



A HUMAN RIGHTS ACT FOR QUEENSLAND: IMPLICATIONS FOR PEOPLE WHO EXPERIENCE MENTAL ILLNESS

Discussion Paper

Introduction

The Queensland Parliament's Legal Affairs and Community Safety Committee is inquiring into whether it is appropriate and desirable for Queensland to pass a Human Rights Act. The Committee is inviting submissions and will report to Parliament by 30 June 2016.

The Queensland Mental Health Commission is preparing a submission to the Inquiry and would like to hear your views. This paper provides some background information on the issue and concludes with some discussion questions for consideration.

What is a Human Rights Act?¹

A Human Rights Act is common legislation that protects the human rights of individuals within a jurisdiction. 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 every person. Human rights include things like the right to a fair trial, freedom of speech and the right to be free from torture or other inhumane or degrading treatment or punishment.

Some countries (such as the United States and Canada) protect human rights through their constitutions. Australia has mainly relied on the courts applying common law principles. However, two states, the ACT and Victoria, have in 2004 and 2006 respectively enacted Human Rights legislation that requires their parliaments, the courts and the executive (government departments and other organisations performing public functions) to respect, protect and fulfil human rights. Parliaments are

required to consider the human rights compliance of laws that it passes; courts are obliged to interpret legislation in a way that is compatible with the human rights listed in the Acts; and public authorities are obliged to act compatibly with human rights and give proper consideration to relevant human rights when making a decision.

Queensland is considering legislation similar to that introduced in Victoria and the ACT to better protect human rights in this State.

Why are human rights particularly important for people experiencing mental illness?

Human rights protections have particular relevance for people who are vulnerable, marginalised or disadvantaged because these groups are more likely to encounter violations of human rights than others, and they may have more difficulty defending themselves.

People experiencing mental illness, for example, are more likely to:

- *Be subject to involuntary treatments and restrictive practices* – human rights legislation can protect against inhuman and degrading treatment.
- *Have shorter life expectancies and experience poor physical health* – human rights include the right to enjoyment of the highest attainable standard of physical and mental health.
- *Come into contact with the criminal justice system* – human rights include the right to a fair hearing, the right to legal advice and representation, the right to procedural fairness, the right to an expeditious hearing and the right to equality before the law.

¹ This section draws from the Anti-Discrimination Commission Queensland/Human Rights Law Centre publication *A Human Rights Act for Queensland: a discussion paper*. Please refer to this paper for a more extensive discussion on the features and benefits of a Human Rights Act for Queensland.
www.humanrights4qld.com.au/resources

- *Have difficulty accessing services* – human rights include the right of all people to access services including housing, education and training.
- *Have difficulty obtaining and retaining employment* – human rights include the right of all people to equal opportunity.

Furthermore, human rights legislation provides protection for all people, whether or not they have a diagnosed condition or are being treated. Mental health problems are common in the community, but while some people have a long-term mental illness, many may have mental illness for a relatively short period of time, or have an illness that comes and goes. Human rights are about ensuring everyone is treated fairly, and with dignity, equality and respect.

How are the human rights of people experiencing mental illness currently protected?

Australia is party to several human rights treaties, but there is currently no legislation that directly implements two of the most important treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Some of the human rights in these treaties are protected in law, but not all. This means citizens cannot launch complaints in courts on the basis of these covenants.

Anti-discrimination legislation exists in Queensland to combat discrimination in employment, education, housing and services on the basis of particular attributes, including impairment.² However, these laws rely on people making a complaint, and the complainant needs to be able to make a case that discrimination is occurring because of particular attributes they have, and that it would not occur to someone else in similar circumstances.

Some other state laws reflect human rights principles. A new *Queensland Mental Health Act 2016* is expected to be implemented in the coming year and introduces some stronger protections for patients, including increased transparency and accountability and a requirement for least restrictive practices. The principles of the Act also refer to a person's right to basic human rights and

² The laws also prohibit discrimination on the basis of sex, relationship status, pregnancy, parental status, breastfeeding, age, race, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities, and association with, or relation to, a person identified on the basis of any of these attributes.

respect for his or her human worth and dignity as an individual. However, the Act only relates to involuntary patients and those receiving regulated treatment. There are significant numbers of people who experience mental illness who do not or cannot access treatment. Furthermore, there are arguments that people covered under the Act can be reluctant to make complaints due to fear of persecution or uncertainty about rights and processes, thus weakening the intended protections.

What are some of the arguments against a Human Rights Act in Queensland?

Common arguments by those who oppose human rights legislation include:

- The common law and current legislation, such as anti-discrimination legislation, provide adequate protections
- Unelected judges would have too much power
- Human rights contravenes existing legislation
- It would result in a rush of litigation
- Alternative options such as a parliamentary committee reviewing legislation from a human rights viewpoint would be sufficient, and safeguard the sovereignty of parliament
- It would create an undue focus on individual rights as opposed to responsibilities or public interest.

What are some of the arguments for a Human Rights Act in Queensland?

The key arguments in support of human rights legislation are:

- It would promote a stronger culture of respect for human rights
- It would help to make sure that people's human dignity is always respected – no matter who they are, where they live, or what they do
- Government policy-making and administrative decision-making would be strengthened
- Queensland would be brought into line with many other liberal democracies around the world
- It would allow Queensland to better meet the obligations Australia has undertaken, under international law, to protect human rights standards
- It would provide more formal checks and balances for vulnerable people, particularly those not covered under existing legislation

- It would enable human rights complaints to be heard and determined within Queensland.

Questions for discussion

1. Do you believe human rights are sufficiently protected and promoted in Queensland currently? Why or why not?
2. Can you think of any examples where existing laws did not protect the human rights of a person experiencing mental illness?
3. If you support the introduction of a Human Rights Act, what do you think would be the most positive difference it would make for people experiencing mental illness and their families?
4. Can you foresee any drawbacks of a Human Rights Act for people experiencing mental illness or their families? If so, what?
5. Do you have any other ideas about the proposal to introduce a Human Rights Act in Queensland?

Share your views and experiences

You are invited to consider the questions for discussion outlined above and provide feedback by email to info@qmhc.qld.gov.au by 13 April 2016.

Further information

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