

**Proposed Queensland Human Rights Bill 2018 – Questions relating to how will it be enforced and what consequences will provide the necessary deterrent if violated?**

**Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000**

Dear Committee,

From my understanding the claimed purpose of the proposed Human Rights Bill is to provide all Queenslanders access to equal protection/recourse/remedy against Human Rights abuses? For this to occur this Bill should be inclusive to all sources of Human Right abuses and not exclude some offenders or be selective with options that can be abused. The proposed Bill has weak links and fails because what is proposed chooses to ignore likely conflicts of interests, adjudicator conflicts/complicity, allows non-transparency and removes/limits accountability which arguably can surely by definition support denials of Human Rights.

Does the proposed Bill rely on people to interpret Human Right abuses under legislation which will be unqualified, incapable or incompetent to do so – errs then relying on self-review or most matters unlikely to be voluntarily escalated for Supreme Court determination?

While Human Rights protection is long overdue, is this Bill designed to protect all Queensland citizens or the Government from its Public Sector Human Right abuses and provide means for nullifying or erasing complaints and for removing risks of compensation?

Surely to better ‘protect’ citizens the Bill requires real deterrents and meaningful consequences that apply to all offenders. I believe the wider public would expect no less.

Disturbingly, State legislation already exists that allows cases problematic to the Government to be buried away from Public scrutiny – is this Bill’s 2015 origin under the rhetoric of seeking Parliamentary “integrity, accountability during a hung parliament destined to become just another blotter or a clayton’s Human Rights Bill? I raise concern from a laypersons perspective, that within this proposed Human Rights Bill, are unsuitable Clauses taken from other Acts that are already actively abusing peoples’ Human Rights and being misused to provide secrecy and immunity. I am not alone in being able to demonstrate nothing has/is being done to rectify/stop those resulting abuses nor plug existing legislated loopholes that provide government self-protection or non-accountability when a State breaches its own laws or it turns a blind eye. Therefore, it is not unreasonable to predict the unnecessary optional discretions and exemptions found in existing legislations repeated in this proposed Human Rights Bill will again be abused and misused to dissolve complaints and hide matters from public scrutiny that most people would be appalled about. Proper Human Right protection with “dignity” is overdue. Too many State ‘blotters’ are already operating without creating another!

Ideally, abidance of UN international agreements (which are legally binding on the countries that ratify them) or introduction of a good Federal Human Rights Bill with powers over State abuses, including from those entities being excluded/given immunity from this proposed Queensland Human Rights Bill, would offer better protection. Those that do not breach

Human Rights or benefit from it should have concerns when real safeguards are excluded and also included exclusions that allow State Government exemptions.

Therefore, can we trust in the proposed Queensland Bill's compliance, implementation and processes? Will justice within legalised processes occur no matter the abuser? Will real provisions enabling accessibility to independent appeal/recourse for any errs along the way exist in practice?

Could Sections of this proposed Bill allow for further discrimination and ultimately limit the Bill's acceptance/effectiveness in protecting peoples' Human Rights? Should subjective clauses' wording be more definitive?

Reading this Proposed Human Rights Bill, as a layperson, I was/am alarmed at how many 'may'(s), exclusions and optional selectivity's allow for abuses. I therefore sought clarity re how this Bill in practice would operate/protect everyone equally. The LACSC directed me to the QAGD, which I assume prepared the Bill – I gained no clear understanding and was told if I have questions I could write a submission. I hope these questions are understood and not as confusing as the Bill is likely to be to the general public and those discriminated against; especially once legislated and integrated with other Acts or if Human Rights decisions need to be challenged.

I, like most people, support the principles of having Human Rights protection, however the lack of clarity or clear explanation re any appeal process raises concern that possible conflicts of interest, directly or indirectly, could mean Clauses, including 14, may not be met for some situations *"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."*

Will the selected 'decision makers' be legally and otherwise capable of adjudicating and addressing real concerns from the Public?

QCAT is being afforded a key legal role with 'immunity': while fine for some matters will its future determinations about Human Rights come with adequate expertise and safeguards? UN Convention on the Rights of Persons with Disabilities (CRPD) principles 'Article 12 – Equal recognition before the law' affirms the right of disabled persons to equal recognition before the law. Requiring the State to stop denying people their legal capacity and instead enable individuals to exercise their legal capacity by providing necessary support... (Australia ratified this convention and protocol – yet abuses it?)

I can relate to personal QCAT experiences where my mother, a then vulnerable elderly Queensland resident, so called 'Protected' Person, had her legal and Human Rights violated under QCAT without real means for remedy. QCAT's self review 'recourse', as relied upon by this Bill, has been demonstrated from many peoples' experiences; as at best unsafe or simply just a façade misused to avoid vulnerable people the viable means of recourse.

- Does this HR Bills Clauses 5(4), 9(4), 48(4b) exclude accountability for what could be areas where abuses of Human Rights can occur and does 49(1), 58(1) make any appeal unviable/impossible against those selectively excluded from this Bill?
- What meaningful means for equality in consequences apply to like breaches of a person's Human Rights?

Currently, litigation costs are beyond most peoples' reach. Will this Bill's 'costs' to individual's Human Rights be too great? In seeking lower Government financial cost options, inclusion of QCAT relies at best on the luck of the draw re adjudicator investigation and

decision-making? My limited experiences within QCAT process and decision-making included firstly a demonstration of proper qualified and informed protection of my mother's human and legal rights, as appropriate for a Queensland Protected person. Then at a later abhorrent contradicting 'hearing' sham; arguably unqualified decision makers orchestrated conflicting predetermined decisions and used that Act's Clauses to disregard key evidence. QCAT demonstrated Government complicity and conflict of interest can easily prevail over Human Rights and justice – allowing a 'Kangaroo Court' approach that robs a person's human and legal rights and more has no place in protection under this Bill. Better safeguards than currently exist are first needed. Unsafely and unwisely, much relies on the decision making Member's legal/expertise, ethics and understanding of the issues raised.

I therefore ask

- What legal and relevant experience re Human Rights issues will the proposed decision makers be required to have? Particularly where an opinion without considering evidence can nullify a complaint.
- Will this HR Bill and Clauses including 83, 84, 85 again, as QCAT did in my experiences, allow for a situation where a defendant/'victim' can have no representation, though unable to properly represent/protect themselves?
- Is it appropriate again for this Act in Clause 85, as QCAT does under other Acts, for final decisions to be made without reliance on or bound by the rules of evidence?
- Self review seldom works. Again, would QCAT's self review allow self-protection of bad process and decision making rather than ensure independent viable means for protection to those who may be wrongly impacted by QCAT decisions?

Hence, when I was told this week by the QAGD that QCAT re this HR Bill's process relies on self review re QCAT decisions, or the costly Court of Appeal, I was concerned believing better/affordable/accessible safeguards are essential if the claimed purpose of the HR Bill is to be met for the many, not just the few. Human Rights should not come only to those who can afford it.

- It remains unclear to me how in practice Clauses 51, 52, 53 and others involving the future Queensland Human Rights Commission's possible 'intervention' works/fits in with people needing Supreme Court determinations/limited legal power or if/when Appeals are sought against a Government entity?
- Will the future Commission's role effectively be limited to more of an educator rather than, as needed a protector? Will new Clauses be added so that conflicts of interest, against a complainant's Human Rights be prevented?
- Will the Human Rights Commission, like some other so called independent AGD Offices, be legislated into becoming just another 'blotter' for Government indiscretions or violations under Law?
- In seeking true Independent review what conditions need to be met and how are the likely high legal costs involving higher Courts required to be paid for?
- Isn't it a State/Federal Government's role to protect citizens from cultures where Human Rights abuse can/does prevail? Then when a State entity is the offender, will by design the cost of justice be forced outside of a victim's reach?
- Will this legislation contribute to further Lawyers' picnics?

Can the QAGD, if not already done, prepare for Parliament/Public scrutiny the legal timeline/process/decision making flow charts that provide answers that clarify how this Bill will in practice “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.*” I believe acceptance of this important Bill first requires better understanding of processes proposed and how it meets existing International expectations?

Also provide reasons that answer questions such as why the ‘Obligations on Public Entities’ are limited, and why Clauses including 58, 59, 60 protections are included?

Considering the above, what new amendments are necessary to reduce likely interpretation conflicts and complicity that could/would corrupt the intent of what is a much-needed Human Rights Bill compatible with protecting Human Rights? Will clarity be improved so that the public is able to interpret what is considered a Human Rights issue and who can be challenged? Will the AGD’s HR Commission be prepared to act on every Human Rights abuse whenever it occurs, even challenge sister government bodies to the full extent available to it and to seek more if appropriate?

A Human Right abuse is a Human Right abuse, no matter who the abuser. Why then is this Bill selective and allows discretion/flexibility; the need exists before legislation seals this Bill for public awareness to clearly define who is accountable in Queensland for Human Rights violations? Without viable and accessible process for everyone, the consequences for the same abuse will be different. I find it hard to see how is it possible to bring about positive Queensland wide changes in trust, attitudes/actions when violation of Human Rights in some can be exempt or protected.

Ideally, and arguably very important to this HR legislation; the Public ‘victim’ needs to understand how the Bill will apply to their Human Rights issues and what practical processes will be involved in addressing these plus consequences to offenders of the Act. For people to raise concerns the Act should be clear enough for the public to generally understand without going to a lawyer. We are led to believe ultimately it will be the Commissioner’s role to educate/advise/conciliate – but if wide discretion exists and exclusions to some public entities remain it appears the Commissioner with his reporting limitation and lack of powers will not as claimed ‘do all things that are necessary’. Again, if genuine, the Human Right of having the option of a viable/accessible independent appeal process should also apply particularly since the Bill by design can prematurely and wrongly shut down a complaint.

What I have raised here is simply a layperson’s concerns based on past experiences that could be repeated unless prevented: as this will overlap many other Acts it is critical for proper legal scrutiny to block legal loopholes before being proclaimed as Law. If the intent is that Human Rights are protected then why is it that consent is required in many clauses including Clauses 82(2), 83? From personal experiences QCAT has demonstrated that Clauses like 83(3) can be used to deny legal representation and ignore the expectations of international law. How can we be assured that in practice matters involving problematic cases where a State government department has conflicts of interest that inequality in legal representation won’t again leave complainants/victims without legal representation? Situations occur where when the State has control of a person’s assets, those assets are used by the State and/or denied access to for the ‘Protected’ Person’s own legal representation? Who will pay for the lawyers and Court costs justice requires should Human Rights abuses not be nullified, buried or resolved?

Surely evidence has a place in Human Rights cases? What is wrong with being bound by the rules of evidence? My QCAT experience demonstrates Clause 85, risks tabling of key evidence being denied or ignored when cogent evidence conflicts with a ‘predetermined’ intended solution?

I am thankful it is being recognised that universal Human Rights protection and other Australian mechanisms are currently inadequate and alternative recourse through at least a Queensland Bill is required.

The complexity of the proposed 2018 Human Rights Bill adds uncertainties to how it will 'work in practice' and if barriers to justice are necessary. Submissions based on peoples' experiences and future complaints should not need to rely on the HR Commissioner for basic interpretation of what is a Human Right violation and what recourse is legislated. What we don't need or want are integrated injustices, recourse out of reach of the masses or legal façades with weak links/limitations that could themselves be argued as Human Rights concerns. Surely it must be evident that some of this Bill's alleged 'bad Clauses', as found in other Acts, are being abused by Public entities for self-protection; optional abuses of intent or unjust processes without viable recourse must not exist in a Human Rights Bill?

Will many complainants of Human Rights abuses discover a dithering Bill, without certainty of acceptance or process and without viable means for enforcement; effectively resulting in a injustice where no consequences for significant proven Human Rights violations prevails?

I thank this Committee for considering both the benefits and risks I and others raise within our submissions; particularly when based on past experiences of Human Right abuses found to be without recourse in Queensland.

Queensland Human Rights Bill 2018 needs to be strong, fair, just, and equally binding among other things for all; including civil society, the judicial system and government; not just on paper but in processes encompassing protection, accountability, responsibility and legal consequences for Human Rights violations by all.

Australians, we Queenslanders included, demand a genuine Human Rights Bill not a "Clayton's HR Bill"!

Submission by:

Christopher Jenkinson

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