



EST 1889

Human Rights Bill 2018

**QUEENSLAND**  
**TEACHERS' UNION**  
OF EMPLOYEES

Submission No 142

Address all correspondence to:

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IN REPLY PLEASE QUOTE: gjm:amm: Human Rights Bill 2018

27 November 2018

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Sir/madam

Re: **Submission on the Human Rights Bill 2018**

I am writing in relation to a submission on the Human Rights Bill 2018.

We are aware that the submission deadline was yesterday, Monday 26 November. The Queensland Teachers' Union would like to request that you consider our attached submission.

Yours sincerely

Graham Moloney  
General Secretary

encl.



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Dear sir/madam

**Re: Queensland Teachers' Union submission on the Human Rights Bill 2018**

## 1. Preamble

Thank you for allowing the Queensland Teachers' Union (QTU) the opportunity to provide submissions on the Human Rights Bill 2018. This submission has been prepared with the assistance of the QTU's solicitors at Holding Redlich.

The QTU represents over 46,000 teachers and principals in Queensland state schools across primary, special and secondary, as well as TAFE teachers. The Queensland Teachers' Union provides a voice for educators on the range of industrial and professional matters impacting on schools today.

## 2. Summary of submission

The Queensland Teachers' Union supports the intent of the Bill to create formal legal protections to improve the way decisions are made by public entities.

We raise concerns about the application of certain "rights" under the Bill. Of particular concern:

- (a) **Clause 36 Right to education** – This is expressed as a wide and absolute right to access education.

**Concerns:** One student's right to access appropriate education could be infringed by other students' behaviour; yet excluding a student denies them of their right to access education.

Ultimately, it is likely the Supreme Court would find the right to exclude should prevail in this situation.

**Suggestion for improvement:** We seek amendment of the Bill and amendment into the *Education (General Provisions) Act* to avoid the need to have a Supreme Court determine this question.

- (b) **Clause 21 Freedom of expression** – This right is a right to hold and express an opinion and to seek out and receive the expressions of others' opinions.

**Concern:** This right may be used to justify **cyberbullying** of State Government employees, particularly teachers, and cyberbullying between students.

A bully may assert their **cyberbullying** conduct is an expression of their opinion and an exercise of their right to "seek out and receive" the opinions of others.

The "right" as it is presently expressed may prevent state schools from expressing dissatisfaction with **cyberbullying** by parents and prevent state schools from disciplining students for **cyberbullying**.

The effectiveness of the Department of Education's Cybersafety & Reputation Management Unit could be weakened.

**Suggestion for improvement:** Minor amendment to the Bill can be made to preserve the right of the Department of Education to engage with their parent & community around cyber activity and right of schools to discipline students where appropriate for cyberbullying.

### 3. Inconsistencies in the Bill will cause difficulties in its application

There are numerous inconsistencies in the Bill which arise from the extremely broad nature in which the rights are expressed. For example, the right to freedom of expression may conflict with the right to privacy or reputation. The difficulties in navigating these inconsistencies will be vast, as previously acknowledged by Justice Keane:

*"The balancing process ... involved the Courts in balancing different values expressed so broadly that the balancing process requires judges to leap into a legal space without guidance. They were required to span a chasm so broad that it divides political parties. The cases illustrate that, even the ablest judges, doing their best with these statements of broad political aspirations, struggle to span this chasm in a way that does not leave at least one side of the political divide with misgivings as to whether justice would not be better served if the abstract declarations were translated into concrete outcomes by judges with different political view".<sup>1</sup>*

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<sup>1</sup>

Justice Patrick Keane (2011), 2 NTLJ 77 at 84.

It is the submission of the Queensland Teachers' Union that the Parliament should not pass laws that will require a Supreme Court determination in order to understand.

Minor amendments can avoid the need for the State to respond to Supreme Court proceedings.

#### 4. The right to education

##### 4.1 The right to education in the Bill

The right to education provides that:

- (a) *Every child has the right to have access to primary and secondary education appropriate to the child's needs.*
- (b) *Every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.<sup>2</sup>*

The Queensland Teachers' Union has concerns that the right to education may restrict the ability of the Department to make decisions which are necessary to protect the health and safety of Queensland Teachers' Union members and other students.

The Department of Education's North Coast region is aware of very difficult circumstances in one of its schools relating to students who made online threats against a school, severely disrupting the "right" to education for many in that school community. It is essential that the students involved should not return to that school, and potentially not return to state schooling at all. If it is argued that the only education appropriate to those student's needs was at the same school, the Department may breach this human right by expelling the students.

This creates an untenable situation.

##### 4.2 Amendment to the right of education

To mitigate this risk, the Queensland Teachers' Union proposes two amendments:

- (a) **Amendment One:** An amendment to the right to education in the Bill, to restrict the right of education so that it exists in accordance with law.

This amendment would provide (amendment proposed in red underlying):

*Every child has the right to have access to primary and secondary education appropriate to the child's needs, according to law.*

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<sup>2</sup>

Human Rights Bill 2018, clause 36.

- (b) **Amendment Two:** An amendment ought to be made to the *Education (General Provisions) Act 2006* (Qld) to ensure that the Department of Education is able to exclude students which create a risk on the health and safety of others.

To this end, we note that the Bill amends the *Youth Justice Act 1992* (Qld) and the *Corrective Services Act 2006* (Qld) to clarify that other factors, relevant to determining how to act or make a decision under those acts, may be taken into account in addition to human rights considerations under the Bill.

The Explanatory Memorandum to the Bill states that the effect of the amendments to the *Youth Justice Act 1992* (Qld) and the *Corrective Services Act 2006* (Qld) will mean that an act or decision made under these Acts, taking into consideration the additional factors, will not be unlawful under the Bill, only because these additional factors were considered.

We submit that the amendments made to the *Youth Justice Act 1992* (Qld) and the *Corrective Services Act 2006* (Qld) operate to ensure that the relevant Department is able to make decisions which are necessary to protect the staff caring for detainees and prisoners, as well as other detainees and prisoners. We submit that similar amendments ought to be made to protect teachers and students.

To achieve this purpose, we submit that the following amendments ought to be made to the *Education (General Provisions) Act 2006* (Qld).

Introduce a new section 299(2), which provides:

*“Other factors to be considered include:*

- (i) *the good order and management of educational facilities; and*
- (ii) *the safety and welfare of all students and staff within the educational facility.”*

## 5. Right to freedom of expression

The Queensland Teachers' Union submit that the right to freedom of expression has the potential to disrupt the prevention and management of cyberbullying. The right to freedom of expression may essentially legalise cyberbullying and provide bullies with an exercisable right, capable of being used as a shield when State Government Departments take action or make decisions to require the cyberbully to remove existing material, or cease making further comments of a bullying nature.

## 5.1 Right to freedom of expression in the Bill

The Bill provides:

- (a) *Every person has the right to hold an opinion without interference.*
- (b) *Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether –*
  - (i) *orally; or*
  - (ii) *in writing; or*
  - (iii) *in print; or*
  - (iv) *by way of art; or*
  - (v) *in another medium chosen by the person.*

This right to freedom of expression will allow parents and other stakeholders in the educational community to air their opinions on public servants, including teachers, school staff and students in a public forum.

If a parent engages in cyberbullying activities, such as posting on Facebook words to the effect of “I think Teacher X is hopeless” or “I think Teacher X should no longer be allowed to teach”, this right to freedom of expression will prevent the Department of Education from reprimanding the person who made the comment, and will also prevent the Department from requesting that the person removes the post which forms the basis of the bullying complaint. This may also prevent the Department from being able to issue policies on cyberbullying.

The Department of Education’s Cybersafety and Reputation Management team run effective programs to reduce the instance of serious cyberbullying. Their effective operation may be weakened by the “right” in its current form.

The Queensland Teachers’ Union is extremely concerned that this will effectively legitimise cyberbullying, in a world where such cyberbullying is already an extremely delicate and fatal issue. This raises concerns not only for Queensland Teachers’ Union members, but also students: 72% of schools reported managing at least once incident of online bullying in the previous year.<sup>3</sup> Cyber bullying can be extremely damaging to students, and also other members of the community. It can affect a person’s confidence, performance, and mental health. It can cause withdrawal from social activities or severely detrimental coping strategies such as drugs, alcohol or self-harming. It can even result in suicide.

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<https://bullyingnoway.gov.au/WhatsBullying/FactsAndFigures>.

## 5.2 Opposition to the right to freedom of expression

One option would be to remove the right of freedom of expression from the Bill. It has not been recognised in the past in Australia beyond an implied constitutional freedom of political communication. The QTU would, in addition to the example raised above, be concerned if this Bill in any way legitimised “hate speech”.

However, the inclusion of such a right reinforces the rights of teachers employed in the public sector to hold and express opinions in relation to politics as well as professional, industrial and social issues. We remain concerned that clause 13 may not effectively limit this right to “legitimate” expressions of opinions.

## 5.3 Amendment to the right to freedom of expression

Should it be the intention of the Parliament to include this right, we recommend it be expressly created with reference to the “lawful” expression of opinion (amendment proposed in red underlying):

- (a) *Every person has the right to hold an opinion without interference.*
- (b) *Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether –*
  - (i) *orally; or*
  - (ii) *in writing; or*
  - (iii) *in print; or*
  - (iv) *by way of art; or*
  - (v) *in another medium chosen by the person,*  
*within the bounds of the law.*

Yours sincerely



Graham Moloney  
General Secretary