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SUBMISSION ON HUMAN RIGHTS BILL 2018

1. This submission will focus on the following provisions of the Bill:

- International context of human rights law;
- Clause 18 – Freedom from forced work;
- Clause 20 – Freedom of thought, conscience, religion and belief
- Clause 36 – Right to education
- Clause 37 – Right to health services.

International context

2. This Bill reflects the efforts of nations throughout the world to affirm human rights.
3. This international context was eloquently explained by Justice Lionel Murphy in the High Court case of *Koowarta v Bjelke-Petersen*¹ following the refusal of the then Queensland Government to transfer land, namely Archer River Pastoral Holding, to Aboriginal people despite their having entered into a valid contract of purchase.

9. During this century we have witnessed the greatest recognition of and also the greatest denial of human rights in all history. Genocide, forced labour, arbitrary arrest and imprisonment, deprivation of civil and political rights, racial and religious discrimination, or other crimes against humanity, have occurred on an enormous scale. In response, we have had the greatest progress in the elaboration and acceptance of universal standards of human rights by the international community. The Second World War and the events leading to it

¹ (1982) 153 CLR 168 at paragraph 9 of the judgment of Murphy J

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focused attention on the need to secure human rights on an international scale. The history of the fascist regimes showed that the denial of basic rights to the citizens of a country was often instrumental in the advance to or maintenance of power by those who would endanger world peace. Concerted international action was necessary to ensure that peace would not be endangered through denial of rights in any country. Also, there was an increasing consciousness, voiced by Wendell Wilkie and many others, that people had responsibility for the well-being of others everywhere, irrespective of national barriers which were unnaturally dividing humanity. The United Nations Charter 1945 proclaims that one of its purposes is to achieve international co-operation in providing and encouraging respect for human rights and fundamental freedoms for all without restriction. The member nations pledged themselves to take action in co-operation with the Organization for the promotion of universal respect for and observance of these rights and to take action both separately and jointly, that is, by individual national action, as well as by international co-operation.

4. On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights.
5. On 16 December 1966, the United Nations General Assembly adopted the *International Covenant on Civil and Political Rights* (ICCPR). On 13 August 1980 Australia ratified the ICCPR.
6. On 16 December 1966, the United Nations General Assembly adopted the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). On 10 December 1975 Australia ratified the ICESCR.
7. It is unfortunate that the Commonwealth Parliament has not yet legislated for a Human Rights Act. One hopes that the Commonwealth will follow the example of Queensland, Victoria and the ACT in this regard.

Clause 18 – Freedom from forced work

8. This clause reflects Article 8 of the *International Covenant on Civil and Political Rights* (ICCPR).
9. It is salutary to recall the human rights abuses involved in the nineteenth century practice of “blackbirding” of South Pacific Islanders known as “kanakas” for indentured labour in Queensland sugar cane fields.
10. Such human rights abuses have not been confined to the distant past. During the 1985 SEQEB industrial dispute the Bjelke-Petersen government introduced the *Electricity (Continuity of Supply) Act* which provided in section 3(b) authority for the Electricity Commissioner to direct any person to carry out work to provide, maintain or restore a supply of electricity. This provision was held to

be inconsistent with Australia’s international human rights obligations under Article 8 of the ICCPR in a report of the Human Rights Commission chaired by the eminent jurist, the Hon. Dame Roma Mitchell, D.B.E.²

Clause 20 – Freedom of thought, conscience, religion and belief

11. This clause reflects Article 18 of the ICCPR.
12. It is good to see this recognition of religious freedom.
13. It is important that freedom of religion is recognised in the Bill as a freedom to demonstrate a religion individually or as part of a group, in public or in private.

Clause 36 – Right to education

14. This clause reflects Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).
15. I welcome the inclusion of economic, social and cultural rights in the Bill, despite the inherent difficulties in enforcing such rights.
16. It is good to note that the Bill makes specific reference to access to vocational education and training. In a rapidly changing economy such access is increasingly important as new jobs emerge and old jobs disappear.

Clause 37 – Right to health services

17. This clause reflects Article 12 of the ICESCR.
18. This right is particularly important for people with mental health problems. The *Mental Health Act* 2016 provides as a principle in section 5(a) that a person who has, or may have, a mental illness has the same basic human rights as all persons.

MENTAL HEALTH ACT 2016 – SECT 5 PRINCIPLES FOR PERSONS WITH MENTAL ILLNESS

The following principles apply to the administration of this Act in relation to a person who has, or may have, a mental illness —

- (a) Same human rights*
- *the right of all persons to the same basic human rights must be recognised and taken into account*
 - *a person’s right to respect for his or her human worth and dignity as an individual must be recognised and taken into account...*

² Human Rights Commission Report No. 12 “*The Queensland Electricity (Continuity of Supply) Act*” March 1985.

19. One hopes that clause 37 of the Bill will help to protect access to health care and avoid such tragedies as the closure in 2014 of the Barrett Adolescent Centre and the resultant lack of access to health care for adolescents with mental illness.

CONCLUSION

20. I support this Bill. I encourage all members of the Queensland Parliament to support its enactment into law.

21. The Palaszczuk government is to be commended for introducing this Bill to the Queensland Parliament.

With compliments

MATT FOLEY