

Jaime Hungerford-Morgan


14 November 2019

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

Dear Committee Secretary

Human Rights Bill 2018

I thank you for the opportunity to make a submission to this review of the *Human Rights Bill 2018*. I currently reside outside of Australia; however I spent the better part of my life living in Queensland, where the majority of my family still reside, and I remain a citizen of the 'Sunshine State'.

Since encountering the UN International Bill of Human Rights in my university days, I have hoped and looked forward to the realisation of human rights principles in the form of both Queensland legislation and Australian Federal Law. Becoming a wife and mother has only intensified that hope.

The Queensland Parliament enjoys the privilege - and the responsibility - of being able to "...make and change law..." (Queensland Government, 2012). As part of this responsibility, Queensland Parliament is charged with ensuring that the principles by which we define justice, morality, fairness, and the rights of its citizens, are consistently applied to all legislation. It is this legislation which is responsible for securing and maintaining law and order in Queensland, and accommodating "...the public interest of the State's citizens..." (Queensland Government, 2011).

Not of small significance among those public interests, is the health and agency of pregnant women, the protection and health of children, and the protection of the rights of medical practitioners and registered health practitioners. Termination of pregnancy procedures unquestionably impact on all of these areas of public interest.

My principle concern, then, with the current rendition of the *Human Rights Bill 2018*, is the exemption of previously drawn-up legislation from compliance or 'compatibility' with human rights – both theoretical and in practice - as they are defined by this bill. In particular, I draw your attention to **Part 6, 'Savings and transitional provisions', Item 106**, titled 'Act does not affect laws about termination of pregnancy', and which states:

"Nothing in this Act affects any law relating to termination of pregnancy or the killing of an unborn child, whether before or after the commencement of part 2."

All evidence to the contrary: in singling out the recent *Termination of Pregnancy Act 2018*,

the writers of the *Human Rights Bill 2018* highlight the inherent incompatibility of the above-mentioned act (and the bill which gave rise to it) with human rights principles and laws. It is reasonable to expect that all Queensland legislation – both current and future – comply with human rights law. While the bill may allow for existing legislation to legally supersede or remain legally 'unaffected' by the proposed human rights legislation; in reality, such exemptions prevent human rights from becoming properly and consistently enshrined in State legislation; they highlight and engender untenable contradictions between co-existing but irreconcilable pieces of legislation.

The very fact that the *Termination of Pregnancy Act 2018* has been singled out by the writers of this bill as requiring a special exemption, highlights the fact that this legislation poses irreconcilable incompatibility issues with various human rights, as detailed by the *Human Rights Bill 2018*, including but not limited to the following:

- Part 2, Division 2, Item 16 - **Right to life**: *“Every person has the right to life and has the right not to be arbitrarily deprived of life.”*
- Part 2, Division 2, Item 20 – **Freedom of thought, conscience, religion and belief**: (1) *“Every person has the right to freedom of thought, conscience, religion and belief, including... (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.”*
- Part 2, Division 2, Item 21 – **Freedom of expression**: *“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...”*
- Part 2, Division 2, Item 22 - **Peaceful assembly and freedom of association**: (1) *“Every person has the right of peaceful assembly.”*

The writers have conspicuously refrained from explaining or justifying this unique exemption. I can only suggest that such legislation, in the view of the writers of this bill, would be unlikely to pass into law in Queensland, according to the process of 'scrutiny' proposed in this bill: that is, the recently tabled *Termination of Pregnancy Bill 2018*, which has now been passed into law, would be unlikely to produce a 'statement of compatibility' acceptable to the proposed 'portfolio committee'.

The definition of termination of pregnancy supplied by this bill ('the **killing of an unborn child**') is sufficient to demonstrate the problematic nature of termination procedures with regard to human rights articles generally, and particularly with the primary, fundamental human right: the 'right to life'. To reiterate, the *Human Rights Bill 2018* specifies that “Every person has the right to life and has the right not to be arbitrarily deprived of life [sic].” (p18).

The parallels between the human rights detailed in this bill, and the various documents of the 'International Bill of Human Rights' - particularly the *Universal Declaration of Human Rights* (1948) and the *Convention on the Rights of the Child* (1989) proclaimed and promulgated by the United Nations, are unmistakable.

Allow me to highlight, then, that the above-mentioned documents from which the tabled Bill draws its principles embrace in their respective preambles the unborn child in their definitions of a human being or 'person':

*"Whereas recognition of the inherent dignity and of the equal and inalienable rights of **all members of the human family** is the foundation of freedom, justice and peace in the world,*

*"Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that **everyone** is entitled to all the rights and freedoms set forth therein, **without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, **birth or other status**, ...*

~ from the Universal Declaration of Human Rights (1948)

*...Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before as well as after birth**", ..."*

~ from the Convention of the Rights of the Child (1989)

I applaud the bill's writers for having similarly defined human rights as belonging to 'every individual'; to 'every human being', without discrimination of any kind. In defining human rights in this way, the bill extends human rights to every man, woman, and child in Queensland, both the born and the unborn.

The conspicuous absence of the term 'born' from these definitions is of particular significance and encouragement to all those who acknowledge modern scientific understanding of the development of human beings, as being continuous from conception to death.

In stark contrast to the stated goals of this bill, Queensland's legislation pertaining to termination of pregnancy is to be made an exception to human rights-compliant law in the State of Queensland. Human beings are centrally involved in all aspects of abortions: as patients and as targets for destruction; as providers, as practitioners and as assistants; as proponents and as opponents; as legislators. Human rights ought then to be as highly valued and upheld in this arena of public interest as in others.

The singling out of any one particular piece of legislation for exemption from compliance with human rights is unconscionable for State legislators.

Recommendation

In order to consistently and reliably enshrine human rights principles in Queensland law, it is necessary to subject existing legislation to the same requirements, and hold them to the same standards as future proposed legislation.

Legislators and the public must have access to a process by which a request can be made that a committee (such as the portfolio committee described in this bill) review certain legislation whose compliance with human rights law can be demonstrated to be in question.

Yours sincerely,

Mrs Jaime Hungerford-Morgan.

References

Queensland Government. (2012, July 30). How laws are made. Retrieved from <https://www.qld.gov.au/about/how-government-works/legislation/how-laws-made>, Nov 26, 2018.

Queensland Parliament. (2011). The Role of Parliament. Retrieved from <https://www.parliament.qld.gov.au/explore/about-us/parliament-overview/role-of-parliament>, Nov 26, 2018.

UN General Assembly. (1948). Universal Declaration of Human Rights. Retrieved from <http://www.un.org/en/universal-declaration-human-rights/index.html>, Nov 25, 2018.

UN General Assembly. (1989, November 20). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, Nov 25, 2018.