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26 November 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary

Re: Human Rights Bill 2018

We express our strong support for the Human Rights Bill 2018, introduced to Parliament by the Hon. Yvette D'Ath MP on 31 October 2018, which is currently under consideration by the Committee. The Bill promises to improve law making, government policy and public service delivery in the state; help instil a human rights culture within public agencies; and protect marginalised Queenslanders by articulating a suite of determinable and enforceable rights.

The LGBTI Legal Service is a Government-funded community legal service offering advice to Queensland residents who identify as members of the lesbian, gay, bisexual, trans and intersex (LGBTI) community. We advise on a broad range of legal issues, including family law, domestic violence, surrogacy and parenting, criminal law, employment, administrative and government law and discrimination. Our service also includes a law reform division, which draws on the experience of our front-line service delivery to advocate for positive policy reform in areas affecting the LGBTI community.

A Queensland Human Rights Bill has been a long-standing objective of our law reform work.

Below we provide a brief overview of the challenges facing the community, and make several recommendations regarding the Bill.

Challenges facing the LGBTI community

The LGBTI community face a range of social and legal challenges that demand consideration as part of a Queensland human rights framework. These include, but are not limited to the following:

1. Disproportionate violence, intimidation, harassment and bullying;
 - It is important to understand the impact of both presently occurring and historical abuse, especially as they relate to LGBTI persons' interactions with police and other front-line government officers;
 - Bullying and harassment of young LGBTI people is a significant issue, especially within the online environment.
2. Discrimination in finding and retaining employment;

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3. Discrimination in accessing health and aged care, again noting the legacy of historical institutional discrimination against LGBTI older persons; and
4. A lack of culturally capable services that respond to the needs and experiences of LGBTI persons, for example in relation to domestic violence.

These issues are intersectional, and are especially complex for LGBTI persons from culturally diverse backgrounds, LGBTI Aboriginal and Torres Strait Islanders, and LGBTI persons with a disability.

Discriminatory provisions in the *Anti-Discrimination Act 1991 (Qld)*

A Human Rights Act would not be the only legislation relating to discrimination and human rights in Queensland. Laws are contained in the *Anti-Discrimination Act 1991 (Qld)* (ADA), as well as the Commonwealth race, sex, disability and age discrimination Acts.

The ADA prohibits discrimination on the basis of several attributes, including “sex”, “gender identity” and “sexuality”. We draw the Committee’s attention to a significant gap in the current attributes protected under the ADA. Although the reference to sex is adequate to capture intersex persons, the reference to “gender identity” excludes non-binary persons. The issue here is that “gender identity” is premised on a choice, and non-binary people do not choose to be non-binary. It is a similar misconception to anachronistic ideas about homosexuality being a “lifestyle choice”. It is also not consistent with the right to recognition and equality before the law found at clause 15 of the Draft Bill.

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| We recommend the Government amend section 7 of the ADA to include non-binary persons. |
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There are also some explicitly discriminatory provisions in the ADA, specifically sections 28(1) and 45A, concerning work with children and access to reproductive technologies.

Regarding work with children, it is not unlawful to discriminate on the basis of lawful sexual activity or gender identity. Lawful sexual activity is defined as “a person’s status as a lawfully employed sex worker”. Gender identity is defined as where a person either “identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex “is of indeterminate sex and seeks to live as a member of a particular sex”. The reference to “gender identity” was not originally included in the Act, but was included as an amendment in 2002. Intersex and transgender people can now be refused employment without it being unlawful discrimination. We believe “gender identity” should once again have no place in this provision.

Similarly, it is not unlawful to exclude a person from assisted reproductive technology services on the basis of relationship status or sexuality. This provision takes it a step further than section 28(1) and includes references to “sexuality” which is defined as “heterosexuality, homosexuality or bisexuality”. We note this is potentially inconsistent with section 22 of the *Sex Discrimination Act 1984 (Cth)*, which states that it is “unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person”, including on the basis of sexual orientation. We submit that the reference to sexuality should be removed from this provision.

These exemptions do not form part of a contemporary human rights and anti-discrimination framework in Queensland. They are not consistent with the values reflected in the Government’s commitment to LGBTI Queenslanders, especially the significant reforms progressed within your

portfolio. They are also not consistent with clause 15 of the Draft Bill, or with clause 37 regarding access to health services.

We recommend the Government repeal sections 28(1) and 45 of the ADA, and ensure the gaps flagged above are not carried over to a potential Human Rights Act.

Yogyakarta Principles

We refer to the Yogyakarta Principles (2007) and Yogyakarta Principles plus 10 (YP +10) (2010) collectively as the “Yogyakarta Principles”.

The Yogyakarta Principles aim to provide a consistent understanding about the application of standards in *existing* international human rights law to issues concerning sexual orientation, sex and gender. The objective of the Principles is to address the abuse of human rights of LGBTI people.

Historically, the human rights discourse began with an assumption of a binary model of sex and gender. The Yogyakarta Principles recast existing international human rights law in a manner that ensures these rights are more inclusive of concepts of sex and gender.

Accordingly, the Yogyakarta Principles allow greater clarity around the application of existing human rights law to issues concerning sex, sexuality and gender identity. The Principles signify the evolution of human rights law by ensuring that all individuals are treated equally and are able to exercise their rights in a society that is inclusive of sexual orientation, sex and gender identity. The Principles explain that States are obliged to *ensure* equal access to human rights, with each principle recommending how this can be achieved. These standards should be sought to be achieved by the Queensland Government through a potential future Human Rights Act.

The scope of rights covered by the Human Rights Bill 2018

Clause 7 of the draft Bill outlines the meaning of human rights by referring to the rights stated in part 2, divisions 2 and 3 of the draft Bill. Based on these divisions, the Bill primarily concerns only civil and political rights (reflective of similar provisions within the *International Covenant on Civil and Political Rights*) and then economic, social and cultural rights (reflective of provisions within the *International Covenant on Economic, Social and Cultural Rights*). The Bill that the Queensland government proposes is quite conservative, in that it only includes provisions relating to these categories of rights. There is no express reference made to sex, sexuality and gender in the draft Bill.

Clause 12 of the draft Bill provides for expansion of the category of human rights recognised by the Act. It provides for the inclusion of other rights and freedoms that arise or are recognised under another law, including international law. Examples are provided in the notes to the clause.

We recommend the Yogyakarta Principles be incorporated within the meaning of human rights in the Act, through clause 12, by including the Yogyakarta Principles in the notes to the clause.

For instance, the notes could provide:

Examples of another law—

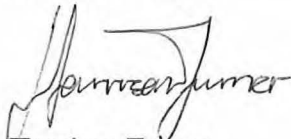
- the Commonwealth Constitution
- a law of the Commonwealth
- the common law
- rights under the International Covenant on Civil and Political Rights not stated in this Act

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- rights under the Universal Declaration of Human Rights not stated in this Act
- **rights under the Yogyakarta Principles and Yogyakarta Principles plus 10 not stated in this Act**
- rights under other international conventions
- other international laws

Again, we express our strong support for a Human Rights Act in Queensland. Representatives from the Service would be glad to meet with the Committee to discuss this significant reform further.

Yours faithfully



Harrison Turner

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