The Human Rights Bill 2018 has been passed which sets to enact the Human Rights Act in Queensland, with the introduction of 23 protections for human rights for individuals.

Queensland is not the first State in Australia to introduce a Bill of Rights, with Victoria and ACT introducing their Charters in 2006 and 2004 respectively.

However, the Queensland Charter is the only Charter in Australia to include the right to education and the right to health services. The inclusion of these rights makes it the strongest legislative human rights Charter enacted in Australia.

The Queensland Charter also includes an avenue for people to complain to the Anti-Discrimination Commission (which will be renamed the Queensland Human Rights Commission from 1 July 2019) in instances where they believe their rights have not been respected. This accessible and practical mechanism to address complaints goes a step further than the Victoria and ACT Charters, again demonstrating the strength of the Queensland Charter.

THE 23 HUMAN RIGHTS PROTECTED BY THE ACT

1. Recognition and equality before the law
2. Right to life
3. Protection from torture and cruel, inhuman or degrading treatment
4. Freedom from forced work
5. Freedom of movement
6. Freedom of thought, conscience, religion and belief
7. Freedom of expression
8. Peaceful assembly and freedom of association
9. Taking part in public life
10. Property rights
11. Privacy and reputation
12. Protection of families and children
13. Cultural rights – generally
14. Cultural rights – Aboriginal people and Torres Straight Islanders
15. Right to liberty and security of person
16. Humane treatment when deprived of liberty
17. Fair hearing
SECTION RELEVANT TO THE PROVISION OF HEALTHCARE IN QUEENSLAND

There are two sections of the Human Rights Bill that have particular relevance to the provision of health care to individuals in Queensland. These are:

Section 37 Right to health services

Which states:

1. Every person has the right to access health services without discrimination.
2. 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.

Section 58 Conduct of public entities

Which states:

1. It is unlawful for a public entity -
   
   (a) to act or make a decision in a way that is not compatible with human rights; or
   (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

2. Subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.

3. Also, subsection (1) does not apply to a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of the religion.

What is a ‘public entity’?

The term ‘public entity’ is defined in clause 9 of the Bill to include:

(h) an entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity.

The section notes, as a specific example, that a non-State school is not a public entity merely because it performs functions of a public nature in educating students because it is not doing so for the State.
Clause 10(3)(b) lists the provision of the following functions as functions of a public nature:

i. Emergency services;
ii. Public health services;

The question raised is whether the construction of the Bill excludes private hospitals, therefore excusing them from the obligation to provide treatment in accordance with clause 37.

The Explanatory Memorandum goes on to identify two types of public entities: 'core public entities' and 'functional public entities'. Core public entities are those that fall within the definition in clause 9 at all times (i.e. a government entity, a public service employee, the Queensland Police Service, a local government, a Minister, or a staff member of a public entity). Functional public entities are determined by the functions they perform. The definition lists:

- An entity established under an Act when the entity is performing functions of a public nature; or
- An entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity (whether under contract or otherwise).

Private hospitals are not created by legislation and provide private health services. It is arguable that private hospitals may not classify as a public entity for the purposes of the Bill which would therefore make them exempt from clause 37.

However, entities can “opt in” to the human rights obligations if they are not otherwise captured by the new laws and it would be reasonable to anticipate that private hospitals will adopt this approach.

QUEENSLAND’S HEALTH SERVICES OBLIGATIONS PRIOR TO THE BILL

The Australian Charter of Healthcare Rights

The Australian Charter of Healthcare Rights (the Charter) was developed by the Australian Commission on Safety and Quality in Health Care in 2007 and 2008. The Charter is supported and promoted by the Office of the Health Ombudsman (OHO). It specifies the key rights of patients when seeking or receiving healthcare services; namely:

- A right to healthcare;
- A right to safe and high quality care;
- A right to be shown respect, dignity and consideration;
- A right to be informed about services, treatment, options and costs in a clear and open way;
- A right to be included in decisions and choices about care;
- A right to privacy and confidentiality of provided information; and
- A right to comment on care and have concerns addressed.

The Charter applies to all health settings across Australia, including public hospitals, private hospitals, general practice and other community environments. All hospitals in Queensland fully support the Charter.

In instances where a violation of one or more of these rights is suspected, a complaint can be
submitted to the OHO. It is particularly notable that the Charter explicitly applies to private hospitals. This may increase the likelihood of the Bill also applying to private hospitals.

The Charter is currently under review, following a consultation process undertaken in 2018. The second draft expands on the rights originally listed, now acknowledging that patients have the right to:

- access services and treatment to meet their healthcare needs;
- safe and high quality health care;
- receive care in a safe environment;
- be cared for as an individual and treated with dignity and respect;
- have their culture, identity, beliefs, and choices acknowledged and respected;
- engage in open communication and make decisions about their health care;
- include the people that they want in planning and decision-making;
- share their experience and participate in improving the quality of health services;
- be engaged in informed consent, be told about their condition and the possible benefits and risks of tests and treatments;
- clear and timely information about services, waiting times and costs;
- be given assistance to help them to understand health information;
- access their health information;
- be told if something has gone wrong during their health care, how it happened and what is being done to make care safer;
- have their privacy respected, have their personal and health information kept secure and confidential;
- provide feedback or make a complaint without it affecting the way they are treated; and
- have their concerns dealt with in a fair and timely manner.

Limitations on the right to access healthcare

It stands to reason that there will be limitations on the right to access health care when faced with competing obligations, for example, in an emergency situation, in order to:

- prioritise treatment of one patient over another.
- protect the safety and wellbeing of others, including patients, employees (e.g. paramedics), and/or visitors, it may be reasonable in the circumstances to exclude someone from a health service for aggressive behaviour.
- discharge a patient from inpatient care in hospital when medically stable or from outpatient care following continued failure to attend scheduled appointments or respond to follow-up requests.
- refuse services that are outside the scope of practice or service capability of the health care provider.
- refuse services that are not deemed to be medically required e.g. to patients exhibiting drug seeking behaviours.

Practical implications from a health care perspective

What the Bill means from a health care perspective is that individuals will have the right to lodge a complaint with the QHRC if they believe they have been denied access to health services, discriminated against in a health care setting or refused life saving emergency
medical treatment or that is likely to prevent serious impairment.

Steps that are required to be undertaken are:

- Aggrieved individual to raise their complaint with the entity concerned at first instance.
- If the complaint is unable to be resolved between the parties, it may then be dealt with by the QHRC.
- The QHRC has the right to refer the matter to another agency, for example, the OHO.

It should be noted that the Bill does not introduce a separate remedy if a decision is made that a human right has been contravened. In other words, the Bill does not create a new offence at law, any independent statutory cause of action, or create a mechanism for monetary compensation. Contravention of a human right may give rise to grounds in a proceeding for any other cause of action that might be available against the subject entity, such as an anti-discrimination complaint.


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