

A potential Human Rights Act in Queensland and inclusion of the right to health

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In the first half of 2016, Queensland Parliament's Legal Affairs and Community Safety Committee led an inquiry into the appropriateness and desirability of legislating for a Human Rights Act in Queensland. The inquiry process included seven public hearings between April and June 2016: two in Brisbane and one each in Townsville, Cairns, New Mapoon, Thursday Island and Lockhart River. On 30 June 2016, the committee delivered its report to the Queensland Parliament. The committee, comprising four opposition and three government members, was "unable to agree on whether it would be appropriate and desirable to introduce human rights legislation in Queensland".¹

Subsequently, in October 2016, Queensland Premier Anastacia Palaszczuk announced that Cabinet had committed to introducing a Human Rights Act for Queensland (HRAQ), modelled on the *Victorian Charter of Human Rights and Responsibilities Act 2006*.² If a HRAQ follows the Victorian model, it would likely omit the right to health, which is absent from the Victorian Charter.³

The imperative to include the right to health in a HRAQ is reinforced by Queensland's unique geographic context and health landscape. Queensland is Australia's second largest state (occupying almost one-quarter of the continent) and faces unique disease burden and health system challenges. These are related to the state's geography, demography, socio-cultural diversity and unique history, including a history of state-condoned rights (encompassing the right to health) violations, such as Indigenous forced

Abstract

Objective: To identify the level of public support for a Human Rights Act for Queensland (HRAQ) and for inclusion of the right to health by participants in a public inquiry process.

Methods: We reviewed the 492 written submissions to the Legal Affairs and Community Safety Committee's Inquiry into a potential HRAQ and the transcripts documenting the public hearings held by the Committee in 2016.

Results: A total of 465 written submissions were analysed; 419 (90%) were for a HRAQ. More than 80% of the 'for' submissions advocated the right to health's inclusion. At the seven public hearings, 72 persons made verbal submissions and most supported a HRAQ. Five major themes were identified in our synthesis of the public hearing transcripts. Three related specifically to health and human rights: 1) the need to consider the holistic health and human rights of Indigenous Queenslanders and Indigenous Queensland communities; 2) instilling a human rights culture in Queensland; and 3) access to health care and the underlying determinants of health. The other two themes related to the conduct of the Inquiry: 4) the importance of community participation in developing a HRAQ; and 5) concerns about the public consultation processes.

Conclusion: This study found strong support in the majority of submissions for the Queensland Parliament to draft and enact a HRAQ, and for the inclusion of the right to health in such legislation.

Implications for public health: The Queensland Parliament's enactment of a HRAQ that expressly included the right to health would increase the accountability and transparency of government health (and related) decision making and resource allocation, and would better identify and address health inequities across the state. This Act is imperative for improving the health and wellbeing of all Queenslanders, particularly rural and remote and Aboriginal and Torres Strait Islander Queenslanders.

Key words: human rights, right to health, social determinants of health, Queensland, Human Rights Act, Aboriginal and Torres Strait Islander health, rural and remote health

dislocation, stolen wages and oppression, and Pacific South Sea Islander slave labour.⁴⁻⁸

This study examined the content of submissions and presentations by witnesses to the inquiry into a potential HRAQ to determine the level of public support for a HRAQ and for specific acknowledgement of the right to health.

What is the right to the highest attainable standard of physical and mental health (right to health) in international law?

The right to health, grounded in Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966, which was ratified by the Australian Government in 1975,

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and other formative international treaties (for example, the Convention on All Forms of Elimination of Discrimination Against Women [1978], the Convention on the Rights of the Child [1989], and the Convention on the Rights of Persons with Disabilities [2006]), is not 'a right to be healthy'.⁹ In other words, governments in countries such as Australia, and domestic state or territory governments such as the State Government of Queensland, cannot ensure good health for all people within their borders or provide protection against all causes of ill health. In turn, any expectation that 'a right to be healthy' be provided to the people by their government is misplaced.⁹ This relates to structure and agency factors that shape and impact community and individual health: "genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles" may all play a role.⁹

Rather, the right to health under Article 12 contains two elements: first, the right to timely and appropriate health care; and second, the underlying determinants of health – the "wide range of socio-economic factors that promote conditions in which people can lead a healthy life".⁹ Specifically, these include "access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health".⁹ In view of the broad scope of the determinants of health, the right to health "transcends almost every other right".¹⁰

A government's obligation to respect, protect and fulfil the right to health, however, is not without caveat: it depends on the context-specific conditions prevailing in the state. Therefore government is obliged to "tak[e] steps", "to the maximum of its available resources", "with a view to achieving progressively the full realization" of this human right. International human rights law is thus pragmatic: it acknowledges that constraints due to finite resources (such as limited fiscal and human resources) will impede a government's fulfilment of their health obligations and that an incremental approach toward attaining "the right to the highest attainable standard of health" is required. "Progressive realization" means governments have "a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization" of this

human right.⁹ Therefore, should the right to health be spelled out in Queensland legislation, the Queensland people would have an added layer of accountability with respect to the decisions made (or not made) by the Queensland Government that affect their health and wellbeing.

Why the right to health must be part of a HRAQ

Cancer, cardiovascular disease, mental disorders and musculoskeletal conditions are the top four contributors to Queensland's total disease burden, with mental disorders, musculoskeletal disorders and respiratory conditions the leading causes of the state's disability burden.¹¹ Like elsewhere in Australia, Queensland is facing continuing increases in hospital admission rates, emergency department presentations and disability burden. While Queensland's Chief Health Officer has described this combination of factors as creating "unsustainable" pressure on the state's hospital and health systems,¹² a HRAQ containing the right to health would support advocacy for equitable access to healthcare and improvements in determinants of health for all Queenslanders. This is particularly important for potentially vulnerable and marginalised Queenslanders, including Aboriginal and Torres Strait Islander people, older people, those with disabilities, rural and remote Queenslanders and the one in five Queenslanders living in areas of socioeconomic disadvantage.¹³

For Queensland's 200,000 Indigenous people,¹⁴ although life expectancy has increased and the life expectancy gap for Indigenous Queenslanders has decreased, large disparities remain: Indigenous Queenslanders are four times as likely to die before 50 years of age as non-Indigenous Queenslanders, and the disability burden rate for Indigenous Queenslanders is 90% higher than for their non-Indigenous counterparts.¹² Under-registration of Indigenous births is highly problematic, especially in remote Queensland,¹⁵ with lack of birth registration instrumental in setting the stage for Indigenous inequity, discrimination, marginalisation and poor health across the life course.¹⁶

Recent figures indicate sexually transmitted infections (STIs) are on the rise in Queensland,¹⁷ while concern remains around a sustained Queensland response to HIV prevention.^{18,19} Compounding this, Queensland is the only Australian state or

territory with an international border, creating potential cross-border disease transmission (such as MDR-TB and cholera) and additional challenges for health policy and resourcing in the state's isolated far north.^{20,21} Queensland has the third highest rate of suicide in Australia after the Northern Territory and Tasmania.²² Taken together, this evidences the serious and complex nature of the ongoing population health concerns and inequities in the State of Queensland. This confluence of poor health, and its negative impact on Queensland's most marginalised people, grounds the need for the right to health's explicit inclusion in any future HRAQ.

Improved accountability and transparency

A right to health that is expressly incorporated in a future HRAQ would offer guidance to better public health policy in these domains, and could also offer a mechanism to hold to account state and provincial governments that fail in these respects. Indeed, the "principal value add" of inserting the right to health in a HRAQ would be one of advocacy and accountability: "Because it converts passive beneficiaries into claim[s]-holders and states and other actors as duty-bearers that can be held to account for their discharge of legal, and not merely moral, obligations".²³ For social advocates and legal practitioners alike, law as opposed to policy will frequently be the preferential remedy to tackle health inequities and injustices experienced by minorities and the socioeconomically disadvantaged.²⁴ This is because the pursuit of the right to health should not be a matter of charity, morality, beneficence, or compassion – or the *ad hoc* policy that is and can be health policy in Queensland – but one rooted in the law.^{25,26} Health advocacy in Queensland can only be strengthened by way of legal teeth: "Rights remove discretion from development and provide a framework of accountability".²⁷

Of course, litigation is not (and should not be) the only tool at citizens' and advocates' disposal, and must be the last resort.^{28,29} Certainly, "the optimum situation is for legal standards to be internalised by individuals to such an extent that court cases are unnecessary".³⁰ However, Queensland Health has already been called upon to "be open to transparently engaging with the broad-ranging health issues raised by all parties"³¹ – and a HRAQ that includes the right to health will go some way in compelling such openness.

Progressing a rights-based and community inclusive decision making culture

Inclusion of the right to health would tell the people of Queensland that their health matters, and it would give particular voice to rural and remote Queenslanders, as well as to Queensland's Aboriginal and Torres Strait Islander peoples. The UN Committee on Economic Social and Cultural Rights, in expanding on the meaning of the right to health in its General Comment No. 14 of 2000, was emphatic that an "important aspect" of this right "is the improvement and furtherance of participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the right to health taken at both the community and national levels".⁹ The Committee continued:

The formulation and implementation of national health strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. In particular, the right of individuals and groups to participate in decision making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under article 12. Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people's participation is secured by States.^{9[paragraph 54]}

Improved participation and inclusion by the Queensland community in health decision making would facilitate a broader rights-based culture, and aligns with similar calls from other key UN instruments, such as the UN Declaration on the Rights of Indigenous Persons and Convention on the Rights of Persons with Disabilities.

Objectives

This study had two objectives:

- to determine the level of support for the introduction of a HRAQ among participants who made verbal or written submissions to the Inquiry
- to identify expressions of support for acknowledgement of the right to health in a HRAQ in those submissions.

Methods

Data analysis

The 492 written submissions, publicly available on the Queensland Parliament website, were divided among research team members. Each member analysed submissions using an Excel spreadsheet and coding sheet to identify:

- the submitter (person or persons, state actor, non-state and corporate actors, unclear)
- the submitter's position toward a HRAQ (for, against, neither/neutral, unclear, not-applicable)
- the four main reasons for the submitter's position for or against a HRAQ
- if the submitter was for a HRAQ, had they identified – explicitly or implicitly – whether the right to health should be included.

The right to health was determined to be 'implicitly' included if the submitter requested:

- broad inclusion of economic, social, and cultural rights in a HRAQ (of which the right to health is part);
- a minimum of three rights relating to the underlying determinants of health (the second element comprising the right to health) be included – such as the right to housing, education, food, water, or a safe, clean, healthy, and sustainable environment; or
- acknowledgement of other rights that include the right to health, e.g. where the submitter requested all the rights listed within the UN Convention on the Rights of Persons with Disabilities 2006, which includes the right to health for persons with disabilities (Article 25).

To enhance this study's inter-rater reliability, when a research team member was unsure how to code a submission, other team members were approached to analyse that submission and findings were cross-checked and agreed upon. CEB also randomly audited team members' findings and then synthesised to compile overall findings from analysis of the written submissions.

The second part of the investigation aimed to elicit the main messages on health and human rights delivered to the Inquiry by witnesses at the seven public hearings held between April and June 2016. We used content analysis approaches underpinned by Grounded Theory.³² The public hearing transcripts, also publicly accessible on

the Queensland Parliament website, were subjected to discourse and thematic networks analysis by CEB to derive themes and explore participants' understanding and signification of ideas.^{33,34} Emergent findings were shared iteratively with the research team, and final findings were cross-checked by the team members to ensure study rigour.

To minimise researcher bias, research team members undertook to not consider the findings of the Committee's final report until they completed analysis of the submissions. The research team were aware of the existence of the final report, but all undertook to not consider it until the results of the analyses had been completed and collated.

Ethics statement

All data analysed are available in the public domain on a Queensland Government website. Written submissions were published on this website only after formal acceptance by the Legal Affairs and Community Safety Committee. Attendees at the Inquiry's public hearings were advised at the outset of those hearings by the Committee Chair that their identity and correlating verbal submission would be recorded on the Queensland parliamentary website, as the Committee's proceedings are proceedings of the Queensland Parliament and subject to the standing rules and order of the parliament. Since all material cited in this study is freely available in the public domain, the University of Queensland Human Research Ethics Committee granted a waiver of consent, in accordance with the National Statement on Ethical Conduct in Human Research 2007 (updated May 2015).³⁵

Results

Analysis of written submissions

There were 492 submissions to the Human Rights Inquiry published on the Queensland Parliament website. Eighteen of the 492 submissions were missing ('sequence number not utilised') and nine were determined to be duplicates. Hence we analysed 465 submissions. Most submissions were made by persons (n=384), then non-state actors (n=66) and state actors (n=12), and there were three submissions where the submitter's identity was unclear.

Of the 465 submissions, 419 (90%) were for a HRAQ. Twenty-four were against (5%), 12 were neutral (3%), and 10 were unclear (2%).

The most common reasons articulated in support of a HRAQ were:

- to increase Queensland Government transparency and accountability
- to increase legal and/or human rights protections for Queenslanders
- to instil a human rights culture in Queensland
- Queensland laws are inadequate (including laws overseen by the Anti-Discrimination Commission of Queensland and Queensland Civil and Administrative Tribunal).

The most common reasons given for being against a HRAQ were:

- adequate legal protections are already in place in Queensland
- improper transfer of legal power from the executive to the judiciary within Queensland
- the cost to the Queensland taxpayer/economic burden
- related to religion.

More than 80% of the submissions for a HRAQ (344/419) recommended inclusion of the right to health. Of these, 276 were explicit and implicit in their support for the right to health's inclusion (80% of those for a HRAQ, and 59% of all submitters), 19 (6%) explicitly supported inclusion of the right to health, and 49 (14%) were implicitly in favour.

Analysis of verbal submissions

Seven public hearing transcripts were analysed. There were two public hearings in Brisbane, and one each in Townsville, Cairns, New Mapoon, Thursday Island and Lockhart River. The longest hearing in duration was four hours and 13 minutes in Brisbane, while the shortest was one hour and nine minutes in Cairns. One of the Brisbane hearings was a teleconference where the four witnesses focused on their experience of the human rights acts in New Zealand and Victoria.

Transcripts ranged from 11 to 47 pages in length. In total, 170 pages were analysed. Seventy-two persons were witnesses at the public hearings (and made verbal submissions to the Committee); 40 men (55%) and 32 women (45%). Thirty-one of the witnesses (or nearly 44%) did so in their personal capacity, and the remaining identified as participating pursuant to their professional affiliation with a government, Indigenous, legal, academic, religious or non-governmental organisation (NGO) or agency.

We estimate that at least half the witnesses were individuals who identified as Aboriginal and/or Torres Strait Islander.

The overwhelming majority of the witnesses expressed support for the introduction of a HRAQ. Five major themes were identified in our synthesis of the public hearing transcripts. Three related specifically to health and human rights: 1) the need to consider the holistic health and human rights of Indigenous Queenslanders and Indigenous Queensland communities; 2) instilling a human rights culture in Queensland; and 3) access to health care and the underlying determinants of health. The other two themes related to the conduct of the Inquiry: 4) the importance of community participation in developing a HRAQ; and 5) concerns about the public consultation processes.

1. Advancing health and human rights of Indigenous Queenslanders

I think as a first nation person we have a special place within our country and I think there is a case to be made that we have a special place and being recognised as such.

While there was strong support at six of the seven public hearings for a HRAQ, at four of those hearings (Townsville, Cairns, New Mapoon, Thursday Island) there was particular support for the introduction of a HRAQ positively recognising, promoting and affirming the human rights of Queensland's unique Aboriginal and Torres Strait Islander peoples.

First and foremost, I think our people and community need to be given recognition about what and who we are, where we come from and what we want to achieve for our people.

In this state, we are so far behind every other state ... and that is evidence based ... Governments come and go, but my people remain the sickest and unhealthiest people in the world per head of population across the board ...

In the context of these public hearings, there was much discussion around a HRAQ being an important tool in redressing Indigenous intergenerational grief and trauma, which many witnesses correlated more generally with poor Indigenous health.

We have so many problems in this community. I believe a lot of it arises from the traumatic history. I understand that we cannot change history. We cannot. My father was one of the ones who was removed ... For my father to sit there and cry even today, still. There is evidence.

People who are living here today have intergenerational trauma that needs support. ... People need to be given the space to tell their story because there are sixth or seventh generations who are here today and who have been impacted by the past colonial policies.

For the local people it can be seen that there is a link between trauma and traumatic events, substance abuse, relationship difficulties and abuse, and avoiding behaviours.

It follows that the introduction of a HRAQ affirming Queensland's Indigenous peoples and their cultural rights was further viewed as likely facilitating not only individual and family health, but wider community health:

Our approach has also been that it is not just about the health, it is about their whole of life.

Several people also made special mention of the need for a HRAQ to promote the specific rights of Queensland's Indigenous women, for example:

I think it is fairly well documented that Aboriginal and Torres Strait Islander women are amongst the most disadvantaged socially and economically.

2. Instilling a human rights culture in Queensland

Properly crafted and implemented, it has the potential to foster a widespread culture of rights and respect for the dignity of all people within government, community service organisations, and the wider community.

In six of the seven public hearings there was strong promotion of the opinion that a HRAQ would foster a human rights culture in Queensland.

I think the objective is broader than that, though, and that is to create a human rights culture. At the moment that does not exist in Queensland. What I see is that, when services are delivered through public authorities and the public service, there is a very piecemeal understanding of what the obligations are or even what legal obligations they have under the anti-discrimination laws, let alone anything else ... Common law does not create a human rights culture.

It [a HRAQ] would provide clarity about what is meant by 'human rights'; how they are to be applied in the context of the many facets of a citizen's life and to provide cultural change over time in the provision of government services by government agencies or their agents.

In terms of what a human rights culture might look like in the Queensland context, witnesses referred to a culture promoting improved

decision making accountability, especially by those representing government.

I guess you have to look at the long game. The long game with these sorts of acts is that it will create ... a culture – more than a culture, a mandated process – whereby decision makers say, “Am I considering the human rights of the people who might be affected by this decision?” and then making a better decision that does not lead us into that place of litigation, because most people cannot afford to go to the Supreme Court.

Several witnesses also stated that an improved human rights culture in Queensland, facilitated by a HRAQ, would likely involve community education and awareness around the HRAQ, and this community awareness would positively contribute to government decision making transparency and accountability.

I understand that a human rights act cannot stop human rights abuse. What it can do is make it very clear that that is what is happening ... I think it is an awareness thing. Hopefully, governments would be less likely to pass legislation if it was clear that it was going against legislation that had been enabled ...

[A committee member asked: “How do you imagine introducing a human rights act will change our culture towards human rights?”]

I think in itself alone probably not much. I think it is more what goes along with it – the importance of education and just the fact that the term ‘human rights’ is used and just the fact that when legislation comes before parliament human rights is mentioned. I think all that helps to improve it.

3. Improving the health of Queenslanders

Within the verbal submissions, there was widespread acknowledgement of the need for a HRAQ to facilitate improved health and wellbeing of Queenslanders. Human health was framed holistically rather than bio-medically by most witnesses, with an emphasis on the health conditions and challenges for Queensland’s heterogeneous peoples. This was not only in respect to the holistic treatment of Indigenous health per Theme 1, but spanned from the need for government funding and support for men’s sheds to promote male health and wellbeing, to the indivisibility of human and environmental health and rights.

The main point I want to make here today relates to the notion of the interdependence of human and environmental rights. We say that you cannot have one without the other ... If

there is some environmental harm, the right to an ecologically balanced environment, the right to a healthy and safe environment, the right to life, the right to health and the right to property can be affected ...

While there was not express advocacy for inclusion of the right to health in a HRAQ by witnesses at public hearings, there was implicit support. This was particularly evident in one of the Brisbane hearings at which a number of witnesses advocated the need for a HRAQ to include not only civil and political rights but economic, social and cultural rights, of which the right to health is part. For example:

Moreover, economic, social and cultural rights would seem to be particularly applicable to state governments, whose primary role is in service delivery.

I am for an expansive view of that which covers economic rights and social rights, but that is because I am interested in service delivery and high equality of service delivery, which includes access to justice.

Witnesses described specific health service challenges to illustrate the need to promote and protect the rights of persons with disabilities and mental illness, and Indigenous Queenslanders. Many also implicitly identified the need for a HRAQ to progress the first element of the right to health – improved, equitable access to and availability of health care services – especially for rural and remote Queensland communities, and remote Aboriginal and Torres Strait Islander communities specifically.

We have all sorts of social and emotional health problems in the community. Our health issues have skyrocketed in the last five to 10 years. There is nothing ... This bill of rights might be an opportunity for people – a tool that people can use to get equity of services, or equity on any issue that concerns them, their families, their communities.

Young people are dying from preventable diseases and incidents. For one reason or another, we are not seeing the Indigenous investment at a federal level, let alone a state level, hit its target, which is in our community. There is also duplication in the delivery of service, which I guess is a major issue, at the state and regional levels particularly.

There was also recognition of the importance of the underlying social determinants on improving human health (the second right to health element). This was particularly with respect to the role housing plays in shaping human health.

Housing would be the main problem that really takes our rights as a whole ... Housing makes the social aspect of each household. You talk about unemployment and all of that. It all goes back to the house. Life begins at home.

Other determinants of health identified as needing improvement in the Queensland rights-context included employment, training and education (especially in rural and remote areas), improved water security (“How can we build on our health when we do not have adequate, clean, fresh water all year round?”), and promotion of healthy eating and access to affordable nutritious foods (again, particularly in rural and remote Queensland) for disease prevention. As articulated by one witness:

The people are dying a lot from heart disease and diabetes. It is all about diet. There is not enough focus on awareness and prevention of such disease ... I have not seen any prominent thing on the ground addressing such issues.

There was a broader sense of social injustice resulting from the isolating nature of Queensland’s geography, which many witnesses believed had been inadequately addressed by successive state and federal governments:

We are living up here. We are Australians. Remember that.

Again, interlinked challenges pertaining to securing the underlying determinants of health were highlighted: lack of health, educational/training or employment services (or culturally responsive services); prohibitive cost of accessing public services (including health services, such as kidney dialysis); poor public transport infrastructure (that acted as a barrier to accessing timely and appropriate health care); and inequitable living costs, which together perpetuated a cycle of family and community poverty, and poor health.

With remoteness, we have challenges of access to services and cost of living. With that comes the challenges of employment and education for our community members.

People are screaming down south about the high cost of fuel and that. Just a couple of months ago fuel dropped. But out on the island, we are paying \$2.75 a litre.’

Another determinant of health that was highlighted as rationale for a HRAQ was alleged institutional racism in Queensland’s public health care services (“Racism is very much a key social determinant ... I make mention of the report of institutional racism

in the health sector”), with witnesses citing lack of employment of Aboriginal and Torres Strait Islander people in the Queensland public hospital system, on hospital boards and executive committees:

One point that has been clear to me is that the terrible situation with institutional racism that has arisen has been allowed to arise because the Hospital and Health Boards Act has not complied with the Legislative Standards Act. It has, probably through no intention of anyone – probably through accident – allowed that situation to arise. If there were a human rights act, I think that would be a lot less likely to happen in the future.

4. Importance of community participation in developing a HRAQ

In many of the verbal submissions to public hearings witnesses emphasised the importance of community participation and consultation in developing the content of a HRAQ, which also overlaps with a human rights culture providing ‘voice’ and ‘identity’ to otherwise marginalised Queenslanders.

If we have something in place where we can exercise our rights and our rights can be noticed, I think that would be something that would help us to move forward.

There was particular emphasis on the need for consultation to include Queensland’s Indigenous voices, and all potentially disadvantaged Queensland voices and groups.

I think genuine community input from all equity groups, particularly Aboriginal and Torres Strait Islander viewpoints, is absolutely essential.

At one Brisbane hearing, the emphasis was on inclusion and affirming the human rights not only of Indigenous Queenslanders but also persons with disabilities, persons experiencing mental illness and/or substance abuse problems (especially in involuntary admission), and Queensland’s lesbian, gay, bi-sexual, trans and intersex (LGBTI) community. Indigenous witnesses particularly highlighted the need for “genuine community engagement” and not tokenism.

5. Concern around the HRAQ Inquiry processes

A number of witnesses, at different public hearings, were concerned by the lack of advertising and public awareness of the Public Inquiry into a HRAQ.

As you know, the parliament and government are making decisions up there so this

[public hearing] is a good way to bring it to communities. I just think more information could have been put out to communities to talk about because it does affect the whole of communities. I think the whole idea when a decision is made up there [at the top of government], it affects down here more.

Next time, get the message out so that everybody can come here and we have a full room.

Several witnesses expressed concern that the lack of promotion of the Inquiry meant they were insufficiently informed and under-prepared. Others expressed scepticism about the public consultation. One suggested the entire process was flawed:

The process you are using for this bill of rights is, in my view ... not very good at all. You are not giving everyone a say. There was basically no signalling before the election. You are travelling around and getting input of a few hundred people. It is really a sham, in my view. It is a way to avoid public opinion ... If you want to know what Queenslanders think, have a plebiscite or run an election campaign as one of the parties.

Scepticism was also palpable in the submissions of several Aboriginal and Torres Strait Islander Queenslanders, who spoke of their communities’ tiredness of tokenistic consultation.

So when are you going to complete it, I am asking ... or will it just be another story? ... We have had surveys and surveys and parties coming up here every month – sometimes twice a month with no outcome.

I came here reluctantly at first. You will understand my cynicism as I have been before many committees and provided statements and evidence ... I am all for some sort of legislation that will give us human rights, but is this another talkfest? We have been here before.

Discussion and conclusion

This study found strong support in the majority of the written and verbal submissions for the Queensland Parliament to draft and enact a HRAQ, as well as for inclusion of the right to health in such legislation. In the presentations by witnesses at public hearings, this support was more often implicit than explicit. Nonetheless, at the public hearings promotion of health and human rights was mainly voiced by rural and remote Queenslanders, and more specifically, Queensland’s diverse Aboriginal and Torres Strait Island communities in northern

Queensland. Yet it was frequently these same participants who raised concern about the lack of advertising of the consultation process by the Queensland Government. In turn, they expressed both personal and community concern that the Inquiry was another government ‘talkfest’.

Following the public consultation process, and based on the content of the Legal Affairs and Community Safety Committee’s final report into a potential HRAQ of June 2016, such concerns appear well founded. The Committee reported it was unable to agree on whether it would be appropriate and desirable to introduce human rights legislation in Queensland. Consequently, as the Committee had come to an impasse divided down party lines – the three government (ALP) members on the Committee were in favour, the four non-government (Liberal-National Party) members were against – it decided it was unnecessary to further consider the objectives of the legislation, rights to be protected or how the legislation would be applied.

The Committee Chair reported that the committee had “identified key issues raised by those who made submissions”, but the findings of this study suggest inadequate weight was given to both the overwhelming support for a HRAQ and the specific health-related issues and concerns highlighted by submitters and witnesses. In the final report, government members acknowledged that the committee had received “both passionate and considered calls for greater recognition of human rights in Queensland” during the course of the inquiry. The non-government members concluded that many submitters “considered a human rights act to be a way of addressing a particular issue or problem without consideration of the possible negative effects the legislation will have”.¹ But, as summarised by one witness at a public hearing:

When you look at the information that has been provided to the committee by members of the general public, it is clear that people are seeking a human rights act because they have experienced human rights issues and they feel there is no way to rectify these issues.

This study therefore turns a spotlight on the discordance between community sentiment – expressed in response to an invitation to make submissions to an inquiry by a Parliamentary Committee – and the conclusions of a committee of seven MPs. Community contributors to a public inquiry

process rightly expect transparency and accountability in the deliberations and conclusions reached by the Parliamentary Committees charged with considering, in this case, an extremely significant piece of legislation. Of course, public opinion is only one influence on policy decision making, but when it is specifically sought, it should be given appropriate weight.³⁶

In the black box that is health and governmental policy making, all too often it is the agenda (usually political agenda) of the decision maker, not the evidence base, that influences and shapes the final policy decision.³⁷ The findings of this study suggest that the decision makers within the Committee examining the desirability of a HRAQ were unwavering from their political party positions.

The subsequent decision of the Queensland Premier and Cabinet to progress the development of a HRAQ is to be welcomed, and it is an apt reflection of the support expressed by the majority of participants in the Inquiry process. Enactment of human rights legislation is not 'novel' in the broader Australian context, and would align Queensland with the legislative efforts of Victoria and the Australian Capital Territory (ACT). It remains to be seen, however, whether and when that will eventuate, and the degree to which the content of a HRAQ will reflect the concerns and priorities identified by submitters and witnesses.

Expressly including the right to health in Queensland legislation would position a HRAQ as an advance on the Victorian and ACT models and demonstrate the State Government's commitment to promoting and protecting the health of all Queenslanders. The right to health's inclusion in a HRAQ would be particularly important for the 3% of Queenslanders that reside outside of the state's south-east corner in remote and very remote areas. Geographic isolation and invisibility has all too often served to reinforce lack of leadership and prioritisation for improving the divergent health needs of geographically isolated Queenslanders, especially Queensland's heterogeneous fabric of Aboriginal and Torres Strait Islander people.^{12,15,38-40} If enacted, a Human Rights Act could have tremendous impact on the health and wellbeing of all Queenslanders – particularly the most marginalised – in years to come.

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