

20 June 2024

Independent Review of the Human Rights Act

Via email: [admin@humanrightsreview.qld.gov.au](mailto:admin@humanrightsreview.qld.gov.au)

**Re: Review of Queensland's Human Rights Act 2019**

Thank you for the opportunity to make a submission on the review of Queensland's *Human Rights Act 2019*.

As you would be aware, as the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.<sup>1</sup> There are several conditions that may affect a person's decision-making ability, including intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse.

Queensland's adoption of human rights legislation after Victoria and the Australian Capital Territory (ACT) marked an important moment in the Queensland Government's commitment to the rights of all Queenslanders. Since the introduction of the *Human Rights Act*, there has been a much needed discussion about human rights whenever new laws and policies have been developed in this state, and whenever existing laws and policies have been reviewed.

The review asks a number of discussion questions, including whether any additional human rights should be included as part of the *Human Rights Act*.

**Reasonable accommodation**

My suggestion is that additional rights that realise the objectives of the United Nations *Convention on the Rights of Persons with Disabilities* (UNCRPD)<sup>2</sup> should be included in the *Human Rights Act*.

The UNCRPD endorses a contemporaneous shift in the way that disability is considered, underpinned by a 'social model of disability'.

The Convention emphasises the importance of:

- considering disability to be an evolving concept that results from the interaction of people with their surroundings that create attitudinal and environmental barriers;
- emphasising the right and ability of people with disability to make valued contributions to society; and
- recognising that all rights apply to people with disability, who should be supported to exercise those rights.

'Reasonable accommodation' is one overarching principle of the UNCRPD. This refers to the support, modifications and adjustments that must be made in order for people with disability to exercise their rights on the same basis as others.

Article 5 of the UNCRPD defines discrimination to include the failure to provide reasonable accommodation. Article 12 further imposes an obligation to recognise that people with disability enjoy legal capacity on an equal basis with others, and requires the taking of 'appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.'

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<sup>1</sup> *Guardianship and Administration Act 2000* (Qld) s 209.

<sup>2</sup> Opened for signature 30 March 2007, [2008] ATS 12 (entered into force 3 May 2008).

The Convention therefore places a strong emphasis on the need to provide reasonable accommodation in order to uphold the rights of people with disability.

This concept is beginning to be incorporated into Queensland legislation, with changes to the *Guardianship and Administration Act 2000* making it more consistent with the UNCRPD.<sup>3</sup> These changes include an emphasis on a person with impaired decision-making ability being supported to make their own decisions.

The inclusion of the need for reasonable accommodation in the *Human Rights Act* could improve how people with disability are recognised by government. It would clarify that the broad concept of 'equality' can be complex, and that there needs to be accommodations made for people with differing abilities in order for them to fully realise their rights.

This would also create a positive duty on public entities to have strategies in place to ensure their services and operations are accessible to, and welcoming of, people with different abilities. This is preferable to a reactive approach where a person must seek a remedy after their rights have been breached.

### **Right to participate**

Related to the concept of reasonable accommodation above is the concept of a right to participate. A discussion of this duty has recently occurred during the Federal Government's Inquiry into Australia's Human Rights Framework.<sup>4</sup>

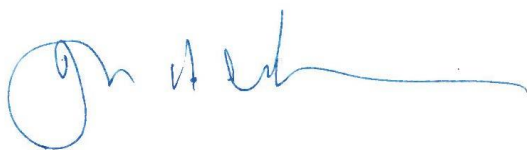
The Inquiry explored the Australian Human Rights Commission's position that there should be an obligation on government entities to ensure the participation of Aboriginal or Torres Strait Islander people, people with disability, or children, in relation to decisions that affect their rights.<sup>5</sup>

I support the inclusion of such an obligation in Queensland's *Human Rights Act*. Inclusion of this obligation would assist in ensuring that decisions made by government are more inclusive and effective, embodying the concept of 'Nothing about us, without us'<sup>6</sup> that people with disability have been pursuing for many years in order to achieve full participation and equalisation of opportunities.

Thank you again for the opportunity to comment on the review of the *Human Rights Act 2019*.

Should you wish to discuss any of the matters I have raised in this submission further, please do not hesitate to contact my office via email [public.advocate@justice.qld.gov.au](mailto:public.advocate@justice.qld.gov.au) or phone 07 3738 9513.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)  
**Public Advocate**

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<sup>3</sup> Explanatory Notes, *Guardianship and Administration and Other Legislation Amendment Bill 2018* (Qld) 7.

<sup>4</sup> Parliamentary Joint Committee on Human Rights, Commonwealth of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024).

<sup>5</sup> Parliamentary Joint Committee on Human Rights, Commonwealth of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) 176.

<sup>6</sup> United Nations, *International Day of Disabled Persons, 2004, 'Nothing about Us, Without Us'*  
< <https://www.un.org/esa/socdev/enable/iddp2004.htm>>