CHERISH LIFE QUEENSLAND INC.

SUBMISSION TO THE LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE ON THE

HUMAN RIGHTS BILL 2018

26 November, 2018

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Preamble

Cherish Life Queensland (CLQ) is grateful for the opportunity to offer a submission on the Human Rights Bill 2018 to the Legal Affairs and Community Safety Committee (Legal Committee hereafter).

CLQ is Queensland's oldest and largest pro-life advocacy group. Established in 1970, we have 14 branches throughout Queensland, and many thousands of supporters. Diverse, yet unified through the core belief that the lives of human beings are to be cherished and protected by law, from conception until natural death.

As a community we are particularly concerned that the Human Rights Bill falls short at extending any rights human rights to unborn human beings. This is discriminatory against the unborn and unscientific as it's an undeniable fact the unborn or preborn children are clearly human beings, and therefore should be afforded human rights.

If this Bill is not amended to extend the "right to life" to unborn human beings it will further solidify the gross injustice in our state that the unborn have no rights.

The Bill has **fatal structural flaws**:

1. Exclusion of unborn human beings in the foundation of all human rights - which is the "right to life".
2. No special provision to enable extra protection to people with special needs or vulnerabilities, i.e. the unborn, pregnant women, the disabled, and the elderly or infirm.
3. It weakens democracy, by effectively shifting power away from the people (via Parliament) to the state (via an unelected judiciary).
4. Judiciary appointments would no doubt be a function of the government's ideological framework and with that comes inherent bias.

There are also some **economic and legal concerns:**

1. It is expensive - almost $3 million over 4 years, and then $600,000 in running costs per year.
2. Judicial misinterpretation as we have seen in Victoria and the ACT.
3. Unintended adverse consequences – particularly against indigenous communities.
4. Inconsistent legislation across states – a Human Rights Act is best placed at the federal level.
5. There is a limitation of, not protection of, minority rights.
6. Such laws could be used to weaponise anti-discrimination laws against those with beliefs different or offensive to those in the human rights judiciary.

On human rights Bills, UQ Professor of Law Nicholas Aroney writes: "……charter of rights are irresponsible law making. Whatever you think the law should be on particular topics, the charter bears on them all, but very vaguely so, with entirely unpredictable results. Subtle differences in wording the charter will influence specific outcomes in particular cases, but no one knows exactly how much or in what direction. Advocates realise this and worry about it. But rather than legislate to address each matter separately, specifically, clearly and responsibly, the legislature retreats to the grand abstractions of a charter of rights and nobody knows what the result will be. Don't do it Queensland." This stern warning from an academic is worth noting.

Timing concerns - we note that just weeks after the passing of the Termination of Pregnancy Act, Queenslanders have been given less than a month to make submissions on this important Bill. Rushing a bill through Parliament deprives it of the scrutiny it deserves, particularly when it affects all individuals and institutions throughout the state.

It's our firm belief that any Human Rights Bill should extend to protect the rights of unborn human beings. To that end this Bill is completely deficient and could be a described as a partial human rights Bill at best.

We therefore humbly request that Legal Committee amend this Bill to extend the right to life to unborn human beings. If that is not done, we recommend that the Legal Committee firmly rejects this discriminatory Bill.

THE RIGHT TO LIFE (section 16)

Section 16: Every person has the right to life and has the right not to be arbitrarily deprived of life.

This provision, while encouraging for the pro-life community on face value, it is not what it seems. Given that the Termination of Pregnancy Bill in its passing entirely removed the legal right to life for unborn human beings, by effectively legalising abortion to birth in our state, it's simply not true that this Human Rights Bill in its current form affords *all* human beings the right to life.

Sadly the Bill only seeks to protect born people's right to life. It's highly discriminatory against unborn human beings to that extent it could be termed "bornist"[1].

We humbly request that section 16 "Right to Life" be changed to include a right to life for unborn or preborn human beings.

The term "right to life" colloquially refers to the notion that unborn human beings have a right to life; that is they have the right to a live birth (as opposed to being aborted). This term is typically used a pro-life context - an example would be the NSW pro-life lobby is named "Right to Life NSW". To use the term outside of this pro-life context in Australia is quite misleading and disingenuous. Indeed, using it in the context of the current Bill's content would be highly offensive to the pro-life community. If there is no change to the Bill to specifically extend rights to the unborn, a true short title of the Bill would be "Born Human Rights Bill" or "Post-Birth Human Rights Bill."

[1] A bornist or bornism is a form of discrimination or negative judgement against unborn human beings because of their pre-born status or location [in a woman's womb].

To deny the right to life of unborn human beings is to deny the foundation of all human rights. Sadly, domestic violence begins in the womb and this Bill in its current form does nothing to ensure a more peaceful Queensland. Indeed, it only helps to solidify the violent untruth that unborn human beings are not worthy of recognition or protection by law.

In solidifying, whether by intent or default, the Termination of Pregnancy Act's total denial of the right to life of unborn human beings, it is highly discriminatory against females. How? By legalising abortion on request up to 22 weeks gestation without a specific clause to exclude sex-selective abortion effectively legalised sex-selective abortion in Queensland, as women can find out the sex of their child much earlier than the 22 week gestation limits.

By reinforcing the precepts of the Termination of Pregnancy Bill, this Human Rights Bill is ignoring the very basis of all human rights.

RIGHT TO PUBLIC ASSEMBLY & FREEDOM OF ASSOCIATION (section 22)

Section 22: Every person has the right of peaceful assembly and freedom of association.

While understanding that in this context "public assembly" means the right to join an association and meet, this right has also been diminished for many in the pro-life community who are Christian by the recent passing of the Termination of Pregnancy Act.

Undemocratically, this right to public assembly has not extended to those in the pro-life movement who used to participate in 40 Days for Life[2]. As an assembly of peaceful like-minded people, they would gather outside abortion clinics and peacefully pray for abortion to end.

The passing of the Termination of Pregnancy Act has taken away their right to be part of a world-wide movement which meets outside abortion clinics. Arguably, it discriminates against Christians and other faiths who hold a belief in the sanctity of the unborn.

[2] https://40daysforlife.com/ 40 Days for Life is a global prayer and fasting movement for the unborn. There are 750,000 volunteers globally and 15,235 babies have been saved by the peaceful prayerful presence of this community. Volunteers meet outside abortion clinics and pray and fast 24/7 (on a roster) for 40 days for abortion to end. It is a peaceful assembly.

RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION OR BELIEF (section 20)

Section 20: Every person has the right to freedom of conscience.

This is a noble right, however it is a bogus right for medical staff in Queensland since the passing of the termination of pregnancy Bill, as doctors with a conscientious objection to abortion are now compelled to refer for abortion – and therefore are complicit in the outcome of an abortion.

May civil libertarians would be horrified at this human rights violation and rightly so.

It's horribly ironic that doctors with a conscientious objection to abortion must refer for abortion all in the name of "choice", yet the doctor gets no "choice" in this abortion supply-chain, even if in their professional medical opinion an abortion is not best for the woman's health. In removing full conscientious objection for doctors, nurses and pharmacists, the Queensland Government has created an abortion totalitarian regime.

While some doctors' objection to abortion is based on a medical understanding of unborn human development or simply on the Hippocratic Oath[3] -a vow some doctors take which include a commitment not to procure an abortion - others object because they practice a monotheistic [4] faith. Compelling doctors to refer for abortion against their religious beliefs is arguably a form of discrimination against someone because of their religion. This is completely unacceptable.

[3] https://www.nlm.nih.gov/hmd/greek/greek_oath.html The Hippocratic Oath includes "…I will not give a woman a pessary to cause an abortion."

[4] Christianity, Judaism and Islam are the three monotheist faiths – all hold a belief in the sanctity of life, including the unborn. Those practising these faiths are opposed to abortion.

RIGHT TO FREEDOM FROM TORTURE (section 17)

Section 17: A right to protection from torture and cruel, inhuman or degrading treatment

The Human Rights Bill contains a right to "protection from torture and cruel, inhuman or degrading treatment", yet the abortion the Termination of Pregnancy Act allows abortion up to birth with no requirement for pain relief for the unborn human being. There was no requirement for an unborn human being to be anesthetised prior to an abortion.

There is a body of medical and scientific evidence to suggest that the unborn face enormous pain during an abortion from as early as 16 weeks gestation. Yet this Government didn't see fit to have a requirement to anaesthetize the unborn before an abortion, so in effect it has legislated for torture, cruel and degrading treatment of unborn human beings at any stage of pregnancy.

The Legal Committee should at the very least, in the name of basic human rights, make a demand that the Termination of Pregnancy Bill have a requirement to anaesthetize unborn babies from at least 16 weeks gestation prior to a termination. Failure to do this would make this Bill complicit in the some of the worst (unborn) human rights abuses of our time.

Legal Concerns and Implications

Ineffectiveness of a Human Rights Act

The addition of another piece of legislation will not in itself serve to improve Queenslanders' enjoyment of their basic human rights. What is actually required is improvements in governmental policy and funding,[5] e.g. to the "under-resourced Privacy Commissioner".[6]

If there are gaps in current human rights protections, they are best addressed by specific legislation or policies.[7]

Judicial (Mis)interpretation

As in the ACT and Victoria, s48 of the Queensland Bill behoves courts to interpret legislation in a rights-compatible manner.[8] In both the ACT and Victoria, courts have become divided on judicial interpretation; this was particularly apparent in *Momcilovic v The Queen* (2011), where the 7 judges of the High Court had 3 different opinions on the applicability of the *Charter of Human Rights and Responsibilities* (2006).[9]

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5 *Inquiry into a possible Human Rights Act for Queensland*, Report No. 30, 55th Parliament, Legal Affairs and Community Safety Committee June 2016, p. xiii <https://www.parliament.qld.gov.au/documents/tableoffice/tabledpapers/2016/5516t1030.pdf>.

6 Josh Bavas, "Queenslanders will soon be protected under a Human Rights Act. Here's what that means for you", *ABC News*, 31 October 2018 <https://www.abc.net.au/news/2018-10-31/human-rights-act-queensland-parliament-brisbane/10448908>.

7 *Inquiry into a possible Human Rights Act for Queensland*, Report No. 30, 55th Parliament, Legal Affairs and Community Safety Committee June 2016, p. xviii <https://www.parliament.qld.gov.au/documents/tableoffice/tabledpapers/2016/5516t1030.pdf>.

8 George Williams and Daniel Reynolds, "A Human Rights Act for Queensland? Lessons from Recent Australian Experience", Alternative Law Journal 41(2) [2016] *UNSWLR* S42, p. 5 <https://www.austlii.edu.au/au/journals/UNSWLRS/2016/42.pdf>.

9 *Momcilovic v The Queen & Ors* [2011] HCA 34 <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2011/hca34-2011-09-08.pdf>.

The Queensland provision replicates the wording of the ACT and Victorian legislation, likely giving rise to similar uncertainty.

A statutory bill of rights transfers decision-making power to the unelected judiciary, while removing contentious political issues (e.g. religious freedom) from the robust parliamentary debate which they deserve.[10] Especially in cases of competing rights, it is just for a democratically-elected parliament to deliberate publicly and enact specific legislation accordingly. Enacting an overarching Human Rights Act with vague wording is an abrogation of legislative duty to promulgate clear laws.[11]

Unintended consequences

Amnesty International and Queensland lawyers have flagged that s33(3) and s30(2) may have adverse effects on children and youth in prisons; also, unlike the International Covenant on Civil and Political Rights, the Queensland bill fails to provide compensation for those wrongfully convicted. Both issues disproportionately affect Indigenous communities.[12]

Other segments of the community may seek to extend their rights – contrary to the public order – by appealing to the Bill of Rights, as bikies have already done.[13]

10 cf. Morgan Begg, quoted by Jared Owens, "Queensland Labor unveils Human Rights Act", *The Australian*, 31 October 2018 <https://www.theaustralian.com.au/national-affairs/state-politics/queensland-labor-unveils-human-rights-act/news-story/14437bda76c4f4f1fbb76c7e57871c83>.

11 Richard Ekins, "Human Rights and the Separation of Powers", *University of Queensland Law Journal* Vol 34(2) [2015], p. 225 <https://poseidon01.ssrn.com/delivery.php?ID=787119070001116030015123029094066068125005068013093026075075114088100087100100115085029055063104039010060024123006006094000101019036075005000014111028028124067127091006035123107064118021016097011119100123076068110003097107001075071090019094022090102&EXT=pdf>.

12 Ben Smee, "Queensland human rights bill has 'major flaws', advocates say", *The Guardian*, 23 November 2018 <https://www.theguardian.com/australia-news/2018/nov/23/queensland-human-rights-bill-has-major-flaws-advocates-say>.

13 Felicity Caldwell, "Bikies use government's own bill to protest association ban", *Brisbane Times*, 24 November 2018 <https://www.brisbanetimes.com.au/politics/queensland/bikies-use-

Inconsistent Legislation Across Australia

In response to a proposed Western Australia Human Rights Act in 2007, Labor Attorney-General Hon. Jim McGinty stated: "Ideally, human rights should be shared by all Australians and not be subject to change when you cross State borders. Human rights protection is an objective best pursued at a national level."[14]

Some agree that there is a case for an Australian Human Rights Act, seeing the adoption of different Human Rights legislation by various states and territories confusing and unnecessary.

Limitation, Not Protection, of Minority Rights

"The International Covenant on Civil and Political Rights 1966, which Australia has ratified, sets the international standard. For those rights that may be limited by State incursion, it permits only 'necessary' limitations. Contrary to this, the ACT Charter and the Victorian Charter, which Queenslanders are now asked to endorse, both draw the boundary much further into the heartland of an individual's rights, permitting 'reasonable' State incursion.

... the 'reasonable' standard offers a much shorter path to majoritarian rule than the test of 'necessity'. The ICCPR requires the State to demonstrate that its interests 'necessarily' require the desired limitation of minority rights."[15][cf. s8(b)]

government-s-own-bill-to-protest-association-ban-20181123-p50hux.html>.

14 *Inquiry into a possible Human Rights Act for Queensland*, Report No. 30, 55th Parliament, Legal Affairs and Community Safety Committee June 2016, p. xvi <https://www.parliament.qld.gov.au/documents/tableoffice/tabledpapers/2016/5516t1030.pdf>.

15 Mark Fowler, "A human rights charter: monster or liberator?", *The Spectator Australia*, 5 December 2016 <https://www.spectator.com.au/2016/12/human-rights-charter/>.

Economic Concerns

To implement is very expensive , $3 m over 4 years then $600,000 running costs per year is tax-payer money poorly spent given the likely ineffectiveness, shifting of power to the judiciary instead of elected MP and major structural flaws inherent in this Bill in its current state.

The money that could be saved by not proceeding with this reform would be better spent on other truly humanitarian issues that don't remove decision making power from elected government officials.

For instance, reinstating some of the almost 40 maternity and birthing clinics closed in regional areas by successive Queensland Labor governments over the past 24 years would be a good start.

APPENDIX

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