

Submission on the Human Rights Bill 2018

Introduction

Just imagine for a moment that in 1850 Alabama introduced a Human Rights Act. This Act contained wonderful references to the inherent dignity and worth of all human beings and to their equal and inalienable human rights.

That would have been great, right? But then, deep within the Act there was this, “This Act does not affect laws about slavery. Nothing in this Act affects any law relating to the enslavement of black people.”

What? How could any worthwhile Human Rights Act possibly allow for slavery? Such an Act would rightfully be considered to be rubbish and not worth the paper that it was written on.

Right? Yes, of course, and no one on this Committee would disagree with that.

Well, in similar fashion Queensland’s Human Rights Bill 2018 is equally fatally flawed.

It is completely hypocritical for this Bill to claim to be about protecting and promoting human rights when at its heart the Bill explicitly, absolutely, and without any attempt at justification, denies the human rights of the most vulnerable members of our society – the children before birth.

There are also serious problems regarding freedom of expression.

You, the members of the Legal Affairs and Community Safety Committee must clearly call out this rank hypocrisy and firmly reject the Bill as it now stands.

Analysis

Part A

The Preamble to the Bill commences with:

In enacting this Act, the Parliament of Queensland recognises—

1 The inherent dignity and worth of all human beings.

2 The equal and inalienable human rights of all human beings

The first of the main objects of the Act is

(a) to protect and promote human rights

Clause 16 states:

16 Right to life

Every person has the right to life and has the right not to be arbitrarily deprived of life.

Clause 26 (2) states:

26 Protection of families and children

(2) Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

Nevertheless, despite the foregoing, clause 106 states:

106 Act does not affect laws about termination of pregnancy

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.

The double standard here is clear, undeniable and inexcusable. Indeed it would be laughably absurd if it were not so serious.

In her comments when the Bill was being introduced to Parliament on 31 October, 2018, Hon. Yvette D'Ath said:

This bill recognises the inherent dignity and worth of human beings. It recognises that the equal and inalienable human rights of all persons are essential in a democratic and inclusive society that respects the rule of law.

The terms "human beings" and "persons" are used interchangeably by the Minister.

Within the Bill itself the same is true. The very title "Human Rights Bill 2018" makes it clear that this Bill is about human beings. The Preamble, as cited above, says that the Parliament of Queensland recognises the inherent dignity and worth of all human beings and the equal and inalienable rights of all human beings. The first main object of the Act is stated to be, to protect and promote human rights.

Clause 16 Right to Life then states that "Every person has the right to life and has the right not to be arbitrarily deprived of life".

The terms "human being" and "person" are clearly equivalent.

The Explanatory Notes for the Bill affirm this conclusion. The Notes state that “The aim of the Bill is to consolidate and establish statutory protections for certain human rights recognised under international law including those drawn from the ICCPR (International Covenant on Civil and Political Rights), etc. The Notes then provides a table showing how each clause of Part 2, Divisions 2 and 3 of the Bill is tied to a particular Article of an international treaty that Australia is signatory to.

Clause 16, Right to Life is shown to have been drawn from Article 6 (1) of the International Covenant on Civil and Political Rights. This ICCPR article reads, “**Article 6(1)**. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Clause 16 of the Bill reads essentially the same, “Every person has the right to life and has the right not to be arbitrarily deprived of life”. Again we see that “human being” and “person” are used as equivalent terms.

The Bill provides no definition of the term “person” but clearly from the foregoing, the term “person” is to be taken as being equivalent to the term “human being”. There can be no other possible take on it: a human being is a person, a person is a human being.

This is a crucially important point as some will try to assert that the “person” of Clause 16 of the Bill is a different sort of entity to a “human being” and thus the right to life should apply only to “persons” rather than to all human beings. They may concede that a child before it is born is a “human being” but they may then try to assert that such a child is not a “person” and thereby does not have his/her right to life protected. Such special pleading is however completely unsustainable in view of the Hon. Yvette D’Arth’s comments, the words of Article 6 (1) of the ICCPR, and the words of the Human Rights Bill 2018 itself.

The child before birth is a human being⁽¹⁾ and, as noted, is thereby a person, and thus should, indeed must, have his/her right to life recognised and protected.

This makes clause 106 of the Bill, “**106 Act does not affect laws about termination of pregnancy**. 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 the more incomprehensible, indefensible, and it must be said, despicable.

No explanation is provided in either the Bill itself or in the Explanatory Notes as to why this incredible exception has been made. Indeed, the lack of explanation is effectively an admission that there can be no principled justification as to why human beings before birth

should have their right to life deliberately removed, thus abandoning them to death on request (the Termination of Pregnancy Act allows abortion up to 22 weeks on demand).

If a reasonable explanation were available then it would have been provided. Instead what we see here is an attempt to use the raw power of the State to simply strip human rights from one segment of humanity. **And this is in the context of a human rights bill that allegedly recognises the inherent dignity and worth of all human beings and their equal and inalienable rights!** This is no different to Alabama having a Human Rights Act that allows for the continuance of slavery.

The hypocrisy is breathtaking.

Up to this point only passing reference has been made to clause 26 (2) of the Bill, *“Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child’s best interests, because of being a child”*. This clause however only sharpens the point that the Bill is completely absurd and untenable. Clause 106 openly acknowledges that it is a “child”, albeit before being born, that is being deliberately abandoned and yet the drafters of the Bill have the nerve to say that “every child has the right, **without discrimination**, to the protection that is needed by the child”!!

Unbelievable.

The Members of this Committee must be able to see the incredible double standard that is being openly, and incredibly cynically, pushed in this Bill.

It seems that being allowed to end the life of a young child – abortion - is somehow of such absolute importance that the principles of consistency, integrity and compassion must be simply tossed aside in order to accommodate it.

Whatever positives this Bill may have in other regards, while clause 106 remains, this Bill, as a human rights Bill, is completely tainted with the stench of corruption and must be rejected.

We hope the Members of this Committee truly value the principles of consistency, integrity and compassion and thus remove clause 106 or else reject the Bill outright.

Part B

Clause 21 (2) Freedom of Expression of the Bill reads,

(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

The Explanatory Notes state that this clause has been drawn from Article 19 (2) of the ICCPR, which reads,

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The Members of the Committee would be well aware of the 150m exclusion zones around places where abortions are done that are part of the recently passed Termination of Pregnancy Act 2018.

Clause 21 (2) is a very worthwhile right but it is very difficult to reconcile *the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds* with the Termination of Pregnancy Act 2108 which allows for the fining and jailing of people who do the very thing that clause 21 (2) supposedly will protect!

Tasmania also has 150m exclusion zones around abortion clinics. I have personally been convicted and fined \$3 000 simply for standing near an abortion clinic in Hobart with a sign that read, “Everyone has the right to life, Article 3, Universal Declaration of Human Rights”.

Both Hon. Yvette D’Ath in her speech introducing the Bill and the Explanatory Notes to the Bill speak favourably of the Universal Declaration of Human Rights. Article 19 of the UDHR states:

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This is very similar to clause 21 (2) of the Bill and Article 19 (2) of the ICCPR.

Are we going to have a situation here in Queensland where people will be arrested, convicted, fined and jailed for promoting documents like the ICCPR and UDHR in public places in Queensland? (i.e. within 150m of abortion clinics?)

The Human Rights Bill 2018 and the Termination of Pregnancy Act 2018 are completely incompatible on the point of freedom of expression.

Conclusion

1. If the Human Rights Bill 2018, and indeed the Members of this Committee, are to have any credibility, then either clause 106 of the Bill must be removed or the Bill must be rejected.
2. The Human Rights Bill 2018 and the Termination of Pregnancy Act 2018 are completely incompatible on the point of freedom of expression.

Graham Preston



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(1) Expert Testimony Relating to Life's Beginning

In 1981, a United States Senate judiciary subcommittee received the following testimony from a collection of medical experts (Subcommittee on Separation of Powers to Senate Judiciary Committee S-158, Report, 97th Congress, 1st Session, 1981):

1. "It is incorrect to say that biological data cannot be decisive...It is scientifically correct to say that an individual human life begins at conception."

Professor Micheline Matthews-Roth
Harvard University Medical School

2. "I have learned from my earliest medical education that human life begins at the time of conception."

Dr. Alfred M. Bongioanni
Professor of Pediatrics and Obstetrics, University of Pennsylvania

3. "After fertilization has taken place a new human being has come into being. [It] is no longer a matter of taste or opinion...it is plain experimental evidence. Each individual has a very neat beginning, at conception."

Dr. Jerome LeJeune
Professor of Genetics, University of Descartes

4. "By all the criteria of modern molecular biology, life is present from the moment of conception."

Professor Hymie Gordon
Mayo Clinic

5. "The beginning of a single human life is from a biological point of view a simple and straightforward matter – the beginning is conception."

Dr. Watson A. Bowes
University of Colorado Medical School

The official Senate report reached this conclusion:

Physicians, biologists, and other scientists agree that conception marks the beginning of the life of a human being - a being that is alive and is a member of the human species. There is overwhelming agreement on this point in countless medical, biological, and scientific writings.

The American Medical Association (AMA) declared as far back as 1857 (referenced in the *Roe. vs. Wade* opinion) that "the independent and actual existence of the child before birth, as a living being" is a matter of objective science. They deplored the "popular ignorance...that the foetus is not alive till after the period of quickening."

Report, Subcommittee on Separation of Powers to Senate Judiciary Committee S-158, 97th Congress, 1st Session 1981, 7.