

A Human Rights Act: What it is and why we need one in Queensland

Introduction

Right now in Queensland, momentum is building towards the introduction of a Human Rights Act. A broad and dynamic group of community organisations, social justice groups and individuals have been issuing increasingly loud calls for the introduction of legislative protection of the basic rights all humans should enjoy. These calls have now garnered a response from Parliament, with the Queensland Attorney-General recently announcing that the Government will refer the matter of a Human Rights Act for Queensland to a Parliamentary Inquiry. "This is an important conversation to be having and it's certainly the right time to be having it," Attorney-General D'Ath said.

What is a Human Rights Act?

It is important that we are clear on what a Human Rights Act (often termed a Charter or a Bill of Rights) is. A Human Rights Act is a statute. It is not an amendment to a constitution. It is therefore not entrenched. It can be changed or repealed at a future point.

Parliamentary supremacy is an important principle and it stems from the fact that members of parliament are elected individuals and, as such, best represent the views of the community. A Human Rights Act does not impede upon parliamentary supremacy in our democratic society. It does not stop governments pursuing good policy. It does not stop governments introducing laws that affect rights.

The reality is that all rights have limits and in most situations there are, in fact, competing rights. A Human Rights Act is simply a statement by the government that it supports fundamental human rights and that those rights will be considered by government in the introduction of new legislation and in policies.

Why do we need a Human Rights Act?

Australia is one of the only western democratic nations without a Human Rights Act. Queensland also lacks blanket legislative protection of basic human rights. While there are some laws that incidentally offer protection for some human rights, this protection is patchy, inconsistent and inadequate. Further, while Australia has signed and in some cases ratified a number of international treaties and conventions that protect human rights, many of these conventions have not been implemented into the laws of Queensland (or of the Commonwealth) and they are therefore not binding on decision-makers.

There are Human Rights Acts in the ACT, Victoria, the UK, Canada and New Zealand. In these jurisdictions, the Human Rights Act operates in addition to the other rights safeguards akin to what is currently in place in Queensland, complementing and enhancing the existing framework. In those jurisdictions, the sky has not fallen. Rather, people's lives have improved.

Queensland is not only presently lacking in human rights protection as compared with some of our neighbouring states, we are also more vulnerable to abuses of process. Queensland

is unique in having a unicameral state parliament. Our lack of an upper house means there is no fetter on the power of the government of the day and leaves us more exposed than our state and territory counterparts to the misuse of government power. A Human Rights Act would protect Queenslanders and improve Queensland's system of government.

There are numerous grave human rights issues in Queensland right now that require redress. Among them is the lack of mental health services in rural and remote areas, the lack of availability of appropriate public housing, the treatment of vulnerable people with disability, the treatment of older people in nursing homes, domestic and family violence and the treatment of Aboriginal and Torres Strait Islander children within the child protection system (including the failure to properly respect the child's ethnic, religious, cultural and linguistic background).

The first step in addressing these human rights issues is the introduction of a Human Rights Act that clearly sets out what our human rights are, guarantees that governments respect our rights and provides avenues to seek justice when our rights have been violated.

Human Rights Acts have been successfully used in other jurisdictions to bring about better outcomes for vulnerable people. For example:

- **Housing:** Human Rights Acts have been used to prevent homelessness. In the ACT the decision to evict a man and his three kids from crisis accommodation – which would have resulted in homelessness – was found to be an interference with his human rights and the Tribunal did not allow the eviction.
- **Disability:** Human Rights Acts can help to protect the rights of people with disability, including their right to choice with respect to their accommodation and support, their right not to be treated in a cruel, inhuman and degrading manner and their right to liberty. In Victoria a disability support worker who had been dismissed from employment after dragging a person with an intellectual disability across a carpeted hallway appealed his dismissal. The Supreme Court upheld the dismissal in part because the worker was found to have breached the right to freedom from cruel, inhuman and degrading treatment. Human Rights Acts have also helped to bring about positive, non-litigious outcomes for young people with disability who were being forced to move into a residential aged care facility, by providing a lawful basis for recognition of the relevance of choice with respect to where and with whom they live into an otherwise pragmatic assessment of housing availability and support needs.
- **Domestic violence:** Human Rights Acts can help to protect the rights of women and children to freedom from torture, inhuman and degrading treatment, to liberty and security of person, to the highest attainable standard of health, to equality in marriage and family relations and to life. Human Rights Acts can give women who have experienced violence new tools when seeking protection of their rights, including access to adequate and appropriate services.

A Human Rights Act would help to create an environment of respect for and protection of human rights for all Queenslanders.

The way forward

The introduction of a Human Rights Act would be a strong statement about who we are as Queenslanders and who we aspire to be as we move towards an increasingly integrated and globalised, yet paradoxically also an increasingly fragmented and divisive, social landscape. The way in which a society looks after its most vulnerable is very telling of the fundamental values and beliefs of that society. A Human Rights Act will help members of our Queensland community to better understand human rights and to build a safer, more respectful and caring society.

The Queensland Government's commitment to a parliamentary inquiry into a Human Rights Act in Queensland is an exciting step forward for Queensland. It is the first step in the walk towards a more humane, compassionate and progressive society.

What you can do:

You can help to further the momentum towards human rights protection in Queensland by:

- Getting the word out! Become a friend of the Rights for Queenslanders campaign, like our Facebook page and sign up for campaign updates (www.humanrights4qld.com.au), follow us on Twitter (<https://twitter.com/hr4qld>) and Instagram (<https://instagram.com/explore/tags/humanrights4qld/>)
- Writing to the Queensland Attorney-General expressing your support for her decision to refer the matter to an Inquiry (attorney@ministerial.qld.gov.au)
- Meeting with your local Member of Parliament and seeking their support
- Making a financial donation towards the cost of the campaign (www.humanrights4qld.com.au).

