

# A HUMAN RIGHTS ACT FOR QUEENSLAND

## Submission to the Legal Affairs and Community Safety Committee of the Queensland Parliament

Monday 26 November 2018

Submission by PETROS KHALESIRAD [REDACTED]

### **This letter is written as a submission in response to the Queensland Government's introduction of a Human Rights Bill ("Bill")**

I pay respect to Aboriginal and Torres Strait Islander Elders, past and present, and acknowledge the important role of Aboriginal and Torres Strait Islander people, their culture and customs across Queensland. I also acknowledge all those individuals who have been adversely affected by Queensland Government decisions. I hope this Bill is a step towards the restoration of public interest centric policy & legislation making.

As an advocate for accountable and transparent Government, I strongly believe in a Human Rights Bill but I DO NOT support the current Bill before the parliament. It is clear when reading the proposed Bill, the intent of the Parliament is to ensure *"respect for human rights is embedded in the culture of the Queensland public sector and that public functions are exercised in a principled way that is compatible with human rights."*<sup>1</sup> Having read the Bill numerous times and discussed it with my colleagues, I don't believe the Bill will protect Queenslanders but instead promote a Government that exercises its power contrary to what a reasonable person would understand to be "Human Rights".

The Bill is pusillanimous, absent of statutory penalties and only enforceable (though the State has immunity) against public entities or entities that deliver service of a public nature.

Regards,

Petros Khalesirad

Enc.

*Attachment 1 Autism and Police interviewing*

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<sup>1</sup> Human Rights Bill 2018 Explanatory Notes, Obligations imposed on government  
<https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1768.pdf>

## LAW ENFORCEMENT

We are already seeing totalitarian behaviour<sup>2</sup> by Queensland Government agencies such as the Queensland Police Service (“QPS”). Even if you don’t agree with that statement, it is clear agencies like the QPS have little respect for the rule of law<sup>3</sup>. The Bill specifically lists the QPS as a public entity<sup>4</sup> but and I am having difficulty in determining how the Bill (and the Human Rights Commissioner) will balance the interest of Queenslanders over that of the delivery of law enforcement. There’s no denying a Government’s first and foremost obligation is to the safety of its people, but at what cost to our already diminishing civil liberties?

### EXAMPLE 1 – Treatment by QPS towards people with “special needs”

I have engaged with many adults and children that suffer from Autism and Asperger Syndrome. My relationship with them is one I cherish and I feel obliged to offer them, if anything, a voice, and to shield them from the unwarranted behaviours of our society towards them, including miscarriages of justice.

Even though there are provisions in the QPS Operational Procedures Manual to deal with people that have a “special need”<sup>5</sup>, the failure in this Policy lays with the police officers ability to identify the special need and to **establish whether a special need exists**.<sup>6</sup> If this crucial step is overlooked or not vigorously taken into account, the path to a miscarriage of justice is inevitable. *“It is better that ten guilty persons escape than that one innocent suffer.”*<sup>7</sup>

I am familiar of a case in Central Queensland where the QPS failed to identify a person of interest with Autism as a special need. From that point on, the machine swallowed him and I am of the opinion, the man was prosecuted for something he didn’t do, serving two months in prison for an offence he didn’t commit. His lawyer, who has been the subject of several misconduct investigations by the Legal Services Commission provided anything but legal representation.

This autistic man’s idealistic view of justice is honourable and one that resonates with me. His voice is not being heard. His concerns are being ignored by the QPS, Ethical Standards, Crime and Corruption Commission, Legal Services Commission & the Queensland Attorney General, but I will not ignore this miscarriage of justice! It is hard to imagine why a Government would treat a vulnerable person this way. Maybe the prosecution was for the benefit of statistics? There are many more stories like this, and they are increasing at an alarming rate because authorities lack the training to identify people with special needs.

In his open letter titled **Autism and Police interviewing** (attached) the author writes *“When under the spotlight of a Police interrogation from an already highly fixated and suspicious individual, all this unnecessary verbiage unfortunately becomes fodder for further suspicion and assumption that I (sic) must be “guilty” and therefore need to be “taken down”, even if it means constructing a scenario that doesn’t exist.*

I have his consent to include this letter with this submission and for it to be published unredacted.

<sup>2</sup> <https://www.sydneycriminallawyers.com.au/blog/fighting-police-corruption-an-interview-with-former-queensland-sergeant-rick-flori002F>

<sup>3</sup> <https://www.couriermail.com.au/news/queensland/queensland-magistrate-threatens-eight-police-officers-with-contempt/news-story/a68ed7092c801b9a9baa60b466b8eb4e>

<sup>4</sup> Section 9(1)(c) Human Rights Bill 2018

<sup>5</sup> When the term ‘special need’ is used in relation to a person, it refers to persons who, because of any condition or circumstance, have a reduced capacity to look after or manage their own interests.

<sup>6</sup> Section 6.3.2 QPS Operational Procedural manual

<sup>7</sup> Blackstone’s ratio, Commentaries on the laws of England". J.B. Lippincott Co., Philadelphia, 1893.

LAW ENFORCEMENT Cont'd

## RECOMMENDATION

The Human Rights Commissioner must protect these vulnerable individuals by establishing a special committee tasked to represent how Government decision making can properly take into account "special needs". The committee must also consist of recognised and respected advocates outside of Government. Such a committee, in consultation with the Human Rights Commissioner & other agencies, may determine that law enforcement officers require further education and training to help identify people with special needs.

### EXAMPLE 2 – Domestic Violence victim's details leaked by Police

A court suppression order prevents me from referring to this particular case however the matter has been reported widely in the media with headlines such as "Queensland in court fight with domestic violence victim whose details leaked by policeman."<sup>8</sup>

In this example, hypothetically, had this individual referred the matter to the Human Rights Commissioner via the statutory provisions of the Bill, there would be no chance of prosecution as the Bill clearly says "Nothing in this Act makes the State liable to be prosecuted for an offence."<sup>9</sup>

Furthermore, how does the Bill interact with a public servants statutory obligation to disclose misconduct when such is engrained in legislation as **duty to notify is paramount**?<sup>10</sup>

## RECOMMENDATION

1. Amend the Bill in the future to remove the prosecution immunity at Section 5(4) "Nothing in this Act makes the State liable to be prosecuted for an offence."
2. Create a "prosecution threshold test" for the Human Rights Commissioner to meet, and legislate prosecution powers.

## AMBIGUITY

Many sections of the Bill are ambiguous. In the short time provided to the public to make a submission, I have not been able to provide an exhaustive list. Instead I have taken the approach of outlining such ambiguity in the below hypothetical example.

### EXAMPLE 1 - Delivery of public transport services

In regional Queensland, private companies operate under a contract arrangement with the Department of Transport & Main Roads to deliver public transport. These companies also operate their own private services such as charters which would not be of a public nature.

Section 10(1)(3)(b)(v) of the Bill would bound this organisation to the Bill as they are a public transport provider that provides a function of a public nature.

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<sup>8</sup> <https://www.theguardian.com/australia-news/2018/aug/21/queensland-in-court-fight-with-domestic-violence-victim-whose-details-leaked-by-policeman>

<sup>9</sup> Section 5(4) Human Rights Bill 2018

<sup>10</sup> Section 39 Crime and Corruption Act 2001

## AMBIGUITY Cont'd

Two questions arise;

1. Does the Bill extend to passengers who utilise the same organisation as a private charter?
2. Will these public transport organisations, and other organisations that are bound to the Bill by virtue of providing a function of a public nature, also enjoy the benefit of immunity against prosecution?<sup>11</sup>

**RECOMMENDATION**

1. The prosecution immunity enjoyed by the State must also extend to organisations that perform a function of public nature.<sup>12</sup>
2. Future versions of Human Rights legislation should see no immunity provisions.

**PARLIAMENT OVERRIDE**

To the average person, parliament sovereignty is not something that is understood but when you are actively involved in holding the Government to account, or involved in political communication, the absolute power held by the Parliament can ruin your life. My visit to Queensland Parliament on the 5th September 2017 is an example of why parliament sovereignty, exercised contrary to the spirit of Parliament, is the biggest threat to Queenslanders and Human Rights.<sup>13</sup>

I have grave concerns with the Override by Parliament<sup>14</sup> section of the Bill. I cannot understand why any Government would want to override Human Rights. The bill lists examples of exceptional circumstances such as *“war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order”*. If anything, Human Rights are most likely going to be violated in these examples and its importance will need to be relied on. This override power further speaks as to the absolute power Governments continues to crave, behavior a reasonable person would consider to be contrary to Human Rights centric governance.

I share the view that judicial activism is the only way of advancing human rights and whilst some will disagree, obviously because Parliamentarians are meant to be the voice of the people, politicians are not representing their constituents. Instead, the powerful voices coming from unions, large corporations or anyone that makes a political donation, continues to be the only voice heard. It is clear when observing the political climate in Australia, the focus is more on advancing a political parties interests and those with financial ties, than that of the public. In some cases the people we elect are more interested in protecting the institution, even if it is at the expense to innocent people such as myself, MP's on the opposing side<sup>15</sup>, or even those MP's who exercise a conscience vote.<sup>16</sup>

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<sup>11</sup> Section 5(4) Human Rights Bill 2018

<sup>12</sup> Section 10 Human Rights Bill 2018

<sup>13</sup> <http://www.robpyne.com.au/stalker-in-parliament/>

<sup>14</sup> Section 43 Human Rights Bill 2018

<sup>15</sup> <https://www.parliament.qld.gov.au/documents/assembly/procedures/CodeOfEthicalStandards.pdf>

<sup>16</sup> <https://www.theguardian.com/australia-news/2018/oct/22/punishing-1np-mps-who-backed-abortion-rights-could-light-the-fuse-for-dermerger>

## PARLIAMENT OVERRIDE Cont'd

The Parliament must lead by example and be held to the same standard as the very citizens it legislates for. This is the rule of law and it must always be paramount.

**RECOMMENDATION**

1. Insert provisions in the Bill where a member of the Legislative Assembly can be referred to the Human Rights Commissioner when their conduct has been determined to be consistent with the offences listed in Chapter 8 of the Criminal Code (Qld) such as **False evidence before Parliament**<sup>17</sup> or contrary to the Queensland Parliament Code of Ethical Standards.<sup>18</sup>

END OF SUBMISSION

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<sup>17</sup> Section 57 Criminal Code 1899

<sup>18</sup> <https://www.parliament.qld.gov.au/documents/assembly/procedures/CodeOfEthicalStandards.pdf>

## OPEN LETTER – AUTISM AND POLICE INTERVIEWING

Please feel free to share this letter with anyone who may be interested. I only ask that my identity be kept confidential.

I unknowingly suffered Autism all my life, although what they call “High-Functioning”, and it profoundly affected me in many ways. I suffer from extreme social anxiety. I type much better than I talk.

Life with Autism has been genuinely difficult, but over time I have learned to compensate for many of these difficulties and built a successful Career as a skilled and trusted Professional.

But I only recently allowed myself to accept the fact that I actually do *have* Autism and agreed to a formal diagnosis.

With my Autistic condition comes deficits in social-emotional reciprocity, communication and interpersonal relationships; somatosensory sensitivity, monotonous speech, tangential thinking and elevated focus on detail. And that’s just for starters!

No matter how many compensations a person develops to hide and mask the difficulties of Autism, there is no place where the problem of Autism is more profoundly manifested than in a situation like a Police Interview.

As is unfortunately often the case with those who suffer from Autism, I paid the ultimate price for my overly trusting nature, particularly when it comes to those in Authority.

I, a person with no prior knowledge of the Law, was thrust into to an extremely adversarial system – a system where I was vulnerable and virtually defenceless - when there never even *was* a Crime.

Nobody stopped for a moment to consider that the uncommonly blunt and overly-analytical responses I gave in my Police Interview may have been due to a cognitive disability such as Autism.

I, and no doubt other people with Autism, can be extremely black and white when talking about things. We don’t require any ‘truth serum’ to be absolutely truthful – in fact, *more* than truthful. We are exceptionally helpful and trusting, with an almost pathological need to *please*. When led along by a Police Interviewer (without a Lawyer present), these traits can lead to quite devastating results.

I, in particular, analyse literally *everything* to death. My mind goes to work on every new piece of information, pulls it to pieces, looks at it from every possible angle – and at times, as seen in my Police Interview, I verbalise the whole process.

When under the spotlight of a Police Interrogation from an already highly fixated and suspicious individual, all this unnecessary verbiage unfortunately becomes fodder for further suspicion and assumption that I must be ‘guilty’ and therefore need to be ‘taken down’, even if it means *constructing* a scenario that doesn’t exist.

Autistic responses become dynamite in the hands of a 26-year-old Junior Constable lacking the maturity, objectivity and experience to properly assess the situation - and crucially, the Training to identify a possible case of cognitive impairment such as Autism.

No need to call even one solitary Adult Witness to find out the truth, he already ‘knew’. He was going to make absolutely sure that this Parent who had ‘touched the lower back’ of this poor innocent girl would never return to his family. Even if he had to perjure himself.

He became my accuser at Law when he swore the false and reprehensible document against me – subjecting an innocent person, who had in fact done *nothing at all*, to an extremely adversarial and unfair District Court system.

My own words, crude and unfiltered, magnified through the lens of my Autism, would be used to ‘hang’ me. All my words would be used at face value without the slightest recognition of the Autistic quirks or idiosyncrasies behind them.

My words would be combined with the words the alleged victim claims I said to her - which would be taken as *absolute gospel*, even though that alleged victim has been described thus:

*“likely to have problems with any aspect of language (hearing words correctly, understanding their meaning, remembering verbal material)”*

This Assessment from the Psychologist Counsellor at the complainant’s High School would never be submitted to the Court.

No psychological profile would be done on the defendant or the alleged victim.

The profoundly Autistic person, struggling to understand the bewildering Legal and Court system he has been thrust into, finds that every step of the way, people seem to be falling over themselves to hold their 'thumb on the scales of Justice' as it were, and give Justice a little push, a little 'helping hand'.

I experience further discrimination at the hands of my *own* Lawyer, who obviously takes me for a sucker.

The Lawyer decides, on the basis of my extremely poor showing in the Police Interview, that I must either be guilty, or an idiot. He makes precious little effort to communicate with me except, of course, for those times when he urgently needs 'another couple of Grand' in his Bank Account, presumably to feed his gambling habit.

Please tell me: how *does* a person go through 2 Years and 5 Months waiting for a District Court Trial and not even *know* that the Charge against him has been altered *twice*? Am I incompetent or lacking the ability to communicate? Apparently my Lawyer thought so! (Funny how I never missed a single one of his calls for Money ... )

How does a Defence Lawyer manage to produce not one single Adult Witness, despite there being numerous persons named in the Testimony who could have attested to the truthfulness of my account, including Professionals with reporting obligations, and even the complainant's own Counsellor who saw them *every week*?

How on earth do the Mother, Aunt and Grandmother of the alleged victim all present themselves together at his Office to state their intention of helping to clear my name, and yet he doesn't even manage to put a single one of them on the Witness stand?

Will somebody please tell me why a Retraction Letter *signed* by the complainant which repeatedly says I'm innocent and '*it has been misunderstood*', ends up not being submitted to the Court at all?

When so much revolves around words it is claimed I said, for what acceptable reason was the Court not provided the Educational Assessment *proving* that it is *highly unlikely* the complainant could have correctly recalled or comprehended those words?

And so, I present myself for my District Court Trial, a bewildered, utterly unprepared, profoundly Autistic person, without even the



benefit of a Defence Lawyer who believes in me. Because of my 'terrible' Police Interview, I am deemed too stupid to take the stand in my own defence. My only defence is literally my Police Interview. I sit there in a Suit for 4 days; my Autistic responses being picked apart. Not one single Witness or Exhibit is produced in my behalf.

The Judge says to the Jury something basically to the effect of 'never mind all those numerous Adult Witnesses named in the Testimony... you are instructed to disregard all possible lines of inquiry relating to anything those people *might* have said'.

The Crown Prosecutor goes straight for the jugular, attacking my Police Interview mercilessly, lambasting me for my 'qualified' answers, my lack of robust denials, the (apparently) 'obvious' indicators of guilt in my long-winded explanations and tangents I went off on, for long pauses when I was trying to process it all ...

Even my Defence Lawyer joins the party: "*diatribes of soul searching, over-analysing, analysis paralysis*" "*boring monologue and his soul searching and his insights into this family dynamic*" "*Imagine living with him. It'd be like watching paint dry.*"

Everyone seems oblivious to the fact that the one single solitary direct reference to the alleged Crime is, *without exaggeration*, quite literally the alleged victim saying "*oh no no it was when ...*"

And even then *only* after being prompted by the interviewer – and *after* already having related the alleged circumstances in full not once, but *twice* – both times completely skipping over the part where the Crown alleges this 'Crime' to have occurred!

The second (12-minute) Interview with the complainant consists basically of the Interviewer repeating the alleged story (arbitrarily choosing the part *after* the "*oh no no it was when ...*"), and asking "is that what happened?", to which the complainant replies "Yeah".

The one-and-only item of supposed relevance offered by the one-and-only 'Witness' is stated no less than *Ten* times during the testimony to be utterly impossible to have been carried out. *Four* people are named as being aware of this impossibility. How they could possibly be permitted to use this so-called 'evidence' at all, let alone make use of it in such a 'highly prejudicial' manner is something that is absolutely beyond my powers of understanding!

The Crown Prosecutor *deliberately* drops the wrong word during his address to the Jury. He pauses, and reads out an *incorrect word* from the testimony. Just like that. Unsurprisingly, that particular word will introduce maximum prejudice. The Judge reads the same portion of testimony (correctly) the next morning – but the damage is done. This is all in the Transcript for anyone who cares to look.

I cannot find words to describe to you what it is like for someone like myself with an extremely strong sense of Justice - of Right and Wrong (which is itself a manifestation of Autism) to try to process all that has happened to me. Every day I wake up with the injustice. I live it, I breathe it. I feel it – *every single moment of every day*.

My 8-year Job with a Global Company, my Top-Secret Government Clearance, my entire Professional Career ... All Gone! And for what?

Since virtually every advertised position in my industry requires a Police Check, I am left with a never-ending struggle to find enough Work to make ends meet. I have been fighting to survive, fighting to keep from being overwhelmed by the never-ending struggle to prove my innocence, fighting to stop myself sinking into the mire of despair and depression, worrying myself sick about Police Checks and Employers finding out about the whole sordid mess ...

And some of the time I've been fighting not to kill myself.

All this because I happen to have Autism – a disability which I suffer from through absolutely no fault of my own.

It is unbelievable that a person's entire life, career, reputation and standing in the community can be destroyed by a Justice system desperately clutching at straws with *worse than* no evidence, for arguably the most minor and poorly-defined 'crime' imaginable.

That a vulnerable person can be thrown into a filthy Jail Cell and subjected to all manner of unspeakable abuses, and then subjected to the further indignity of a Criminal Record for life, *and* be listed on an "Offender's Register" along with some of the most heinous Criminals on earth - all over the words "*oh no no it was when ...*" is something I may never, ever fully understand or forgive.

While incarcerated, I was in an extremely precarious situation and in constant fear for my life. For someone with the sensitivities and

social anxieties that an Autistic person suffers from, it became absolutely intolerable. Not even having the benefit of knowing that I *had* Autism at the time, I was unable to ask for help on that basis.

I was forced to witness a man being beaten within an inch of his life, beaten savagely about the head and body for more than 10 minutes – all because he went to the Front Counter and said he needed ‘help’. They punished him because he wanted to ‘bail out’.

I cannot believe the things I experienced as an Autistic Person in the Queensland Correctional system. It was absolutely horrendous.

I was threatened by a group of men who said “we are going to drag you into the toilets and rape you”.

I was grabbed on the private parts or buttocks by at least 8 different men who would come up behind me in the walkways, reach between my legs, and fondle my genitals and buttocks.

I could not even get some relief from it all by going out to the oval. While there I was repeatedly harassed sexually over a period of weeks, culminating in the individual pulling down his shorts & underwear and rubbing his private parts against me; and when I objected, yelling out after me “I’m going to rape you!”

I was beaten up, belted about the face several times with the force of a baseball bat. I had simply been reading a book.

Some tough guy repeatedly kept coming up to me, making slashing motions at my throat, and saying “Your life gone” and “You’ll be leaving in a black bag with a toe-tag”.

An inmate who was mentally disturbed began taunting me and repeatedly sneaking up behind me and punching me very hard in the back of the head; this going on constantly every day for a week.

I am beyond disgusted at everything the Queensland Police Service and the Justice system put me through *because* I suffer from Autism.

To make it much worse, I was not even afforded the dignity of being allowed to Appeal my unjust Conviction.

During the first 30 days of my incarceration, I made *two* requests expressly for the purpose of Appealing my Conviction. That neither

of these requests ended up being followed through on was absolutely due to no fault of my own. I have documented evidence of this in the form of official Letters.

Since then, I have made many, many submissions, including a comprehensively indexed 32-page document and annexure incorporating a multitude of exhibits proving beyond a shadow of a doubt that my Trial was *not* conducted according to Law.

I have *proved* my innocence many times over, with repeated submissions and requests to have my Right of Appeal restored.

And yet, the Queensland Attorney General continues to withhold and to repeatedly deny my Right of Appeal, despite the existence of a High Court Ruling which states the following:

“The need to be able to correct a miscarriage of justice is a fundamental aspect of any system of criminal justice ... It is integral to public confidence in the criminal justice system, and to ensuring the system operates fairly and within the law, while acknowledging that any system operates imperfectly and what is important is that there is always a capacity for correction.”

I have done more than anyone ever could have to prove beyond a shadow of a doubt that a monumental failure of Justice occurred. It is my unshakeable belief that the proceeding against me was not Lawful – *cannot possibly have been* conducted according to Law.

I ask for nothing more than the same guarantee of Appeal I *would* have rightfully had in the first place. It is a shocking state of affairs in Queensland that I was tried and convicted solely for my Autistic traits and responses, *not evidence*. My Autism was on trial, not me.

If I *did*, as has been suggested, ‘convict myself’ entirely on the basis of my Police Interview, how can that *possibly* be fair?

If anyone can speak up for me, advocate for me, or provide any kind of Legal assistance, advice or resources related to difficulties encountered by Adults on the Autism Spectrum in the Criminal Justice system, I would be most grateful.

I may be contacted at the generic email address below:

[REDACTED]