



HUMAN RIGHTS ACT FOR QUEENSLAND

An enforceable Human Rights Act for Queensland

A brief guide to making a submission to the Legal Affairs and
Community Safety Committee

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An enforceable Human Rights Act for Queensland

On 31 October 2018, the Queensland Government tabled the **Human Rights Bill 2018** ('the Bill').

For years our campaign has lobbied the Queensland Government to introduce legislation that would mean that all Queenslanders get treated equally and fairly.

We asked for legislation that would ensure that when Queenslanders are mistreated they can hold authorities to account.

We're almost there, but we're not there yet.

The Bill ticks a lot of boxes. If passed, it will require the Queensland Government to think about human rights when creating new laws and policies or delivering services, and it includes a mechanism for complaints to be conciliated in the Queensland Human Rights Commission (formerly the Anti-Discrimination Commission Queensland).

If a person is already involved in a legal matter the bill allows them to make an argument that their human rights have been limited.

But otherwise, if their complaint is not resolved in the Queensland Human Rights Commission, and they do have an ongoing legal matter, they cannot have their complaint heard in court.

To be effective laws need to be enforceable. An enforceable Human Rights Act should give Queenslanders the ability to take legal action if they are treated unfairly.

Until 26 November 2018 we can make submissions that we want an enforceable human rights act before the bill is debated in Parliament.

This guide is for citizens and organisations to be used when writing submissions about the bill as part of the parliamentary inquiry process. It sets out the amendments the Queensland Government should make to deliver an enforceable Human Rights Act.

More information about what a Human Rights Act is can be found in our discussion paper and our response to the Bill can be found in our briefing note.

An enforceable Human Rights Act should include:

- The ability to complain to a Commission so that human rights complaints can be conciliated for free (the Bill includes feature)
- The ability to take a human rights complaint to a court or tribunal
- The ability of the tribunal or court considering the complaint to make orders that include requiring that the offending conduct cease and awarding damages.

The ability to complain to a Commission

The Bill empowers the Anti-Discrimination Commission/Human Rights Commission to:

1. investigate, report on and conciliate human rights complaints;
2. intervene in relevant legal proceedings;
3. conduct conciliation; and
4. research and report on compliance and reform.

The Queensland Government has set aside funding for the Commission to perform these important functions.

There are many benefits to ensuring there are non-judicial **avenues to resolve disputes about breaches of human rights**. Dispute resolution can lead to a satisfactory outcome.

However, there are some drawbacks.

Under the Bill, the Human Rights Commission cannot:

1. Make a legally binding finding about whether a government agency or body, or a particular law, breaches human rights, or
2. Award remedies to address the harms caused by a breach of human rights.

Making a complaint to a court or tribunal

The Human Rights Act needs a standalone cause of action so people can enforce their rights in a tribunal or a court.

The ACT's Human Rights Act has a standalone cause of action, as do most bills of rights around the world. This means people can make a complaint to a court or tribunal when their rights are limited.

The Bill, like the Victorian Charter only allows claims of unlawfulness 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 recommended amending the charter to include a standalone cause of action like the one that exists in the ACT, and for complaints to be made to a tribunal rather than the Supreme Court.[1]

Recommendation: The Bill must include a standalone cause of action so that breaches of human rights can be heard before QCAT or the Supreme Court.

[1] Michael Brett Young From Commitment to Culture the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, recommendations 23 and 27.

Remedies for breaches of Human Rights

Queensland's Human Rights Act should ensure that:

- (a) people whose rights are violated have an 'effective remedy';
- (b) people claiming a remedy should have their rights to the remedy determined by a competent authority (i.e. a court); and
- (c) remedies should be enforced where granted.[1]

An effective remedy might include making the offending behaviour or action stop, requiring a decision to be made again or compensating a person who has not been treated fairly.

Recommendation: The Bill must ensure people have access to an effective remedy, including by compensating them.

[1] See e.g. ICCPR art 2(3); CERD art 6; CAT art 14; CROC art 39.

Make a submission

Our human rights act should be enforceable.

We must ensure the Queensland Government fixes the Bill so that all Queenslanders have access to justice when our government crosses the line.

Make your voice heard by writing a submission to the Legal Affairs and Community Safety Committee today. You can use the tool on our website www.humanrights4qld.com.au to make your submission.