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Email: lacsc@parliament.qld.gov.au  
Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

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## Human Rights Bill 2018

Dear Committee Secretary,

Thank you for the opportunity to make a submission to this inquiry. I make this submission in a personal capacity.

I encourage the committee to consider the consequences and costs of this Bill rather than the emotion Human Rights are intended to excite. Protecting the rights and liberties of Queenslanders should not be swept up in an act of conspicuous compassion where dialogue and administrative processes are mistaken for genuine action.

Any consideration of a statute about Human Rights must not gloss over the practical problems that come with enforcing Human Rights or the associated costs imposed on taxpayers. Human Rights are not free. When a State ensures a right, it is the taxpayers that must fund that right and any consequences. Rights enforced or protected by the State must face economic realities as the economic resources of the State are not limitless, no matter how great a cause is. Problems and practical limitations cannot be swept aside by good intentions.

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*An obsession with the big picture can allow the accumulation of damaging detail*

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The rights and liberties of individuals are slowly chipped away over time, typically through small increases in government power and the creation of new regulation. If the debate about Human Rights is focused solely on big picture hypothetical problems, the actual infringements endured by people in everyday life get over-looked. Being obsessed with large but unlikely infringements of Human Rights can have the consequence of missing the small but all too common ones.

I don't see anything in the rights in the Bill that will protect people from ever increasing fees and regulation imposed on specific work or other activities. The Bill does not include a specific protection from the reversal of the onus of proof in criminal proceedings, search or seizure without a warrant or being compelled to provide information to a government body (all increasing trends in new legislation).

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### *Who should define Human Rights in Queensland*

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A parliamentary democracy based on the rule of law has, for all its flaws, shown itself to be the best mechanism of addressing issues for which the citizenry can have very different opinions. Parliament is the best placed institution for determining and protecting Human Rights because its members are elected and as such, are accountable to those affected by the decisions they make.

Parliament employs a transparent process for debating and deciding matters which extends to its consideration of the rights and liberties of Queenslanders. Parliament remains the best placed institution to be representative of the community and reflect community opinion. A Bill of Rights or similar mechanism of entrenching Human Rights in law can only really be used to limit or dictate the public policy that gets enacted through laws made by Parliament.

Because Human Rights are broadly and vaguely defined, their application will lead to a need for further definition. Whether this further definition is called interpretation or something else the Bill leaves this open to be done by the new Human Rights Commission or the courts under their obligations and powers in the Bill.

Entrenching Human Rights in a law that empowers any entity other than Parliament with the ability to define those rights shifts the ultimate legal authority away from the citizenry as exercised through their elected representatives.

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### *Current Queensland approach to Human Rights ignored*

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A confusing aspect of the Bill is that it completely ignores the current approach used in Queensland as set out in the *Legislative Standards Act 1992*.

It may surprise many people to know that Queensland already has a mechanism for protecting the rights and liberties of individuals. Currently in Queensland there is a requirement that legislation have sufficient regard to the rights and liberties of individuals and to the institution of Parliament. Enshrined in section 4 of the *Legislative Standards Act 1992* is the concept of fundamental legislative principles. Fundamental legislative principles are principles relating to legislation that underlie a parliamentary democracy based on the rule of law. Sections 23(1)(f) and 24(1)(i) of the *Legislative Standards Act 1992* impose a requirement that explanatory notes for Bills and subordinate legislation include an assessment of the consistency of the Bill and subordinate legislation with fundamental legislative principles and, if not inconsistent, the reasons for the inconsistency.

The current Queensland approach is often overlooked because it doesn't use the term Human Rights. The Queensland approach takes the view that the proper time to consider the rights of citizens is in the development of legislation and the determination of how those rights should be affected by legislation is ultimately the job of the Parliament. For more information about the application of fundamental legislative principles see chapter 7 of The Queensland Legislation Handbook<sup>1</sup>, The OQPC notebook and The Principles of good legislation: OQPC guide to FLPs<sup>2</sup>.

The Bill ignores fundamental legislative principles and the *Legislative Standards Act 1992*. The Bill does not include any amendments to the *Legislative Standards Act 1992* or the consideration of fundamental legislative principles. Can it really be the intention of the government to run two different approaches to protecting the rights and liberties of Queenslanders?

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### *Orwellian nature of some provisions of the Bill*

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The State's protection of Human Rights should never, by intention or in effect, have the consequence of creating different rights for people based on ancestry, culture, ethnicity, race or religion.

Subsection (5) of clause 15 of the Bill contradicts the previous subsections in that clause. If everyone is to be treated equally, and discrimination is to be removed (as has been the legislative intention in Queensland since 1991) then why is clause 15(5) required? Wouldn't the answer to a person suffering discrimination be to address the discrimination, not to provide the person with an advantage? Would discrimination be needed to be proved and unable to be addressed under the relevant State or Federal anti-discrimination laws before an advantage can be given under clause 15(5)?

Clause 20 could quickly establish differences in the rights of Queenslanders depending on their religion. It's easy to predict that clause 20(2) will be relied on to claim a breach in relation to any law or policy that could be argued restrains a person's ability to observe an obligation or practise of their religion. There are many rules imposed by government entities through policies, policies which would need to be made consistent with the Human Rights under the Bill.

Clauses 27 and 28 quite clearly set apart the cultural rights of Aboriginal and Torres Strait Islanders peoples above all other Queenslanders. Clause 27 already provides a general right to all Queenslanders to enjoy their culture etc. Clause 27 is already problematic in that it does not acknowledge that cultures and the practises of religions should not be entertained to the extent they conflict with any law. Clauses 27 and 28 are purely Orwellian in that while all Queenslanders are equal, some Queenslanders are more equal than all the rest. Clause 28 even goes so far as to acknowledge multiple more cultural rights for Aboriginal and Torres Strait Islander peoples than any other Queenslanders. The Bill emphasises people being equal before the law, free from discrimination, but then contradicts both principles.

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<sup>1</sup> [www.legislation.qld.gov.au/leg\\_info/publications/legislation\\_handbook.pdf](http://www.legislation.qld.gov.au/leg_info/publications/legislation_handbook.pdf)

<sup>2</sup> [www.legislation.qld.gov.au/Leg\\_Info/flp.htm](http://www.legislation.qld.gov.au/Leg_Info/flp.htm)

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*How much will this cost Queensland taxpayers*

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Rather than seeing this Bill as a turning point in the protection of Human Rights for Queenslanders, what I see is a large amount of administrative work for numerous public servants and an expansion of a public entity (the current Anti-Discrimination Commission). There are some important questions the committee should put to those promoting this Bill:

- What actual mechanism will a person or public entity use under this Bill to redress a breach of a Human Right?
- What can this Bill achieve that cannot be achieved by the 1000s of pages of Queensland legislation or specific amendments of that legislation?
- How many extra public servants are expected to be needed for public entities to comply with their obligations under the Bill?
- How many extra public servants are expected to be needed for the new Queensland Human Rights Commission (formerly the Anti-discrimination Commission)?
- What is an estimate of the cost of the new commission dealing with a Human Rights complaint?
- What is the anticipated burden expected on court services for actions under the Bill?

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*Conclusion*

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I do not support the Bill as I do not believe it is the correct approach for Queensland. The Bill makes blanket statements that are inconsistent with, or overly simplistic summaries of, other Queensland statutes which will only confuse the public<sup>3</sup>. Creating a dialogue is never a good reason for passing laws because laws are to have legal consequences, any lesser purpose simply erodes public respect for laws. Any changes to protecting Human Rights in Queensland must provide Queenslanders with real and specific protections but without the creation of a new bureaucracy ripe for capture by lobby groups. Also, any changes need to accommodate or replace the fundamental legislative principles under the *Legislative Standards Act 1992*.

Yours sincerely



Luke Geurtsen

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<sup>3</sup> Clauses 28 to 35 which states criminal procedure matters covered by various Acts, see for example, the Criminal Code, The Justices Act 1886 and the Bail Act 1980.