

Submission on Human Rights Bill 2018

Purpose

1. This document is a submission on the *Human Rights Bill 2018* (**Bill**) made to the Queensland Legislative Assembly's Legal Affairs and Community Safety Committee (**Committee**).

Summary of submission

2. The difficult business of government requires the balancing of competing rights, including human rights. In this business we all have a role, including the following:
 - (a) The Parliament, which is to seek to strike an appropriate balance between competing rights in the public interest and according to law.
 - (b) The executive, which is to implement the law and policy of the day.
 - (c) The general public, who are to ensure that the actions of the Parliament and executive are fair and reasonable, including by lobbying for change on the basis of a perceived breach of human rights or electing a new government to remedy the perceived breach.
 - (d) The judiciary, which is to ensure that the Parliament, executive and general public act according to law.
3. Given the way in which statutory bills of rights have been interpreted in other jurisdictions, the Bill amounts to an allocation by the Parliament to the judiciary of a number of the responsibilities of the Parliament, including the following:
 - (a) Responsibility for defining the extent of each human right.
 - (b) Responsibility for ensuring the appropriate balance is struck between competing human rights.
4. The allocation of such responsibilities to the judiciary by the Parliament of Queensland effectively removes the general public from its position in the business of government, given the doctrine of precedent and that the judiciary cannot be lobbied and is not elected.
5. The protection of human rights is therefore better retained as a function of the Parliament, to ensure the general public retains its involvement in the difficult business of government.
6. Should the Legislative Assembly of Queensland be concerned that its power may be exploited to abuse human rights, a more appropriate mechanism for protection of these rights consistent with the existing distribution of power would be the reintroduction of an upper house of the Queensland Parliament.
7. In relation to the specific matters provided for in the Bill, this submission considers the stated objects of the Bill and provides a brief discussion of:
 - (a) the requirement for legislative intervention to pursue or achieve the objects; and
 - (b) the ability of the Bill to achieve the objects.

Objects do not require legislation

Objects of the Bill

8. The stated objects of the Bill are as follows (see clause 3 of the Bill):
 - "(a) to protect and promote human rights; and

- (b) *to help build a culture in the Queensland public sector that respects and promotes human rights; and*
- (c) *to help promote a dialogue about the nature, meaning and scope of human rights."*

9. Each of these stated objects are considered below, however for ease of discussion they are not addressed in the order stated in the Bill.

Promote a dialogue about the nature, meaning and scope of human rights

- 10. Dialogue on legal issues is promoted by a number of means and takes place in a number of fora, including news outlets, journals, universities, seminars and Parliamentary debate.
- 11. Such dialogue does not require legislative intervention in order to be promoted; in fact such legislative intervention may detract from a dialogue about the nature, meaning and scope of human rights.
- 12. The Bill provides for the interpretation of human rights to be declared by the Supreme Court, which would bring an end to any debate as to the meaning of human rights.
- 13. Legislative intervention is therefore not required for this stated object, the Bill does not achieve the object and the enactment of the Bill would hinder this object.

Build a culture in the public service that respects human rights

- 14. The *Public Sector Ethics Act 1994 (PSEA)* relevantly states ethics principles which are declared to be fundamental to good public administration (see section 4 of the PSEA).
- 15. The PSEA also provides for codes of conduct, the purpose of which are to provide standards of conduct for the public service consistent with the ethics principles and values (see section 10 of the PSEA).
- 16. The PSEA and codes of conduct provide obligations for the conduct of public officials in accordance with the ethics principles and ethics values.
- 17. As all employees of public sector agencies are to comply with the PSEA and codes of conduct, the culture of the public service is built around the ethics principles and ethics values.
- 18. These principles and values are reflective of the role of the public service agencies as the implementation mechanism for the elected representatives of the people of Queensland (see sections 7, 8 and 9 of the PSEA).
- 19. It is therefore inappropriate for the public service agencies to be separately required to consider human rights in the performance of their duties, where the nature, meaning and scope of such rights are still the subject of debate (as acknowledged by clause 3(c) of the Bill).
- 20. The enactment of legislation for this stated object is therefore considered inappropriate and unnecessary.

Protect and promote human rights

- 21. Protecting and promoting human rights is an important and complex feature of modern society.

22. This complexity is exacerbated by the fact that "human rights" is a highly contentious term with a different meaning for everybody depending upon each individual's moral values, life experiences and cultural background.¹
23. The way in which this complex balance is pursued in Queensland is summarised in item 2, above.
24. This method of protecting human rights ensures that the public is involved in the determination of the scope of human rights and the particular way in which rights are protected.
25. By introducing a statutory bill of rights such as that proposed in the Bill, the Parliament will allocate responsibility to the unelected judiciary for determining the scope of human rights and whether relevant matters comply with these rights.
26. Such a determination cannot be changed or influenced by a member of the public, such that the general public will be removed from its position in protecting and promoting human rights, namely ensuring that the actions of the Parliament and executive are fair and reasonable, including by way of lobbying for change on the basis of a perceived breach of human rights or electing a new government to remedy the perceived breach.
27. The Bill is therefore not required to protect and promote human rights in Queensland and may in fact have the opposite effect, should the general public disagree with a determination of the judiciary.
28. Further, a number of the "human rights" are protected elsewhere in legislation and the Bill is therefore not required to pursue these objects.
29. The enactment of legislation for this stated object is therefore considered inappropriate and unnecessary and this stated object may be adversely affected by the Bill.
30. An alternative and more appropriate means of achieving this object would be the reintroduction of an upper house of the Queensland Parliament.

Submitter details

31. Thank you for the opportunity to make a submission to the Committee on the Bill. I am more than happy to further expand upon the matters stated in this submission, should this be required or requested.
32. This submission is made in my personal capacity, as a Senior Associate in one of Australia's leading law firms with significant experience advising public and private sector entities on government decision-making. My name and contact details are stated below.

Name	Luke Grayson
Mailing address	[REDACTED]
Email address	[REDACTED]
Daytime telephone number	[REDACTED]
Signature	

¹ In particular, the limits and applicability of clauses 20 (is a belief protected if it is inconsistent with other "human rights"?), 21 (does logical debate against the opinions of another constitute "interference" and, if not, what about illogical debate?) and 22(2) (what about offences under chapter 9A of the *Criminal Code Act 1899*?).