



Supporting Information

Supplementary material

This appendix was part of the submitted manuscript and has been peer reviewed.
It is posted as supplied by the authors.

Appendix to: Brolan CE. Queensland's new Human Rights Act and the right to access health services.
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Applying 10 key points raised by the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12, International Covenant on Economic, Social and Cultural Rights)* to section 37 Human Rights Act 2019 (Queensland)†

<i>Committee</i>	<i>Committee on Economic, Social and Cultural Rights</i>
<i>ICESCR</i>	<i>International Covenant on Economic, Social and Cultural Rights</i>
<i>HRAQ</i>	<i>Human Rights Act 2019 (Queensland)</i>
<i>RTH</i>	<i>right to health</i>

**Article 12(1) ICESCR: The State parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

1. The Committee interprets the RTH, as defined in Article 12(1) ICESCR, to the human right to access timely and appropriate health care and also the underlying determinants of health, such as 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.
2. The Queensland Parliament has modelled section 37 HRAQ on Article 12 ICESCR but does not intend for section 37 to encompass rights beyond health service access. Specifically, section 37 is not intended to encompass rights in relation to underlying determinants of health, such as food and water, social security, housing and environmental factors.
3. The Committee states that the RTH in all its forms contains four inter-related and essential elements. Thus, functioning public health and healthcare facilities, goods and services must be Available, Accessible, Acceptable and Quality. This is known as the AAAQ Framework.
4. With respect to Accessible health facilities, goods and services, the Committee states there are four overlapping dimensions for consideration:
 - (a) Non-discrimination
 - (b) Physical accessibility
 - (c) Economic accessibility (affordability)
 - (d) Information accessibility
5. For the purposes of the narrower RTH approach taken by the Queensland Parliament to section 37 HRAQ, the Committee informs that Accessibility also implies that medical services are within safe physical reach, including in rural areas.
6. The Committee states that the principle of non-discrimination is a core RTH obligation in terms of the right to access health facilities, goods and services, especially for vulnerable and marginalised groups. This means where a complainant raises a bona fide contravention of section 37(1) HRAQ, respondents will find it difficult to claim they will implement non-discriminatory health services when human or financial resources become available 'down the track'. This is because the core obligation of non-discrimination has a zero-threshold and requires the discriminatory treatment or practice be remedied immediately.
7. The Committee considers a further important aspect to advance the right to access health services is the right of individuals and groups to participate in decision-making processes that may affect the protection and promotion of section 37 for themselves and their community. For the Committee:

- (a) Participation in health-related decision-making must be an integral component of any policy, programme or strategy developed to discharge governmental obligations under Article 12 ICESCR.
 - (b) Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health.
8. In General Comment No. 14 the Committee recommends a gender perspective be integrated into health-related policies, planning, programmes and research and makes special mention of the protection and promotion of the RTH of women, children and adolescents, older persons, persons with disabilities and Indigenous peoples.
9. The Committee directs that the RTH, like all human rights, imposes three types or levels of obligations: the obligations to respect, protect and fulfil. In the context of section 37:
- (a) Obligation to respect: requires the Queensland Government to refrain from interfering directly or indirectly with the enjoyment of the right to access health services.
 - (b) Obligation to protect: requires the Queensland Government to take measures that prevent third parties from interfering with section 37 guarantees.
 - (c) Obligation to fulfil: requires the Queensland Government to adopt appropriate legislative, administrative, budgetary, judicial, promotion and other measures towards the full realisation of section 37.
10. For the Committee, States' obligation to fulfil (promote) the right to health requires States to undertake actions that create, maintain and restore the health of the population. Such obligations include:
- (a) Fostering recognition of factors favouring positive health results, e.g. research and provision of information.
 - (b) Ensuring that health services are culturally appropriate and that healthcare staff are trained to recognise and respond to the specific needs of vulnerable or marginalised groups.
 - (c) Ensuring that the State meets its obligations in the dissemination of appropriate information relating to healthy lifestyles and nutrition, harmful traditional practices and the availability of services.
 - (d) Supporting people in making informed choices about their health.

* State of Queensland. *Human Rights Act 2019* (Qld).

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005> (viewed Jan 2020).

† United Nations Committee on Economic, Social and Cultural Rights. General comment no. 14, the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights). Geneva: UN, 2000.

<https://digitallibrary.un.org/record/425041?ln=en#record-files-collapse-header> (viewed Jan 2020).