



Multicultural Recognition Bill 2012

Report No. 9
Health and Community Services
Committee
October 2012

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Acknowledgements

The committee thanks those who made submissions to the committee's inquiry and attended its public hearing.

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Abbreviations

AMES	Adult Multicultural Education Services
CAC	Community Affairs Committee
LGAQ	Local Government Association of Queensland
MDA	Multicultural Development Association
MHiMA	Mental Health in Multicultural Australia
MIA	Migration Institute of Australia
QCOSS	Queensland Council of Social Services
QPASTT	Queensland Program of Assistance for Survivors of Torture and Trauma

Chair's foreword

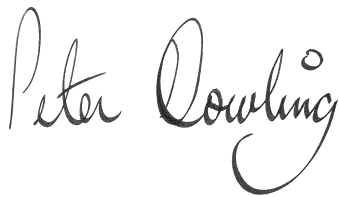
This report presents a summary of the committee's examination of the Multicultural Recognition Bill 2012.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

Examination of a Bill by a portfolio committee allows the Parliament to hear views from the public and stakeholders on legislation and its impact. The examination of Bills is intended to contribute to better policy and legislation in Queensland.

On behalf of the committee I thank those organisations that made written submissions on this Bill and attended the public hearing and others who have informed the committee's deliberations: the committee's secretariat and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.

A handwritten signature in black ink that reads "Peter Dowling". The signature is written in a cursive, flowing style.

Mr Peter Dowling MP
Chair

23 October, 2012

Recommendations

Recommendation 1

3

The committee recommends that the Multicultural Recognition Bill 2012 is not passed.

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 17 May 2012, and is comprised of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of fundamental legislative principles to the Bill.

The Multicultural Recognition Bill 2012 was introduced by the member for Inala (Ms Annastacia Palaszczuk MP) and referred to the committee on 23 August 2012. The committee was required to report to the Legislative Assembly by 23 October 2012.

1.2 Process

A previous version of the Bill, the Multicultural Recognition Bill 2012, was introduced to the 53rd Parliament on 11 October 2011 and referred to the former Community Affairs Committee (CAC), the portfolio committee which at that time had responsibility for multicultural affairs. The CAC had not completed its report to the Legislative Assembly at the dissolution of Parliament on 19 February 2012, at which time the Bill lapsed.

The Multicultural Recognition Bill 2012 before the committee now is essentially the same Bill as that considered by the CAC in 2011.

The CAC commenced its examination of the 2011 Bill by advertising for public submissions on 29 October 2011. Four submissions had been received by the CAC at the closing date of 25 November 2011.

The CAC had not received a briefing from the Department nor held a public hearing prior to the dissolution of Parliament.

Given that a public consultation process on a Bill that was essentially the same had already been commenced by the former CAC, the committee decided not to advertise again in the press for public submissions.

The committee wrote to invite submissions from 16 stakeholder organisations on 19 September 2012. The submissions made on the previous 2011 Bill had been made available to the committee and it wrote to the authoring organisations seeking permission to republish those submissions as submissions to the current inquiry. Two organisations chose to have their previous submissions republished. The committee received another seven submissions in response to its written invitation by the closing date of 4 October 2012. A list of the nine submissions received in total is at Appendix A.

The committee held a public hearing on 8 October 2012. A list of witnesses is at Appendix B. A transcript of the public hearing and submissions received and accepted by the committee are published on the committee's webpage at www.parliament.qld.gov.au/hcsc.

1.3 Policy objectives of the Bill

The Multicultural Recognition Bill 2012 (the Bill) aims to recognise multicultural principles in Queensland and ensure that Government policy and service delivery better meets the needs of culturally and linguistically diverse people and communities. The specific objectives of the Bill are to:

- (a) recognise the valuable contribution of diverse groups of people to the Queensland community
- (b) promote Queensland as a united, harmonious and inclusive community and
- (c) ensure government services are responsive to the diversity of Queenslanders.

In order to achieve its objectives, the Bill:

- establishes the Multicultural Queensland Charter (the charter)
- establishes the Multicultural Queensland Advisory Council
- requires the Minister for Multicultural Affairs to develop three year multicultural action plans to implement the principles of the charter and the priorities of the multicultural policy
- requires Chief Executives of departments to ensure that staff are aware of the charter and multicultural policy
- requires departments to consider the charter in developing policies and providing services
- requires departments to report on progress in implementing the multicultural action plan each year, and
- allows for departments to develop their own action plans to implement the multicultural action plan.

2 Examination of the Bill

2.1 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the main policy changes which the Bill would implement, as well as the application of fundamental legislative principles. After its examination of the Bill a majority of the committee determined to recommend that the Bill should not be passed.

The committee recognised the potential of the Bill to acknowledge the contribution of multiculturalism to the development of Queensland and noted the success of multiculturalism in Queensland to date. The committee considers, however, that the Bill, in its current form, does not effectively achieve its purposes. The committee believes that the matters in the Bill may be better addressed through policy.

The remainder of this report outlines the issues considered by the committee in more detail.

Recommendation 1

The committee recommends that the Multicultural Recognition Bill 2012 is not passed.

2.2 Purposes of the Act (clause 3)

The committee considered the purposes of the Bill as stated in clause 3. The Bill aims to recognise the valuable contribution of diversity to Queensland, promote Queensland as a united, harmonious and inclusive community and ensure that government services in Queensland are responsive to diversity.

In submissions to the committee and at the public hearing, stakeholders supported the purposes of the Bill and the intent of the legislative framework it would establish to underpin the achievement of those purposes. Adult Multicultural Education Services (AMES) noted in its submission that a legislative basis for the establishment of a Multicultural Charter, Advisory Council and Action Plan 'strengthens the potential for positive reception and effective longer term settlement of migrants and refugees in the broader community'.¹

In its submission, Mental Health in Multicultural Australia (MHIMA) suggested that the objectives should be broadened and further developed for the Bill to be 'practically meaningful and effective in ensuring improved outcomes'. It noted that in its current form the Bill may have 'little real ability to achieve tangible improvements'.²

At the public hearing, the committee heard evidence from stakeholders that multiculturalism in Queensland had functioned well to date. The Multicultural Development Association (MDA) noted at the public hearing that multicultural principles and their acceptance by the community had supported an increase in the population born overseas from three per cent in 1945 to 27 per cent at the last Census 'without major social upheaval'.³ In its evidence, MDA also mentioned gaps in the recognition of cultural and linguistic diversity, with some of their clients encountering discrimination

¹ Submission 2, Adult Multicultural Education Services, p.1

² Submission 8, Mental Health in Multicultural Australia, p.2

³ Mr Warren McMillan, Chair, Multicultural Development Association, transcript of public hearing, 8 October 2012, p.1

and difficulties accessing public services⁴ and ‘new challenges emerging which the old policy frameworks may not be ready for’.⁵

At the public hearing, QPASTT noted that establishing a legislative framework for multiculturalism in Queensland would provide support for equitable access to services for people from different communities in line with the legislative arrangements in other jurisdictions. In its evidence, QPASTT also expressed particular interest in ‘a mechanism for communities to be able to articulate their needs and issues with government’ as well as accountability on the part of service providers.⁶

The committee noted the importance of recognition of, and government responsiveness to, cultural and linguistic diversity as guiding principles in support of multiculturalism. It recognised that the Bill seeks to strengthen the implementation of multicultural policy in Queensland with the establishment of a legislative framework in support of those principles.

2.3 Application of the Act (clause 5)

Clause 5 clarifies that the Act would not create new rights nor impose legally enforceable obligations on the State, the Minister, departments or anyone else. Clause 5 also states that the Act does not create a civil cause of action if a provision is contravened. The validity of a decision is not affected by failure to comply with the Act. In addition, clause 5 clarifies that in the case of any conflict with another Act, the provisions of the Act would not override the other Act. The explanatory notes to the Bill note that this is in order to ensure there is ‘no conflict with existing legislation such as the *Anti-Discrimination Act 1991*’.⁷

The committee noted that the outcome of the application of clause 5 is that the requirements the Bill seeks to implement are not enforceable. Further, clause 5 also means that no obligation is imposed on the Minister, chief executives of departments or department employees with regard to supporting multicultural principles or achieving outcomes in service delivery that are responsive to diversity.

Given that the Bill seeks to strengthen the implementation of multicultural policy in Queensland and provide an appropriate legislative framework for responsive service delivery, the committee considers that the operation of clause 5 means that the Bill cannot achieve its stated purposes.

2.4 Multicultural Queensland Advisory Council – functions and operation (clauses 7, 8, 13, 14)

The committee considered provisions in the Bill which establish the Multicultural Queensland Advisory Council (the advisory council) and sets out its functions and operations.

The explanatory notes to the Bill state that no additional cost should arise from establishment of the Council as it would replace an existing advisory committee and the members would not be remunerated.⁸

In general, stakeholders supported the establishment of the advisory council. As part of its submission, MDA recommended that the advisory council be appointed as an independent, bipartisan body, consistent with the national and Victorian approach. This would support the function of the advisory council in advising and making recommendations to the Minister about the development and implementation of government policies.⁹ MDA also recommended that the

⁴ *ibid.*, p.1

⁵ *ibid.*, p.4

⁶ Mrs Tracy Worrall, Chief Executive Officer, Queensland Program of Assistance to Survivors of Torture and Trauma, transcript of public hearing, 8 October 2012, p.4

⁷ Explanatory Notes, Multicultural Recognition Bill 2012, p.4

⁸ *ibid.*, p.3

⁹ Submission 4, Multicultural Development Association, p.3

advisory council be supported by a secretariat and adequately resourced to perform its function, including remuneration for members.¹⁰

In its submission, MHIMA indicated concern that the Bill does not seek to establish a dedicated commission as in other jurisdictions that have multicultural legislation. It also recommended consideration of 'provision to seek expert advice to support the work of the proposed advisory council'.¹¹

Considering the advisory council's functions, MDA recommended that clause 8(1)(b) be amended to include reference to settlement in addition to multiculturalism. It also recommended that the Council's functions be expanded to include promotion of multiculturalism and settlement and monitoring of compliance by public authorities with the Charter.¹² MDA also suggested that the advisory council should be required to 'undertake regular engagement and consultation with the Queensland public, particularly culturally and linguistically diverse and newly emerging communities'.¹³

2.5 Multicultural Queensland Advisory Council – membership (clauses 9, 10, 11, 12)

Clauses 9 to 12 of the Bill provide for the appointment of advisory council members, appointment of the Minister as chairperson of the advisory council and arrangements for alternate chairperson.

A number of organisations commented on the appointment of members to the advisory council and the importance of appropriate representation. Clause 9 (2) would require the Minister to take into account the need for the advisory council to be representative, specifying in particular that this representation should include people from regional locations.

Noting the significant local government involvement in multicultural and settlement policy, and service delivery programs, the Local Government Association of Queensland (LGAQ) recommended consideration of LGAQ membership of the advisory council.¹⁴

In its submission to the inquiry, MDA recommended that the Bill specify eligibility criteria for appointment to the advisory council, based on 'skills, knowledge and experience in relation to multicultural affairs and settlement, and connections to diverse communities'.¹⁵ The Queensland Program of Assistance for Survivors of Torture and Trauma (QPASTT) noted the need for the advisory council to represent 'new and emerging communities as well as more established communities'.¹⁶

2.6 Multicultural Action Plan (clauses 15, 16, 17)

Clauses 15 and 16 require the Minister to develop a multicultural action plan, commencing by 1 July 2014 with further plans to be developed at least once every three years. Under clause 17, reporting on the plan by the Minister is required as soon as practicable after three years from the date of commencement.

Queensland Council of Social Services (QCOSS) recommended annual, rather than three yearly, reporting by the Minister to the Legislative Assembly and that this should be based on, but not limited to, the consolidation of departmental annual reporting required in clause 20 of the Bill.¹⁷ Annual monitoring and reporting was also a recommendation of QPASTT's submission. In addition,

¹⁰ *ibid*, p.6

¹¹ Submission 8, *op.cit.*, p.2

¹² Submission 4, *op.cit.*, p.6

¹³ *ibid.*, p.11

¹⁴ Submission 1, Local Government Association of Queensland, p.1

¹⁵ Submission 4, *op.cit.*, p.7

¹⁶ Submission 6, Queensland Program of Assistance to Survivors of Torture and Trauma, p.2

¹⁷ Submission 3, Queensland Council of Social Services, p.1

QPASTT noted that the multicultural action plan needs to be ‘backed up by strong provisions for monitoring, evaluation and reporting’.¹⁸

2.7 Responsibilities of chief executives and departments (clauses 18, 19, 20, 21)

Clause 18 would require chief executives of departments to ensure employee awareness of the charter and multicultural policy. In its submission, MDA recommended that this clause be strengthened by an amendment to include a requirement to ensure that employees also understand the charter.¹⁹

Clause 19 would require the employees of a department to consider the charter when developing policies or providing services. In its submission, QPASTT noted that it is important that departments be clear about who is covered by the charter and why a particular target group ‘may be worthy of consideration as a separate target group in the planning and delivery of services’. In commenting on this clause, QPASTT also wanted to see the ‘embedding’ of culturally competent practices into policy development, program design and service delivery.²⁰ These requirements should then be ‘passed on to services funded by the Queensland Government’ in a similar way to the requirements that appropriate services be provided for Aboriginal and Torres Strait Islander people.²¹

In its submission, MHiMA noted the ‘lack of clear powers to investigate or require organisations to put in place remedial measures’ under the Bill.²² As part of its submission, the Migration Institute of Australia (MIA) suggested that ‘attention should be given to ascertaining the needs and challenges of Australians of diverse cultural backgrounds, and assisting them to take part in wider Australian culture while maintaining their distinctive cultural and linguistic heritage’.²³

Clause 20 would require each department to include a report on its progress in implementing the multicultural action plan in its annual report. Clause 21 allows for departments to develop their own action plans to implement the multicultural action plan but does not require them to be developed. QCOS recommended that for clause 21 (1) ‘to more effectively fulfil’ the Bill’s objectives, it should be amended to state that the department must develop its own action plan to implement the multicultural action plan.

In the public hearing the committee heard evidence from both QPASTT and MHiMA about the importance of collecting ‘accurate and appropriate data’ on a whole of government basis in order to properly target services and service provision.²⁴ Improved data at both state and federal level would mean that government could ensure that resources are reaching the target groups effectively and better assess who is receiving services.²⁵

In light of the range of comments on requirements for departments to consider the charter and the lack of mandatory planning and reporting requirements, the committee considers that the Bill does not provide the strong statutory accountability framework required for the Bill to achieve its objective of ensuring that service delivery is responsive to diversity.

¹⁸ Submission 6, op.cit., p.2

¹⁹ Submission 4, op.cit., p.8

²⁰ Submission 6, op.cit., p.2

²¹ *ibid.*, p.3

²² Submission 8, op.cit., p.2

²³ Submission 9, Migration Institute of Australia, p.3

²⁴ Worrall, op.cit., p.4

²⁵ Mr Hamza Vayani, Executive Officer, Mental Health in Multicultural Australia, transcript of public hearing, 8 October 2012, p. 8

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

3.1 Rights and liberties of individuals

Specification of reasons for, and procedural fairness in, ending the appointment of member of the Advisory Council

The committee notes that Clause 12 includes criteria for ending a member of the Multicultural Advisory Council’s appointment. These are: inability due to illness or absence from the State to perform the member’s functions of office; misconduct; insolvency; absence from council meetings without permission or reasonable excuse; and performance of duties carelessly, incompetently or inefficiently. Reasons for the ending of the appointment do not have to be specified in the written advice given to the member. Further to this, there is no requirement in the clause for notice of ending the appointment to be given to the member or opportunity for them to be heard with regard as to why the appointment should not be ended.

While the clause is a commonly used provision, the committee notes that it could be improved by greater transparency in the process for the ending of an appointment, in particular, the explicit provision of procedural fairness to members of the advisory council.

Clear and precise drafting

Clause 22 provides for regulations to be made by the Governor in Council ‘under the Act’. The matters which may be addressed by regulation are not specified. This general regulation making power confers a very broad administrative discretion with respect to matters that may be the subject of a regulation.

The committee notes that to adequately list the foreseeable matters about which regulations may be required for this Bill would be difficult, and that a too narrowly defined head of power may be counterproductive in this case.

3.2 Explanatory notes

Explanatory notes were tabled with the introduction of the Bill as required by the *Legislative Standards Act 1992*. The committee notes that the paragraph ‘consistency with fundamental principles’ in the explanatory notes incorrectly refers to clause 13 rather than clause 12. Clause 12 had been the relevant cause for the previous version of the Bill.

Appendices

Appendix A – List of submissions received

Sub #	Submitter
1	Local Government Association of Queensland (LGAQ) – re-published from 2011 inquiry
2	Adult Multicultural Education Services (AMES)
3	Queensland Council of Social Services (QCOSS)
4	Multicultural Development Association (MDA) – re-published from 2011 inquiry
5	Migration Institute of Australia – QLD & NT (MIAQLD&NT)
6	Queensland Program of Assistance for Survivors of Torture and Trauma (QPASTT)
7	Settlement Council of Australia (SCOA)
8	Mental Health in Multicultural Australia (MHiMA)
9	Migration Institute of Australia (MIA)

Appendix B – Witnesses at public hearing 8 October 2012

Mr Warren McMillan, Chair, and
Ms Sally Stewart, Manager, Community Advocacy & Social Policy
Multicultural Development Association

Mrs Tracy Worrall, Chief Executive Officer
Queensland Program of Assistance to Survivors of Torture and Trauma

Mr Hamza Vayani, Executive Officer
Mental Health in Multicultural Australia

Dissenting Report

A dissenting report commences
on the next page

Dissenting Report

The Non-Government members do not agree with the recommendation of the Committee in relation to the Multicultural Recognition Bill 2012.

The Committee report is contradictory, as in parts it seems to argue that the Bill does not go far enough and should be strengthened with more powers and scope. However in other parts the committee report also claims the Bill will not be able to compel the Government sufficiently to adhere to the principles of the Bill.

The contradictions do not stop merely in the analysis of the report. During the committee hearings a number of Government members also seemed to contradict the position of the report.

The Member for Ferny Grove, Mr Shuttleworth during the public hearing said *“that is, in the way the bill is currently written, it seems not to actually achieve a great deal when the application of the act does not impose any obligations on anyone, it seems”*.

In not supporting the Multicultural Recognition Bill 2012, government members on the Committee as well as the Government itself, if it opposes this Bill, will be contradicting the Queensland Government’s own multicultural policy – “A multicultural future for all of us”.

The policy outlines the priorities for the Queensland Government as being the implementation of “multicultural recognition legislation”. It is a requirement of this policy for legislation to be enacted as part of the policy.

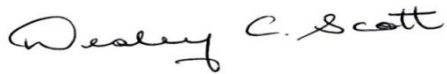
Further on during the public hearing the Member for Ferny Grove seems to underline the importance of multicultural recognition legislation by saying *“I am not questioning the validity of or the necessity for recognising multiculturalism”*.

The opposition to this Bill by the Government-members controlled committee seems to be ideologically driven rather than a genuine issue with the contents of the Bill.

This is an important piece of legislation to further strengthen what has been a story of success and harmony in Queensland. The legislation speaks directly to our diverse community of our recognition of the contribution made to the development and economic advancement of our country through migration, and affords equitable access to services and the unifying principles we all enjoy.

In establishing the Charter and Queensland Advisory Council, we give status to our multicultural community and guidance to our departments and chief executives on policy and service delivery. There has been wide consultation on the Bill receiving unanimous support from all submissions received by the committee.

On behalf of the Non-Government members of the Health and Community Services Committee, I recommend that the Bill be passed by the Legislative Assembly.

A handwritten signature in black ink, reading "Desley C. Scott". The signature is written in a cursive style with a large initial 'D' and a clear 'C' and 'S'.

Desley Scott MP
Member for Woodridge