

**AMNESTY
INTERNATIONAL**



Submission to the
LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE
INQUIRY INTO
HUMAN RIGHTS BILL 2018
QUEENSLAND

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience – people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language or sexual orientation. Amnesty recognises that the right to freedom of thought, conscience and religion as set out in Article 18 of the Universal Declaration.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status. Amnesty calls for states to take measures that prohibit discrimination as well as positive measures to address long-standing or systemic disadvantages, and to prevent discrimination by non-state actors. Our work on non-discrimination is grounded in human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We work both publicly with our supporter base of over 7 million people, and privately with families and lawyers in determining the most strategic approach to bring about change at any given time and within the consent which we are given. Mobilising our large supporters base to take actions themselves and in their community - write letters, sign petitions, take to social media, mainstream media, and online activities - is what Amnesty has become known for and leads to our effective campaigning.

1. Summary

- 1.1 Amnesty International commends the Queensland Government's introduction of a Human Rights Bill and welcomes opportunity to provide this submission.
- 1.2 All human beings are born with equal and inalienable rights and fundamental freedoms. Human rights are based on dignity, equality and mutual respect – regardless of your nationality, your religion or your beliefs.
- 1.3 Your rights are about being treated fairly and treating others fairly, and having the ability to make choices about your own life. These basic human rights are:
 - Universal: they belong to all of us – everybody in the world
 - Inalienable: they cannot be taken away from us
 - Indivisible and interdependent: governments should not be able to pick and choose which are respected.
- 1.4 Amnesty's 300,000 Australian supporters pressure the Australian government to adopt laws that respect the human rights of all our citizens and to meet our international human rights obligations.
- 1.5 In Queensland, Amnesty is working to get the government to support more Indigenous-led solutions for kids and to change laws to make the youth justice system fairer. Indigenous children are 25 times more likely to be imprisoned than their non-Indigenous classmates. Amnesty's 'Community is Everything' campaign aims to end this inequality, stop kids younger than 14 being locked up, and instead, provide prevention programs for kids which give them the care and support they need.
- 1.6 Amnesty has been campaigning for a Human Rights Act in Queensland for several years as it is a crucial part of the human rights framework which will assist us in reaching our campaign goals.
- 1.7 Australia is the only democratic country not to have a national Human Rights Act, so it is significant that Queensland is now the third State or Territory to take the initiative to protect human rights.
- 1.8 The ACT and Victoria also have similar human rights laws in place, and Amnesty encourages the Federal Government to put in place a charter to protect human rights across Australia.

Recommendations

1.9 Amnesty International Australia makes the following recommendations:

- (1) **Recommendation 1:** that in order to ensure the Bill protects the human rights of *all* people in Queensland, including kids in detention and on remand, sections 182-183 of the Bill be removed.
- (2) **Recommendation 2:** that section 33(3) of the Bill be amended to provide greater clarity around the treatment of children convicted of an offence in a manner that is 'appropriate for the child's age'.
- (3) **Recommendation 3:** that the Bill incorporates all of the human rights prescribed by the international covenants and conventions to which Australia is a signatory.
- (4) **Recommendation 4:** that certain non-derogable civil and political rights be incorporated without limitation by providing exemptions for these rights from section 13 of the Bill.
- (5) **Recommendation 5:** that the parliamentary scrutiny provisions in the Bill be amended to ensure statements of compatibility are of a high quality, evidence based standard, and that parliamentary procedures be reformed to ensure bills can not be passed without adequate consideration of the statements of compatibility and relevant committee reports.
- (6) **Recommendation 6:** that an individual be able to institute an independent cause of action against a public authority for breach of the Act, and that a court be able to provide the usual suite of remedies.

2. Rights protection in Australia

- 2.1 Amnesty International Australia ('Amnesty') considers the Human Rights Bill 2018 ('the Bill') to be an important step towards meeting our long-standing international obligations to protect the human rights of all people in Australia. This is particularly pleasing in the context of 2018 marking the 70th anniversary of the Universal Declaration of Human Rights.
- 2.2 Amnesty believes that the existing framework for human rights protection in Australia is insufficient. Unlike other countries with comparable legal systems, Australia does not have overarching human rights legislation. This lack of protection has come to the fore in recent public debate about freedom of religion and how this might be balanced against other fundamental human rights, such as the right to freedom of expression and the right to non-discrimination¹.
- 2.3 Amnesty has consistently campaigned for the Government to begin a process to legislate a Human Rights Act for Australia, to ensure fundamental rights are protected and appropriately balanced. The objectives of a human rights act should contain as a minimum: right to recognition and equality, right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, right to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), rights to education and the rights of children in the criminal process, and their access to health care.
- 2.4 In the absence of a federal framework, Amnesty welcomes Queensland's codification of 23 fundamental human rights. The Bill lays the foundation for all future government to be more cognisant of, and compliant with, human rights standards.
- 2.5 In making this submission, Amnesty would like to address certain provisions of the Bill which could be improved in order to better uphold the basic human rights of all people.

3. Whose rights should be promoted and protected?

- 3.1 Article 1 of the *Universal Declaration of Human Rights* (UDHR) states that 'all human beings are born free and equal in dignity and rights'.²
- 3.2 During the Bill's introductory speech, Attorney-General Yvette D'ath confirmed that the Bill "*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.*"³ Accordingly, it is vital that the proposed Bill protects the human rights of *all* people in Queensland.
- 3.3 Amnesty is concerned that the Bill provides exemptions for some Queenslanders. The protection of the human rights of youth on remand is rendered illusory by virtue of sections 182-183 of the Bill which seek to amend the *Youth Justice Act 1992*. The practical effect of these sections is that a decision to detain children not yet convicted of an offence together with those children who have been convicted would not infringe the Bill.

¹ For example, New Zealand, Canada and the United Kingdom.

² Universal Declaration of Human Rights, United Nations General Assembly, 3rd session, UN Doc. A/RES/217(III) A (adopted 10 December 1948), art 1.

³ Explanatory memorandum, Human Rights Bill 2018 (Qld) 3184.

- 3.4 This exemption contravenes the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules') which states that untried detainees should be separated from convicted juveniles.⁴
- 3.5 These provisions unduly infringe the right to humane treatment when deprived of liberty. Amnesty believes that no child should be detained who has not been convicted of a crime other than in accordance with international law and standards. These prescribe that should a child be held in pre-trial detention, it should only be for the shortest period of time appropriate.⁵
- 3.6 Amnesty firmly believes that no one should be exempt from human rights protections. In particular, youth in detention and other vulnerable members of society are likely to be at the highest risk of human rights violations. that could harm kids in detention by including exemptions for kids on remand.
- 3.7 The situation for kids on remand in Queensland is creeping towards a human rights crisis. This exemption paves the way for this problem to not only continue, but get worse. This will result in them being treated differently to all other Queenslanders and fuel the growing crisis for kids on remand in Queensland. A group of people we are already failing are being deliberately excluded from rights protection. The youth justice system must be better manage.
- 3.8 **Recommendation 1:** Amnesty recommends that sections 182-183 of the Bill be removed. Given these provisions are not due to commence until 2020, the Government should address issues of overcrowding and youth justice, prior to the commencement of the Bill.
- 3.9 Amnesty is particularly concerned that the lack of clarity in section 33 (3) will enable the Queensland Government to continue to violate the Convention of the Rights⁶ of the child by detaining children alongside adults in prison.
- 3.10 Protecting a child's fundamental human rights while in detention is paramount. This bill does not do enough to ensure this.
- 3.11 **Recommendation 2:** Amnesty recommends that section 33(3) be amended to provide greater clarity around the treatment of children convicted of an offence in a manner that is 'appropriate for the child's age'. Reference in this section to such matters as the personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations would provide this clarity.
- 3.12 The status of human rights as universal, indivisible, interdependent and interrelated, is a fundamental and widely-accepted principle of international human rights law. Article 5 of the *Vienna Declaration* expressly mandates that human rights must be protected 'in a fair and equal manner, on the same footing, and with the same emphasis'.⁷

⁴ UN Standard Minimum Rules for the Administration of Juvenile Justice, Rule 17.

⁵ See Amnesty International Australia's [submission](#) to the Queensland Productivity Commission Inquiry into Imprisonment and Recidivism dated 2 November 2018, Part 3.

⁶ UN Convention of the Rights of the Child, Art. 37(c).

⁷ UN World Conference on Human Rights, Vienna, 1993 art 5.

3.13 Therefore, a Human Rights Act for Queensland should promote and protect all of the rights prescribed by the seven international human rights covenants and conventions to which Australia is a signatory. These include the following:

- 1) The International Covenant on Civil and Political Rights (ICCPR)
- 2) The International Covenant on Economic, Social and cultural rights (ICESR)
- 3) Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- 4) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
- 5) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- 6) Convention on the Rights of the Child (CROC)
- 7) Convention on the Rights of Persons with Disabilities (CRPD)

3.14 In signing these covenants and conventions, Australia is obliged under international law to ensure its domestic legislation is compliant with their provisions. Equal and non-discriminatory protection of all of the rights prescribed by these instruments would improve Australia's standing in the international community.

3.15 We welcome the explicit recognition of cultural rights, in particular the distinct cultural rights of Aboriginal and Torres Strait Islander Peoples, and the inclusion of two rights from the International Covenant on Economic, Social and Cultural Rights (right to education and right to health services).

3.16 In particular, Amnesty believes that economic, social and cultural rights are equally important as other human rights such as civil and political rights. In its Concluding Observations on Australia's compliance to the International Covenant on Economic, Social and Cultural Rights, the UN Human Rights Committee stated in May 2009 that:

'The Committee affirms the principle of interdependency and indivisibility of human rights and calls on the State party to include economic, social and cultural rights when considering legislative reform'.⁸

3.17 Indeed, in the drafting of the UDHR, it was Australia's representative and president of the General Assembly, Dr Herbert Vere Evatt, who argued for the inclusion of economic, social and cultural rights.⁹

3.18 Amnesty notes that Division 3 of the Bill only protects two of the human rights enumerated in the International Covenant on Economic, Social and Cultural Rights. In order for Australia to fulfill its international human rights obligations, the all the ESCR rights be incorporated into the Bill.

⁸ UN Human Rights Committee concluding observations on Australia ICESCR Periodic Review, 22 May 2009, [www2.ohchr.org/english/bodies/cescr/docs/ AdvanceVersions/E-C12-AUS-CO-4.doc](http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc) (accessed 30 May 2009).

⁹ Geoffrey Robertson, *Statute of Liberty* (Sydney: Random House, 2009), Australia, p 30.

- 3.19 **Recommendation 3:** that the Bill be amended to incorporate the following additional rights:
- Article 6: the right to work
 - Article 7: the right to just and favourable conditions of work
 - Article 9: the right to social security
 - Article 11: the right to an adequate standard of living
 - Article 12: the right to enjoy the highest attainable standard of physical and mental health
 - Article 15: to take part in cultural life and benefit from scientific progress

4. Limiting human rights

- 4.1 Amnesty acknowledges that not all human rights are absolute and may reasonably be limited on certain, defined grounds.
- 4.2 However, certain rights such as freedom from slavery and torture are so fundamental to the liberty and dignity of all people that they are non-derogable, and should be protected without limitation.
- 4.3 This principle is supported by the ICCPR which forbids derogation from articles 6 (right to life), 7 (torture or to cruel, inhuman or degrading treatment or punishment), 8 (slavery), 11 (contractual obligations), 15 (criminal offences), 16 (recognition before the law) and 18 (freedom of thought, conscience and religion) under any circumstances, including in a public emergency.
- 4.4 Accordingly, an exemption to section 13 of the Bill should be made in relation to sections 16 (right to life), 17 (protection from torture and cruel, inhuman or degrading treatment), 18 (freedom from forced work), 20 (freedom of thought, conscience, religion and belief), 31 (a fair hearing), 34 (right to not be tried or punished more than once) and 35 (retrospective criminal laws) of the Bill which must be protected as non-derogable civil and political rights.
- 4.5 **Recommendation 4:** that section 13 of the Bill be amended to provide an exemption for the non-derogable civil and political rights outlined in sections 16, 17, 18, 20, 31, 34 and 35 of the Bill.

5. Monitoring compliance with human rights: functions of government

- 5.1 Amnesty supports the 'dialogue model' adopted by the Bill, in which the three arms of government are obliged to have regard to, and respect for, human rights in performing their separate functions.
- 5.2 By ensuring that laws and decisions which breach human rights are not automatically invalidated, this model allows parliament to maintain final authority over contentious issues. In this way, the Bill increases awareness of human rights and encourages governmental compliance without violating the principle of parliamentary sovereignty.
- 5.3 We note that the 'dialogue model' has been successfully adopted in other common law countries with analogous legal systems, such as New Zealand and the UK.

Parliament

- 5.4 Under sections 38-39 of the Bill, the member and portfolio committee responsible for examining a Bill must report on its compatibility with human rights. Amnesty believes that this will contribute to politicians according greater weight to the protection of human rights when developing policy, benefiting the wider community.
- 5.5 The process of parliamentary scrutiny could be further improved by ensuring that there is adequate time and information for Members of Parliament to consider the human rights implications of all legislation before them.
- 5.6 Amnesty recommends the scrutiny process outlined in the Bill be amended to ensure statements of compatibility include a detailed and evidence-based assessment of proposed provisions that interfere with rights¹⁰, and that the preparation of the statements of compatibility be undertaken by a suitably qualified agency or individual so that the quality of the statements is uniform¹¹.
- 5.7 Time constraints are a major barrier to effective human rights scrutiny of legislations. Parliamentarians in other jurisdictions have identified that ‘the main thing that would make parliamentary scrutiny more effective is more time’¹².
- 5.8 Amnesty recommends parliamentary procedures be amended to allow for more time for scrutiny of legislation, including by, legislating that outside of a ‘clearly defined emergency’, a bill should not be passed unless the committee has considered the bill and reported, the relevant Minister has responded to questions raised, and the parliament has had the opportunity to read and debate the recommendations made in any relevant report.
- 5.9 **Recommendation 5:** that the parliamentary scrutiny provisions in the Bill be amended to ensure statements of compatibility are of a high quality, evidence based standard, and that parliamentary procedures be reformed to ensure bills do can not be passed without adequate consideration of the statements of compatibility and relevant committee reports.

The judiciary

- 5.10 Section 48 of the Bill requires legislation to be interpreted in a way that is consistent with *both* the object and purpose of a given act, and the Human Rights Act. Amnesty considers this

¹⁰ Parliamentary Joint Committee on Human Rights, ‘Drafting Statements of Compatibility’ (Guidance Note No 1, Parliament of Australia, 2014), 1.

¹¹ Statements of compatibility are also required in New Zealand, the UK, ACT and Victoria. In the ACT and New Zealand, the Attorney-General prepares the statement of compatibility. In Victoria and the United Kingdom, as in the Commonwealth, it is the Minister or the sponsor of the bill who prepares the statement of compatibility. The Law Council of Australia suggests a centralised, independent statutory body, such as the Australian Human Rights Council, should prepare the statements. See: Australian Law Reform Commission, Report 129: Traditional Rights and Freedoms - Encroachments by Commonwealth Laws, 2 March 2016, <https://www.alrc.gov.au/publications/freedoms-alrc129>.

¹² Carolyn Evans and Simon Evans, ‘Messages from the Front Line: Parliamentarians’ Perspectives of Rights Protection’ in Tom Campbell, KD Ewing and Adam Tomkins (eds), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press, 2011) 329, 342.

interpretive provision preferable to the UK equivalent, which does not expressly provide that legislation is to be interpreted in accordance with its objects and purpose.

The Executive

5.11 Section 58 obliges public entities to act in a manner that is compatible with human rights, and to give proper consideration to human rights when making decisions. The definition of 'public entity' under section 9 is broad enough to encompass 'core' public entities, such as government departments, and 'functional' public entities, such as a private company managing a prison. This ensures that government cannot circumvent its human rights obligations through private contracting and the outsourcing of public services.

6. Enforceability of human rights

6.1 A Human Rights Act is only as valuable as it is enforceable. In accordance with article 2(3) of the ICCPR, the Bill must ensure that individuals whose human rights have been violated have access to an effective remedy.

6.2 The enforcement mechanism adopted by sections 58-59, does not permit an individual to seek a legal remedy for contravention of the Human Rights Act, unless they possess an existing independent claim of unlawfulness. Although an individual may still be entitled to redress if they fail on the independent ground but succeed on the human rights ground, monetary damages are unavailable.

6.3 The wording of section 59 is confusing and wholly unclear to a lay person attempting to remedy a breach of their human rights. Section 59(1) provides that a person may seek relief '*other than because of section 58*', while section 59(2) confirms that relief is available '*on the ground of unlawfulness arising under section 58*'. Given that it is the vulnerable members of society, such as those living with a disability, whose human rights may be most at risk, the mechanisms for relief under the Bill need to be especially clear and easy to understand.

6.4 The Victorian Human Rights Act contains a similar 'piggyback' cause of action mechanism. A recent independent review of this legislation found that it was overly complex and should be simplified to provide a freestanding cause of action, similar to that of the ACT.¹³

6.5 Amnesty recommends that an individual should be able to instigate an independent cause of action against a public authority for a breach of the human rights contained in the Bill. Additionally, the court should be able to provide the usual suite of remedies including monetary damages.

6.6 Finally, sections 63-90 empowers an individual to make a complaint to the Human Rights Commissioner in regards to a contravention of the Act. Amnesty is approving of conciliation as a low-cost, less burdensome means of achieving redress for human rights violations than court action

¹³ Michael Brett Young, *From Commitment to Culture: Review of the Charter of Human Rights and Responsibilities Act 2006* (2015) 119.

7. Conclusion

- 7.1 Amnesty is pleased to see substantial progress in the protection of the human rights of Queenslanders. We recommend the above amendments be made and that the bill be passed.