**Human Rights Bill 2018 – information session**

 **Overview**

The Anti-Discrimination Commission Queensland (ADCQ) is the independent statutory body responsible for administering the *Anti-Discrimination Act 1991* (Qld). Our functions under this legislation include assessment and resolution of complaints, education and awareness raising activities and promoting public discussion of human rights. Under the Human Rights Bill 2018, it is proposed that ADCQ will be rebranded as the Queensland Human Rights Commission (QHRC), and take on additional functions and powers in relation to human rights awareness and complaint resolution, while retaining existing functions.

The purpose of this information session is to provide you with a general overview of the contents of the Human Rights Bill and alert you to the opportunity to make a submission on the Bill and the resources available to assist you with this. This session is not about providing an opinion on the bill or any associated parliamentary processes, nor telling you what your submission should contain.

Should the legislation be passed, ADCQ (QHRC) will deliver more detailed information and training sessions.

**What are human rights?**

Human rights are the basic rights that belong to every person, regardless of age, race, sex, social status or any other characteristic. They are derived from, and serve to protect, the dignity and worth of each person. Human rights include the right to a fair trial, freedom of speech, the right to vote, protection from imprisonment for arbitrary reasons, the right to education, health care and the right to be free from torture or other inhuman or degrading treatment or punishment. Human rights are fundamentally important in maintaining a fair and civilised society. They apply to individuals only, not to groups or corporations.

**How are human rights currently protected in Queensland?**

Currently, Queensland lacks blanket legislative protection of basic human rights.

Many people believe that the Australian Constitution contains the necessary human rights protections for all Australians, such as the right to free speech. This is not true. The Constitution offers very limited protections for human rights. It includes the right to trial by jury for certain offences, some protection of freedom of religion, an implied right to freedom of political communication, and the right to be paid a fair price if the government compulsorily acquires your property.

However the Australian Constitution does not guarantee fundamental rights and freedoms such as the right to life, freedom from torture, the right to equality before the law, the right to liberty and security of the person, the right to be represented by a lawyer at trial, the right to free speech (generally, as opposed to merely on political issues), or the right of peaceful assembly.

Some rights are protected in the form of anti-discrimination legislation such as:

* Anti-Discrimination Act 1991 (Qld)
* Australian Human Rights Commission Act 1986 (Cth)
* Sex Discrimination Act 1984 (Cth)
* Racial Discrimination Act 1975 (Cth)
* Disability Discrimination Act 1992 (Cth)
* Age Discrimination Act 2004 (Cth)

At a federal level, these laws help Australia to implement its human rights obligations. In particular, the Australian Human Rights Commission Act 1986 (Cth) restates the obligations Commonwealth authorities have under key human rights instruments. Under this Act, the Australian Human Rights Commission has a range of powers to look at how the federal government is meeting its human rights obligations.

However, Queensland state and local government authorities are not required to demonstrate their compliance with international human rights instruments to the Australian Human Rights Commission, and the federal parliamentary scrutiny committee can’t consider the human rights issues raised in Queensland laws.

The Queensland Anti-Discrimination Act 1991 provides protection against discrimination, sexual harassment, vilification, victimisation and other objectionable conduct. However this protection is limited to individuals with certain characteristics, or attributes, and only in certain areas of public life. While the Anti-Discrimination Act provides a level of protection to individuals, it is framed as prohibitions in that it states actions that can’t be undertaken e.g. a person must not discriminate….. It relies on individuals making complaints for actions to occur in relation to human rights breaches, rather than creating positive obligations on politicians, public authorities and the courts to consider human rights. Existing state legislation does not provide blanket protection of human rights.

**Case study from the United Kingdom**

A woman and her children were fleeing domestic violence. The woman’s husband was attempting to track the family down; each time he discovered their whereabouts the family moved to a different area. The family eventually arrived in London and were referred to the local social services department. Social workers told the mother she was an unfit parent and that by moving she had made the family intentionally homeless. They therefore told her she was not eligible for housing. She was told that her children had to be placed in foster care.

An advocate helped the mother to challenge this claim using the Human Rights Act. They argued that social services were not properly considering the rights of the woman and her children to respect for family life, protected by Article 8 of the Act. Under this right, social services needed to consider the rights of the woman and her children and to take actions which are necessary and proportionate. As a result, the family were told they could remain together and that the social services department would provide the deposit if they could secure private rental accommodation.

If this scenario were to occur in Queensland before the introduction of a Human Rights Act, in order for the woman to make a complaint under the Anti-Discrimination Act 1991, she would have to show that she was treated less favourably than someone else in similar circumstances in the area of state laws and programs because of a specific attribute – eg. her sex, parental status, relationship status etc. The circumstances outlined in this scenario would not meet the threshold for the complaint to be accepted by the Anti-Discrimination Commission Queensland.

**Case study from Victoria**

A man in Victoria became homeless after his partner died and his house was repossessed. He spent a period moving between shelters, crisis accommodation and short stays with friends and family members. After several months the man was accepted into transitional housing which was designed to help him into longer term housing. Upon moving in, the man was provided a 120 day eviction notice, effectively creating a probation period for his tenancy. He was advised by the housing worker that this was the way to ensure that he could be evicted if necessary. This was unsettling to the man who was seeking stability and certainty, and who had not yet moved into the accommodation let alone done anything that would warrant eviction. Victoria’s Charter of Human Rights and Responsibilities provides the right to privacy and reputation which prevents a person’s home being unlawfully or arbitrarily interfered with. It was successfully argued that issuing an eviction notice was arbitrary and the notice was revoked.

If this scenario were to occur in Queensland before the introduction of a Human Rights Act, in order for the man to make a complaint under the *Anti-Discrimination Act 1991* he would have to show that he was treated less favourably than someone else in similar circumstances in the area of accommodation because of a specific attribute eg. his sex, relationship status etc. The circumstances outlined in this scenario would not meet the threshold for the complaint to be accepted by the Anti-Discrimination Commission Queensland under existing legislation.

**Human Rights Bill 2018**

Queensland is now closer to having many of the gaps in our human rights protections filled, with the introduction into parliament of the Human Rights Bill 2018. The Attorney-General introduced the bill on 31 October and in doing so described it as follows:

This bill recognises the inherent dignity and worth of human beings. It recognises that the equal and inalienable human rights of all persons are essential in a democratic and inclusive society that respects the rule of law. This Human Rights Bill is about changing the culture of the public sector by putting people first in all that we do.

The main objects of the Human Rights Bill are:

1. To protect and promote human rights; and
2. To help build a culture in the Queensland public sector that respects and promotes human rights; and
3. To help promote a dialogue about the nature, meaning and scope of human rights.

**Rights and responsibilities**

The Human Rights Bill is largely based on Victoria’s Charter of Human Rights and Responsibilities which has been in operation since 2006. It is an ordinary piece of legislation, rather than a constitutional model like those which exist in the USA, Canada and South Africa. However there are some elements of the bill that are unique and which strengthen the protections offered to Queenslanders.

The bill protects 23 human rights. These are primarily civil and political rights drawn from the International Covenant on Civil and Political Rights but also include two rights drawn from the International Covenant on Economic, Social and Cultural Rights and one from the Universal Declaration of Human Rights. The bill also explicitly recognises the special importance of human rights to the Aboriginal peoples and Torres Strait Islander peoples of Queensland as Australia’s first people and their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters and coastal seas.

The rights contained in the bill are:

Civil and political rights:

 Recognition and equality before the law

 Right to life

 Protection from torture and cruel, inhuman or degrading treatment

 Freedom from forced work

 Freedom of movement

 Freedom of thought, conscience, religion and belief

 Freedom of expression

 Peaceful assembly and freedom of association

 Taking part in public life

 Property rights

 Privacy and reputation

 Protection of families and children

 Cultural rights – generally

 Cultural rights – Aboriginal and Torres Strait Islander peoples

 Right to liberty and security of person

 Humane treatment when deprived of liberty

 Fair hearing

 Rights in criminal proceedings

 Children in the criminal process

 Right not to be tried or punished more than once

 Retrospective criminal laws

**Economic, social and cultural rights**

 Right to education

 Right to health services

Please refer to ‘Factsheet - Proposed human rights for Queensland’ for an explanation and examples of each right.

The primary aim of the bill is to ensure that respect for human rights is embedded in the culture of the Queensland public sector and that public functions are exercised in a principled way that is compatible with human rights. As such, responsibilities have been given to each arm of government under the Human Rights Bill.

**Responsibilities of Public Entities**

Public entities must act and make decisions in a way that is compatible with human rights. There are two types of public entities covered by the bill – core public entities and functional public entities. Core entities are those that are considered to be public entities at all times, such as state government departments, local governments etc. Functional public entities are those which are only considered to be public entities when they are performing public functions. For example, a private company managing a prison or a non-government organisation providing a public housing service. Registered providers of supports or a registered NDIS provider under the National Disability Insurance Scheme Act 2013 are also public entities when they are performing functions of a public nature in Queensland. The bill provides, 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, or, in making a decision, to fail to give proper consideration to a human right relevant to the decision.

Non public entities can request that the Minister declare the entity subject to obligations of a public entity.

**Responsibilities of Courts**

As much as possible, courts and tribunals must interpret legislation in a way that is compatible with human rights.

Importantly, the Human Rights Bill does not give courts the power to strike down legislation. A court or tribunal can refer a matter to the Supreme Court for determination of compatibility of a law or statutory provision with human rights.

If the Supreme Court determines that a statutory provision cannot be interpreted in a way that is compatible with human rights it can make a declaration of incompatibility. This is provided to the Attorney-General who then gives it to the Minister administering the relevant statutory provision. The Human Rights Bill doesn’t stop governments pursuing policy objectives or introducing laws that affect rights. Parliament retains sovereignty. All rights have limits and in most situations, there are, in fact, competing rights that must be balanced depending on the needs of the time.

**Responsibilities of Parliament**

Parliament will scrutinise all legislative proposals – bills and subordinate legislation – for compatibility with human rights. The Human Rights Bill requires all bills introduced into Queensland parliament to be accompanied by a statement of compatibility which states whether, in the opinion of the member who introduces the bill, the bill is compatible with human rights.

**What does ‘compatible with human rights’ mean?**

Under the Human Rights Bill, an act, decision or statutory provision is compatible with human rights if the act, decision or provision does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.

The bill provides guidance for deciding whether a limit on a human right is reasonable and justifiable. Factors to consider include:

* The nature of the human right
* The purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.
* The relationship between the limitation and its purpose – does the limitation help to achieve the purpose?
* Are there less restrictive and reasonable ways to achieve the purpose?
* The importance of the purpose of the limitation
* The importance of preserving the human right
* The balance between the importance of the purpose and preservation of the human right

**Case study 1**

There was a case in Victoria where an authorised officer restrained a 15 year old girl suspected of not holding a valid train ticket. CCTV and witness footage of the incident was widely released showing the teenager being spear tackled and held face down by three authorised officers for around eight minutes, until police arrived. The matter was investigated and found that the force by the authorised officers was excessive and unjustified, and incompatible with the teenager’s right to not be treated in a degrading way. The investigator found that there were less restrictive means reasonably available to the authorised officers to achieve their objectives.

**Case study 2**

Compare this with another example from Victoria where a young woman was living in a residential care unit. She was presenting an immediate risk of harm to herself and others. The Department of Health and Human Services considered locking her door to keep her safe. They recognised that this action would limit her right to liberty and protection from arbitrary detention. However, it was reasonable and necessary in the circumstances. The department had evidence to demonstrate that locking the young woman’s door was in her best interest and taken as a measure of last resort. The matter was regularly reviewed and subject to independent oversight by the Commission for Children and Young People.

**Remedies**

Litigation is not the focus of the dialogue model of the Human Rights Bill. The bill favours discussion, awareness raising and education about human rights as well as the everyday interactions of individuals with government.

The bill does not contain a stand-alone legal remedy for a breach of human rights. However, it provides for an enforcement mechanism known as a piggyback cause of action. A contravention of the Human Rights Bill will not create a right to any new remedies. It will create a new ground of unlawfulness, that is, a breach of the Human Rights Bill will be unlawful. Where an applicant has an existing right to claim for a remedy on another independent ground of unlawfulness, then that person can piggyback the human rights claim onto that existing claim. The remedy is the one the person would have been entitled to anyway on the basis of the existing claim.

An important provision of the Human Rights Bill that doesn’t exist in Victoria or the ACT, is a dispute resolution function for the Qld Human Rights Commission to attempt to resolve complaints made under the bill. When an individual feels they are the subject of a public entity’s failure to act compatibly with human rights, they can make a complaint directly to that public entity. If the complaint cannot be resolved with the public entity, the individual can then make a human rights complaint to the Commission. The Commission can attempt to informally resolve the complaint by discussing the matter with the parties, or if appropriate, attempt to resolve the complaint through a compulsory conciliation conference.

Unlike the existing process of resolving complaints under the Anti-Discrimination Act, complainants will not be able to refer their complaint on to a tribunal for determination if they are unable to reach a resolution through conciliation.

If a complaint is made to another complaint agency – the Ombudsman, the Health Ombudsman, the Information Commissioner or the Crime and Corruption Commission – and those agencies consider the complaint may also be a human rights complaint, they can choose to deal with the complaint under their relevant legislation or refer it to the Commission.

**Qld Human Rights Commission Reporting**

For complaints that are accepted but unresolved by the Commission, we must prepare a report about the complaint and provide a copy to the complainant and respondent. The report must include the substance of the complaint and the actions taken to try and resolve it. It may also include recommendations for the respondent to ensure its acts and decisions are compatible with human rights.

The Commission can also publish details about human rights complaints it has finished dealing with. This publication can contain details of the complaint but no personal information that has not previously been published, or for which the Commission does not have permission to publish by the individual.

The Commission is also required to publish an annual report about the operation of the Act during the year.

**Public entities reporting**

Public entities that are required under the *Financial Accountability Act 2009* to produce an annual report, will be required to include in that report information about their compliance with the Human Rights Bill. This information will include

* Details of any actions taken during the reporting period to further the objects of the legislation
* Details of any human rights complaints received by the entity including number and outcomes.
* Details of any review of policies, programs, procedures, practices or services undertaken in relation to their compatibility with human rights.

**Timeline**

The Human Rights Bill was introduced to parliament on 31 October 2018. It is proposed that if passed, the Human Rights Act will commence in stages. The first stage, from July 2019 will be the commencement of the Queensland Human Rights Commission’s education and awareness raising functions. From January 2020 the obligations on public entities and the complaints process will commence. A review of the legislation will occur at approximately four and eight years after commencement, consistent with the reviews of the Victorian human rights legislation.

**Submissions on Human Rights Bill**

The Parliamentary Legal Affairs and Community Safety Committee will conduct an inquiry into the Human Rights Bill and report to parliament by 4 February 2019. Members of the public will be able to make submissions to the Committee to express their views about the bill. Submissions are due by midday on 26 November 2018.

A Human Rights Act for Qld campaign has made available a simple, online submission form for anyone wishing to share their views with the Committee. You can access the form on the campaign’s website: [www.humanrights4qld.com.au/make\_a\_submission](http://www.humanrights4qld.com.au/make_a_submission).

A range of other resources are available from the ADCQ website and the campaign website to help you understand the Human Rights Bill, including factsheets and a discussion paper. We have printed copies of these resources available for you today.

QCOSS is also running two events on 22 and 28 November where the Queensland Anti-Discrimination Commissioner, Scott McDougall and Attorney-General, Yvette D’Ath will be speaking about the Human Rights Bill. Information and registration for these sessions is available on the QCOSS website (www.qcoss.org.au).