

Sunday, November 25, 2018

Legal Affairs and Community Safety Committee
Parliament House
Brisbane
QLD 4000

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Thank-you for the opportunity to present the following submission on the Human Right Bill 2018.

In this submission I will be referencing; Human Rights Bill 2018, The Explanatory notes for this Bill and other Legislative instruments including the International Covenant of Civil & Political Rights, the International Covenant on Economic & Social Rights, along with Queensland's Legislative Standards Act 1992, also the Judgement in the Case of Horvath V Australia 2014 from the International High Court in Den Haag. This last one has critical implications as to how the International High Court looks on the commitment made by the Australian Government when it signed the various agreements.

From the start of the Bill; ...**"A Bill for An Act to respect, protect and promote human rights"**...

In the Preamble—

In enacting this Act, the Parliament of Queensland recognizes---

2 The equal and inalienable human rights of all human beings.

3 Human rights are essential in a democratic and inclusive society that **respects the rule of law**.

4 Human rights **must** be exercised in a way that respects the human rights and dignity of others.

5 Human rights should be limited only after the careful consideration, and should be limited in a way that can be justified in a free and democratic society based on **human dignity, equality, freedom and the rule of law**.

This all starts off well and good and 'sounds' like this Bill has admirable intentions, yet by only page 12 in;

Part 1 Preliminary
Division 1 Introduction

...
4 How main objects are primarily achieved

The main objects are to be achieved primarily by---

...
(c) requiring statements of compatibility with human rights to be tabled in the Legislative Assembly for all Bills introduced in the Assembly; and

...
(e) providing for Parliament, in exceptional circumstances, to override the application of this Act to a statutory provision; and

...
It is at this point I would like to point out as this is only at the Preliminary Part of the legislation, a few relevant points from the Queensland Legislative Standards Act 1992, as at only 12 pages into the Human Rights Bill 2018 the Government have included the first of many "exemptions" clauses, in lay-mans terms, 'We have to do this, but if we don't want to, we don't have to.

...
Part 2 ---- Legislative Standards

...

Meaning of "fundamental Legislative principles"

4.(1) For the purposes of this Act, "fundamental Legislative principles" are the principles relation to legislation that underlie a parliamentary democracy based on the rule of law.¹...

1. Under section 7 a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

(2) The principles include requiring that legislation has sufficient regard to---

- a) Rights and liberties of individuals; and
- b) The institution of Parliament.

(3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—

- a) Makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
- b) is consistent with principles of natural justice and
- c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
- d) does not reverse the onus of proof in criminal proceedings without adequate justification; and
- e) confers power to enter premises, and search for or seize documents of other property, only with a warrant issued by a judge or other judicial officer; and
- f) provides appropriate protection against self-incrimination; and
- g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
- h) does not confer immunity from proceeding of prosecution without adequate justification and
- i) provides for the compulsory acquisition of property only with fair compensation; and
- j) has sufficient regard to Aboriginal tradition and Island custom' and
- k) is unambiguous and drafted in a sufficiently clear and precise way.

(This section of the Legislative Standards Act 1992, I have included as an indicator in recent laws passed by both sides of the House [VLAD & Serious and Organised Crime Amendment Act 2016 & the Crime & Corruption Act 2001] that have overlooked this clause/section. Which therefore shows a historical propensity to not follow these laws on law making)

The problem with this whole section of the Legislative Standards Act 1992, 4. (3) (a) through to (k) is it highlights a litany of occasions when the Government of the day has been prepared to not follow Legislative Standards to meet their agenda of the day.

Back to the Human Rights Bill 2018,
Division 2 Interpretation

...

8 Meaning of compatible with human rights

An act, decision or statutory provision is compatible with human rights if the act, decision or provision---

- (a) does not limit a human right; or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13

So, the question arises what is Reasonable and Demonstrably Justifiable? The Oakes test as named from the Canadian Supreme Court case of R v Oakes [1986], must be a guideline to answer this Question. Is the purpose of the legislation to limit the charter right or freedom? If so, it is not a reasonable limit.

Is the limit proportional to the objective? It is if it meets all of the three following criteria:

- *The limit has a "pressing and substantial objective"*
- *The limit infringes on the Charter right as little as possible to meet its objective (aka the "minimal impairment test")*
- *The benefit of the limit is greater than the harm caused by limiting the right or freedom.*

Part 2

Division 1

Section 13 Human rights may be limited

(1) A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

(2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the

following factors may be relevant—

(a) the nature of the human right;

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose;

Again, we encounter a version of, in this case, phrase “Reasonable limits that can be demonstrably justified”, although there are many good terms mentioned throughout this Bill, there is almost as many times that this, “Fingers Crossed” Clause is inserted

14 Human rights are protected

Nothing in this Act gives any person or other entity a right to limit to a greater extent than is provided for under this Act, or destroy, a human right of any person.

This Bill is full of examples where the “intent” of the BILL is subjugated by the Bill itself. When the Bill constantly allows exemptions to Standards laid out within this Human Rights Bill, it is clearly not, as titled, a Human Rights Bill.

Division 2 Civil and political rights

15 Recognition and equality before the law

(1) Every person has the right to recognition as a person before the law.

(2) Every person has the right to enjoy the person’s human rights without discrimination.

(3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.

(4) Every person has the right to equal and effective protection against discrimination.

(5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

This principle is already being breached by the provisions of the Serious and Organised Crime Amendment Act 2016 which allows an entity to determine what clothing individuals must not wear in public. Is it the Governments intent to rectify such pieces of existing Legislation that are in breach of this new Bill, but also Acts such as the Legislative Standards Act 1992? What also has to be considered is the opinion of the International High Court in the judgement of the case of Horvath V Australia, from the Judgement;

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author’s rights under article 2, paragraph 3, in connection with articles 7, 9, paragraphs 1 and 5, 10, paragraph 1, and 17 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take steps to prevent similar violations in the future. In that connection, the State party should review its legislation to ensure its conformity with the requirements of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established.

This shows that even though Various Australian Governments have failed to implement the protocols of the Various instruments signed by the Australian Government on behalf of the people of Australia, the International High Court is prepared to rule as if they are law in Australia. Should this Queensland Human Rights Bill 2018 become passed into Law in its current form, it risks the burden of costs on the people of Queensland of legitimate claims taken to the International High Court being upheld and therefore costing the taxpayers of Queensland for the incompetence of our elected representatives in preparing and passing Legislation that complies with our International Obligations.

19 Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

As some existing laws have punished people for where they live, (Some Bike Club Members were residents of premises where the Government of the day declared over night with no Judicial oversight that certain class of Queenslanders were declared to be unable to enter their own homes), The first arrests under the Newman Government's VLAD Laws were just such a case.

20 Freedom of thought, conscience, religion and belief

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
 - (a) the freedom to have or to adopt a religion or belief of the person's choice; and
 - (b) the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief.

With the 'Way of Life' belief of certain Queenslanders, having been restrained so as to limit their Freedom to live their lives in such a way as is not harming others, via Legislative means, rather than focusing on Judicial means to deal with Criminal behaviour the Government is punishing "Pre-Crime" or behaviour that the Government is trying to sell as a "Tough on Crime" agenda, when the statistics don't support the Governments position.

21 Freedom of expression

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—
 - (a) orally; or
 - (b) in writing; or
 - (c) in print; or
 - (d) by way of art; or
 - (e) in another medium chosen by the person.

With restrictions on items of clothing, suggesting that a t-shirt is an act of criminality simply because of art work displayed on the t-shirt, or a Vest or other forms of expression we already see a Government that is prepared to restrict Freedom of Expression. Again, I ask, will you be re-assessing existing laws and checking their compatibility with Human Right Bill & United Nations Covenant on Civil & Political Rights, & the United Nations Covenant on Economic & Social Rights?

22 Peaceful assembly and freedom of association

- (1) Every person has the right of peaceful assembly.
- (2) Every person has the right to freedom of association with others, including the right to form and join trade unions.

Freedom of Association is not limited by this Section to Unions, they are only set out as a specific example. Yet we see in the Serious and Organised Crime Amendment Act 2016, this Government has been prepared to restrict lawful activities, preventing a Class of Queenslander from doing what we all expect is a Right, & that is to hang out with your mates. Again, I ask, will you be re-assessing existing laws and checking their compatibility with Human Right Bill & United Nations Covenant on Civil & Political Rights, & the United Nations Covenant on Economic & Social Rights?

27 Cultural rights—generally

All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.

Again, there are sections of Serious and Organised Crime Amendment Act 2016 that breach this Human Right, are you going to Re-assess existing laws and checking their compatibility with Human Right Bill & United Nations Covenant on Civil & Political Rights, & the United Nations Covenant on Economic & Social Rights?

Part 3 Application of human rights in Queensland

Division 1 Scrutiny of new legislation

44 Statement about exceptional circumstances

- (1) A member who introduces in the Legislative Assembly a Bill containing an override declaration, or another member acting on the member's behalf, must make a statement to the Assembly explaining the exceptional circumstances that justify including the override declaration.
- (2) The statement under subsection (1) must be made when introducing the Bill.
- (3) If the override declaration is contained in an amendment in consideration of a Bill, the statement under subsection (1) must be made—
 - (a) by the member who moves the amendment or another member acting on the member's behalf;
 - and
 - (b) when the amendment is moved.

42 No effect on application of laws

A failure to comply with this division in relation to a Bill that becomes an Act, a non-Queensland law or subordinate legislation does not affect the validity of the Act, law, subordinate legislation or any other law.

Yet another example of "We have to do this, but if we don't want to, we don't have to." This is a bill riddled with challengeable aspects that don't comply with our International Obligations, in time someone with enough money and principle will challenge this should it become law in its present format. Queenslanders expect better of our elected representatives.

Regards



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