGHTS CHALLENGES CONCERNING FIRST PEOPLES IN QUEENSLAND TODAY

3.1 How are the standards of UN declarations relevant and useful for this discussion? The approach taken here is to be guided by such standards and the practical values they imply. It is to identify in concrete ways the devaluing (or outright rejection) of human rights as seen and understood in our local communities, cultures, sub-cultures and systemic practices – as viewed and understood by a *reasonable person.* The current, commonly acknowledged standards of access, equity, participation and rights become the best guides. Here are several of the most pressing of the human rights concerns affecting First Peoples in

Queensland today. Some of them also concern others at the margins of society. However, it is argued here that their relevance to First Peoples has been long-standing and manifestly disproportionate in its impacts. The 23 stated elements within the Human Rights Bill appear sufficient in scope to address the following more pressing concerns:

3.2 Recognition and equality before the law: Despite the many reforms to the Queensland Police Service across the past 30 years, there is still too great a potential for a rogue police officer to discriminate negatively in dealings with First Peoples. Is this really given due priority in the recruiting and professional development of police officers?
In the case of a miscarriage of justice against a First Peoples defendant, there appears to be no financial compensation – yet the consequences of this are disproportionate and often greater for First Peoples as a group.

3.3 Protection from torture and cruel, inhuman or degrading treatment: Again, the focus is on the behaviour of QPS officers, especially in watch houses, particularly in rural-remote locations. Is the necessary attention given to responsible practice and accountability, especially in light of the events of 2004 at Palm Island?

3.4 Freedom from forced labour: While the CDEP is a federal matter, the blatant inequity with which it treats unemployed FP workers in remote regions demands state action.

3.5 Peaceful assembly and freedom of association: Aboriginal people still seem more conspicuous and subject to QPS *moving on* orders – especially young people doing nuisance behaviour. When practised visibly, consistently and aggressively, this encourages contempt for the law.

3.6 Protection of families and children: Tragically, FP children are heavily over-represented in the Child Safety Regime of Queensland. While major reforms are envisaged, there appears to be a great need for more insightful and resourceful involvement of FP kinship family resources to be deployed and given relevant, resourceful support. A related and very concerning federal matter is the expansion of using the Basics Card on large cohorts of benefit recipients on a geographic basis – with consequent damage to relationships, responsibilities, individual differences. This has many layers and merits special investigation by relevant state agencies. The positive of the Family Responsibility Commission in 5 Cape communities should be considered in this frame.

3.7 Humane treatment when detained: Remarks made above on the defaults of some QPS officers also belong in this frame. Alongside it however is the question of costs of incarcerated people attending family funerals. This also has many layers. It is understood that currently, such attendance can only happen if the family pay substantial staff costs for escort, transport etc. All things considered, this appears barbaric and unacceptable in our society. It also is multi-layered. Vastly different practices must be sought. Another challenge under this heading is the raising of the age of criminal responsibility for young offenders. Again this involves major over-representation for young FP offenders and

accused. In the current Youth Justice reform process, there are compelling submissions for the minimum age of criminal responsibility to be raised from 10 years to 14 years. ANTaR Q strongly supports such a move on several grounds. We welcome the opportunity to make this case where relevant.

3.8 Rights in criminal proceedings: The various iterations of Murri Courts as sentencing bodies in both the adult and youth courts have shown positive capacity to take on both a culturally authentic and preventative role. This needs further inquiry with a human rights imperative.

3.9 Children in the criminal process: While there is a substantial reform process currently taking place in the Youth Justice system, the question of capable representation and best process for FP children whose first language is not English is an ongoing challenge – with obvious human rights implications.

3.10 Right to education: The above point concerning the first language of children in remote areas is pertinent here. It seems to have several answers – most of them effective but needing consistent support from government.

3.11 Right to health services: This is complex and problematic. An encouraging factor is the visible advance in leadership by FP doctors, nurses and related allied health services professionals. This is inspirational but the overall system in its local components must be fit for purpose.

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