

Submission to

The Legal Affairs and Community Safety Committee

Human Rights Bill 2018

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submission

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Legal Affairs and Community Safety Committee (the Committee) for the opportunity to provide feedback on the *Human Rights Bill 2018* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN, assistants in nursing (AIN) and personal care workers (PCW) who are employed in the public, private and not-for-profit health sectors.

Our more than 59,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

The QNMU supports the Queensland government's commitment to:

- establish and consolidate statutory protections for 23 rights; and
- ensure public functions are exercised in a manner compatible with human rights.

Importantly, the bill introduces processes and procedures that will form a decision-making framework for human rights matters and promote a public sector culture that respects diversity. However, we are very concerned the Queensland government has not provided sufficient time for the community to give proper consideration to all aspects of the bill.

This is an important debate that should not be rushed through the parliament. As in all matters of policy, the QNMU council makes its determinations through informed discussion. Given the haste with which the government has introduced the bill, QNMU council is still in the process of formalising its position. In our view, the government should consider referring the matter to the Queensland Law Reform Commission (QLRC) for further deliberation.

Recommendations

The QNMU recommends the parliament pass the bill with the following amendments:

In respect to clauses 37(1) and 37(2)¹ of the bill amend the *Hospital and Health Boards Act 2011* by inserting -

Relationship with *Human Rights Act 2018*

This section applies to the health practitioner's consideration of the *Human Rights Act 2018*, sections 37(1) and 37(2).

(1) To remove any doubt, it is declared that a health practitioner does not contravene sections 37(1) and 37(2) of the *Human Rights Act 2018*, which provide

- (i) every person has the right to have access to health services without discrimination; and**
- (ii) a person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person providing the person's actions or behaviour do not endanger the health and safety of the health practitioners who are giving treatment.**

The bill extend clause 25 so the use of technology cannot interfere with a person's right to privacy and reputation.

Amendment to *Corrective Services Act 2017*

Amend new section 5A(2) of the bill to read -

to remove any doubt, the chief executive or officer does not contravene section 58(1) of the *Human Rights Act* only because the chief executive's or officer's consideration takes into account:

- The security and good management of corrective services facilities; or
- The safe custody and welfare of all prisoners **and staff, visitors and volunteers.**

¹ Additional wording in **bold**.

The QNMU recommends the Queensland government undertake a community education program to ensure citizens are aware of the legislation and its impact on their lives.

Right to Health

While we support the majority of provisions in the bill at the outset we express concern regarding clause 37(2) the 'right to health services'.

Because the legislative drafters have written this provision (and many others) in the passive voice, it fails to identify 'agency'. Thus, we assume this provision applies to health practitioners administering treatment in the public sector. While we are confident our members would not hesitate to provide medical assistance in a 'normal' emergency situation where the patient needed immediate treatment, our members are increasingly exposed to persons who are behaving violently towards them even when the person's own condition is life threatening. Drugs such as crystal methamphetamine (ice) can produce psychotic, life-threatening episodes where the individual is unaware of the extent of their own injuries/condition. These types of emergency presentations are becoming more common in the health community and more distressing to our members.

Nurses and midwives have a right to a safe workplace.

In our view, the bill must not include an unqualified individual right that may compromise the health and safety of another person. The QNMU therefore recommends the *Hospital and Health Board Act 2011* be amended to include the following -

Relationship with Human Rights Act 2018

This section applies to the health practitioner's consideration of the Human Rights Act 2018, section 37(1) and 37(2).

(2) To remove any doubt, it is declared that a health practitioner does not contravene sections 37(1) and 37(2) of the Human Rights Act 2018, which provide -

- (iii) every person has the right to have access to health services without discrimination; and*
- (iv) a person must not be refused emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person providing the person's actions or behaviour do not endanger the health and safety of the health practitioners who are giving treatment.*

Other Provisions

We provide the following comments on the rights specified in the bill that are of particular relevance to our members.²

Clause 18 – Freedom from forced work

As a trade union, we denounce any direct attack on the security, human personality and dignity of workers. These provisions will enhance the industrial protections currently in place.

Clause 22 – Peaceful Assembly and Freedom of Association

The right to freedom of peaceful assembly is the right to gather publicly or privately and collectively express, promote, pursue and defend common interests. The right to freedom of association is the right to join a formal or informal group to take collective action (Former UN Special Rapporteur On the Rights to Freedom of Peaceful Assembly and of Association, 2018). In our view, the bill should not conflate these rights although there is an interrelationship between the two.

While these rights protect peoples' ability to come together for a common purpose, peaceful assembly may not necessarily lead to collective action under freedom of association. A comprehensive regulatory environment governs the activities of registered trade unions and their ability to take collective action. Peaceful assembly may be one means by which union members seek to gather, but they can also associate in other ways.

Clause 25 – Privacy and reputation

We believe this clause can be enhanced to incorporate the privacy of workers particularly in the use of technology. Whether it is online privacy or the use of surveillance mechanisms, legislation must provide appropriate safeguards to protect a person's privacy and reputation.

The QNMU has received many inquiries from our members around closed-circuit television (CCTV) in the workplace and more recently members working in aged care have raised concerns around the installation of hidden cameras (by family members).

² (recognising here we read all provisions as important to the greater whole of the bill).

The *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and international law recognise privacy as a basic human right.³ Despite this, the domestic legal rights of staff members in respect to workplace surveillance are limited. Workers have the right not to be visually monitored or recorded in staff bathrooms and the right not to have their conversations recorded by persons who are not participants to the conversation except where it would be reasonable for them to expect that the conversation may not be overheard. However, the protection of privacy in Australia is a collection of common law and legislation that has been referred to as ‘an uneven patchwork’ due to this piecemeal approach (Butler & Meek, 2013, p.237).

Unlike some other states, Queensland does not have specific workplace surveillance legislation. Laws in Victoria, New South Wales and the Australian Capital Territory require cameras to be clearly signed and visible with restrictions on their placement and the purposes for which resulting recordings may be used. These states have reformed their laws to provide a fairer balance between protecting the human right to privacy and giving employers sufficient freedom to protect legitimate interests.

Queensland has less privacy coverage than other jurisdictions. Some areas of general application to Queensland workplaces which operate to constrain employers from conducting unchecked workplace surveillance include:

- *Invasion of Privacy Act 1971* (Qld);
- *Security Providers Act 1993* (Qld);
- *Criminal Code* section 227A;
- *Privacy Act 1988* (Cth);
- The Common Law.

The QNMU recommends the bill extend clause 25 so that the use of technology cannot interfere with a person’s right to privacy and reputation.

Clause 26 – Protection of families and children

We support the right to protection of families and children.

Clause 27 – Cultural rights generally

We welcome clause 27 which provides for cultural rights for all persons with a particular cultural, religious, racial or linguistic background and

³ See for example Supreme Court of Canada, *R. v. Spencer*, 2014 SCC 43; US Supreme Court, *Riley v. California* 573 U.S., 2014; European Court of Justice, C-131/12 *Google Spain SL and Google Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* ECLI:EU:C:2014:317; (Zhao, 2014).

Clause 28 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

We recognise the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples.

The QNMU suggests the government provide additional resources to enable Queensland parliamentary committees to compare ‘fundamental legislative principles’ with the *Human Rights Bill 2018* (when enacted) giving sufficient and meaningful regard to Aboriginal and Island tradition and custom.

Clause 31 – Fair hearing

We welcome clause 31 that provides for the right to a fair hearing in criminal trials and civil proceedings. This right and the right in clause 32 reflects the common law tradition of due process that is so important within an industrial relations context.

Clause 58 – Conduct of Public Entities

We welcome the introduction of obligations on public entities to act or make decisions in a way that is compatible with human rights.

Division 2 Human Rights Complaints

We welcome a complaints mechanism as a necessary factor in dispute resolution.

Division 3 – Reporting Requirements

We welcome public reporting through an annual report prepared by the Human Rights Commission and clause 97 that provides a public entity that is required to report under section 63 of the *Financial Accountability Act 2009* will now have to include in each annual report details of human rights complaints and any review of policies, programs, procedures practices or services undertaken in relation to their compatibility with human rights.

Division 3 - Amendment of *Corrective Services Act 2017*

We note clause 126 of the bill introduces a new section 5A(2). We recommend this clause be amended to read -

to remove any doubt, it is declared that the chief executive or officer does not contravene the Human Rights Act 2018, section 58(1) only because the chief executive's or officer's consideration takes into account:

- (a) *The security and good management of corrective services facilities; or*
(b) *The safe custody and welfare of all prisoners, **staff, visitors and volunteers**.*

While we recognise 5A(2)(b) as it now reads relates to the rights of prisoners, 5A(2)(a) is only possible if the bill also recognises and protects the rights of staff working at these facilities, visitors and volunteers (in bold).

References

Butler, D. & Meek, P. (2013). Camera trapping and invasions of privacy: An Australian legal perspective. *Torts Law Journal*, 20(3), 235-264.

International Labour Organization (1948) Freedom of Association and Protection of the Right to Organise (No. 87).

Zhao, B. (2014). The Internationalisation of Information Privacy: Towards a Common Protection. *Groninger Journal of International Law*, 2(2), 1-13.

Former UN Special Rapporteur On the Rights to Freedom of Peaceful Assembly and of Association (2018) retrieved from <http://freeassembly.net/>