



23 November 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE Qld 4000

Email: lacsc@parliament.qld.gov.au

Dear Sir/Madam,

Human Rights Bill 2018

1. The Local Government Association of Queensland (LGAQ) appreciates the opportunity to make a submission on the Human Rights Bill 2018 ("the Bill" or "the Act").
2. As the LGAQ will argue in detail below, the Bill provides a new and additional avenue to appeal local government decisions and policies on top of the series of avenues already available to complainants. This will inevitably lead to jurisdiction shopping on the part of some complainants and introduce costs and delays to local government processes which will fall more heavily on rural and remote councils that have limited capacity to ensure compliance with the new obligations created by the Bill.
3. The LGAQ's support for the Bill is subject to acceptance of the four recommendations outlined below, particularly Recommendation 1 which proposes that Part 3, division 3, or alternatively the definition of "statutory provision", in the context of part 3, division 3, be amended to clarify that part 3, division 3 does not apply to a local law or subordinate local law of a local government.

Application of part 3 division 3 to local laws

4. The Bill, section 5, provides that the Act applies to, relevantly:-
 - (a) parliament, to the extent that parliament has functions under part 3, divisions 1, 2 and 3; and
 - (b) a public entity (relevantly a local government), to the extent the public entity has functions under part 3, division 4.
5. Under part 3, division 3, and in particular section 48:-
 - (a) all statutory provisions (which, by definition, would include the local laws and subordinate local laws of a local government) must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights; and
 - (b) international law and the judgements of international courts and tribunals relevant to human rights may be considered in interpreting a statutory provision.
6. Further, under section 49, in a proceeding before a court or tribunal, if a question arises in relation to the interpretation of a statutory provision in accordance with the Act, the question may be referred to the Supreme Court if:-
 - (a) a party to the proceeding has made an application for referral; and



- (b) the court or tribunal considers the question is appropriate to be decided by the Supreme Court.
- 7. The Supreme Court may make a declaration of incompatibility, in which event the Minister responsible for the administration of the relevant statutory provision must take specified action in the Legislative Assembly.
- 8. The use of the expression “statutory provision” in part 3, division 3 is not appropriate, in the LGAQ’s view.
- 9. **Recommendation 1: Part 3, division 3, or alternatively the definition of “statutory provision”, in the context of part 3, division 3, should be amended to clarify that part 3, division 3 does not apply to a local law or subordinate local law of a local government.**

Obligations on public entities

- 10. The Bill, section 58, imposes a new layer of obligations on each local government, in its capacity as a public entity:-
 - (a) to act or make decisions in a way that is compatible with human rights; and
 - (b) in making a decision, to give proper consideration to a human right relevant to the decision.
- 11. The new layer of obligations applies to local governments, councillors and local government employees. Councillors and local government employees are already subject to a myriad of statutory obligations and will have limited, if any, knowledge about whether a particular act or decision is compatible with human rights or not.
- 12. Local governments will incur expense, and have their normal processes subjected to disruption, if each councillor and local government employee is subjected to a new obligation to make sure that each act and decision undertaken for or on behalf of a local government is compatible with human rights, and gives proper consideration to human rights.
- 13. The introductory speech (for the Bill) notes that the regulatory model for the Bill favours discussion, awareness raising and education about human rights. Importantly, it is also about the everyday interactions of individuals with government.
- 14. However, there is nothing in the Explanatory Notes or the introductory speech to indicate the allocation of resources or funding to the local government sector to facilitate discussion, awareness raising or education about human rights.
- 15. In the context of the human rights identified in the Bill, local governments, councillors and local government employees are already subject to obligations under applicable State legislation for example:-
 - (a) the *Anti-Discrimination Act 1991*;
 - (b) the *Right to Information Act 2009*;
 - (c) the *Information Privacy Act 2009*;
 - (d) the *Judicial Review Act 1991*;
 - (e) the *Ombudsman Act 2001*;
 - (f) the *Crime and Corruption Act 2001*.



16. Also, in the context of the enforcement of the local laws and subordinate local laws of each local government, as part of the local law making process, each local government is obliged to:-
- (a) ensure that its local laws and subordinate local laws are drafted in compliance with the guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992*, section 9 for local laws and subordinate local laws, and most importantly, have adequate regard to the fundamental legislative principles; and
 - (b) consult with relevant government entities about the overall State interest in proposed local laws before making the local law.
17. **Recommendation 2: The Government should allocate resources or funding to the local government sector to facilitate discussion, awareness raising or education about human rights.**

Jurisdiction shopping

18. In the context of a local government, the Bill contemplates that a person who is not satisfied with an act or decision of a local government may pursue various courses of action either individually, collectively, or one by one, for example:-
- (a) judicial review under the *Judicial Review Act 1991*;
 - (b) a declaration of unlawfulness and associated relief including an injunction or a stay of proceedings;
 - (c) provided the aggrieved person is seeking any relief or remedy in relation to an act or decision other than on the basis that the act or decision is unlawful because it is not compatible with human rights or fails to give proper consideration to a human right relevant to the decision—relief or remedy on the ground of unlawfulness arising under the Bill, section 58;
 - (d) a human rights complaint to the commissioner under the process detailed in the Bill, part 4, division 2, provided:-
 - (i) the person has made a complaint to the local government about the alleged contravention, for example, under a local government's administrative action complaints policy; and
 - (ii) at least 45 business days have elapsed since the complaint was made; and
 - (iii) the person has not received a response to the complaint or has received a response the person considers to be an inadequate response.
19. The Bill and the explanatory notes to the Bill do not clarify why an aggrieved person may pursue multiple courses of action in respect of the same fact scenario. For example, if a person seeks relief or remedy on a ground of unlawfulness arising under the Bill, section 58, and the relief or remedy is not granted, the aggrieved person may still make an administrative action complaint to a local government about the matter, and if the aggrieved person receives a response which he or she considers to be an inadequate response, then the aggrieved person may make a complaint to the commissioner.
20. In the interim, the matter the subject of the complaint will invariably be put on hold, or held in abeyance, pending the outcome of the complaint or proceedings.
21. The introductory speech notes that:-
- (a) a dispute resolution function for the commission will complement the dialogue model of the Bill and will provide an accessible, independent and appropriate



avenue for members of the community to raise human rights concerns with public entities with a view to reaching a practical resolution; and

- (b) when a person believes they are the subject of a public entities failure to act compatibly with human rights, they may make a complaint to the relevant public entity; and
 - (c) if the complaint cannot be resolved with the public entity, a person may then make a human rights complaint to the commission.
22. Whilst the introductory speech acknowledges the existence of the complaint and dispute resolution process, none of the introductory speech, the explanatory notes or the Bill indicate whether that process may be utilised before, after, or as an alternative to, the institution of legal proceedings under the Bill, section 59.
23. **Recommendation 3: The explanatory notes or the Bill should clarify whether the complaint and dispute resolution process may be utilised before, after, or as an alternative to, the institution of legal proceedings under the Bill, section 59.**

Threshold for legal proceedings against a public entity

24. According to the introductory speech, the Bill, part 3, sets out the application of human rights in Queensland to the parliament, the courts and the executive. The speech acknowledges that there will be no stand-alone legal remedy for a contravention of the Bill. Rather, the Bill adopts an enforcement mechanism known as a piggyback cause of action.
25. Contravention of the Bill will not create a right to any new remedy. It will create a new ground of unlawfulness, that is a breach of the Human Rights Bill will be unlawful. Where an applicant has an existing right to claim for a remedy on another independent ground of unlawfulness, then that person can piggyback the human rights claim onto the existing claim. The remedy is the one the person would have been entitled to anyway on the basis of the existing claim.
26. However, the only precondition to a person seeking relief or remedy on a ground of unlawfulness arising under section 58 is that the person “may seek any relief or remedy in relation to an act or decision of a public entity on the ground that the act or decision was, other than because of section 58, unlawful”.
27. Indeed, under section 59(2), a person may seek relief or remedy on the ground of unlawfulness arising under section 58 even if the person is not successful in obtaining the other relief or remedy.
28. A person may seek relief or remedy in relation to an act or decision of a public entity on a relatively speculative basis, simply for the purpose of triggering a right to seek relief or remedy on the ground of unlawfulness arising under section 58.
29. **Recommendation 4: The Bill should be amended to tighten the threshold for legal proceedings against a public entity, to prevent a person from seeking relief or remedy in relation to an act or decision of a public entity on a relatively speculative basis.**
30. The LGAQ trusts this feedback will assist the Committee with its consideration of the Bill. Any questions about this submission should be directed to Stephan Bohnen, Lead – Intergovernmental Relations (tel 07 [REDACTED] or email [REDACTED])



Yours sincerely

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Greg Hallam AM
CHIEF EXECUTIVE OFFICER