




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 31 October 2018

HUMAN RIGHTS BILL

Message from Governor

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.17 am): I present a message from His Excellency the Governor.

Mr SPEAKER: The message from His Excellency recommends the Human Rights Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

HUMAN RIGHTS BILL 2018

Constitution of Queensland 2001, section 68

I, PAUL de JERSEY AC, Governor, recommend to the Legislative Assembly a Bill intitled—

A Bill for an Act to respect, protect and promote human rights, and to amend this Act, the Anti-Discrimination Act 1991, the Corrective Services Act 2006, the Corrective Services Regulation 2017, the Disability Services Act 2006, the Family and Child Commission Act 2014, the Financial Accountability Act 2009, the Health Ombudsman Act 2013, the Industrial Relations Act 2016, the Industrial Relations (Tribunals) Rules 2011, the Information Privacy Act 2009, the Integrity Act 2009, the Ombudsman Act 2001, the Parliament of Queensland Act 2001, the Prostitution Regulation 2014, the Public Guardian Act 2014, the Public Sector Ethics Regulation 2010, the Public Service Act 2008, the Public Service Regulation 2018, the Queensland Civil and Administrative Tribunal Rules 2009, the Statutory Bodies Financial Arrangements Regulation 2007, the Statutory Instruments Act 1992 and the Youth Justice Act 1992 for particular purposes

GOVERNOR

Date: 31 October 2018

Tabled paper: Message, dated 31 October 2018, from His Excellency the Governor recommending the Human Rights Bill 2018 [\[1766\]](#).

Introduction

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.17 am): I present a bill for an act to respect, protect and promote human rights, and to amend this act, the Anti-Discrimination Act 1991, the Corrective Services Act 2006, the Corrective Services Regulation 2017, the Disability Services Act 2006, the Family and Child Commission Act 2014, the Financial Accountability Act 2009, the Health Ombudsman Act 2013, the Industrial Relations Act 2016, the Industrial Relations (Tribunals) Rules 2011, the Information Privacy Act 2009, the Integrity Act 2009, the Ombudsman Act 2001, the Parliament of Queensland Act 2001, the Prostitution Regulation 2014, the Public Guardian Act 2014, the Public Sector Ethics Regulation 2010, the Public Service Act 2008, the Public Service Regulation 2018, the Queensland Civil and Administrative Tribunal Rules 2009, the Statutory Bodies Financial Arrangements Regulation 2007, the Statutory Instruments Act 1992 and the

Youth Justice Act 1992 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Human Rights Bill 2018 [1767].

Tabled paper: Human Rights Bill 2018, explanatory notes [1768].

I am delighted to take this next step towards the protection of the human rights of Queenslanders with the introduction of the Human Rights Bill 2018. 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.

This Human Rights Bill is about changing the culture of the public sector by putting people first in all that we do. This is about a modern Queensland, a fair Queensland and a responsive Queensland. This bill was recommended by the Legal Affairs and Community Safety Committee government members in the report titled *Inquiry into a possible Human Rights Act for Queensland* tabled on 30 June 2016 and supported by the majority of submitters to the inquiry. It is also consistent with this government's 2017 commitment to the introduction of a human rights act for Queensland based on the Victorian Charter of Human Rights and Responsibilities Act 2006.

The development of human rights law in Queensland has a long history and goes back further than many may realise. Queensland was, notably, the first Australian state to move towards legislative protection for human rights in a bill introduced by Premier Frank Nicklin in 1959. Although that bill lapsed with the 1960 election, its introduction was consistent with an historical push for human rights protection by both conservative and non-conservative governments worldwide at that time.

More recently, the need for the legal protection of rights, including the rights of individuals to challenge government decisions and actions, was central to the Fitzgerald inquiry report in 1989. The Fitzgerald report led to the establishment of an Electoral and Administrative Review Commission, known as EARC, which also recommended that Queensland adopt a bill of rights. Although a bill of rights was not introduced as a result of the EARC report, this period was the start of many administrative and legislative reforms aimed at protecting our democratic system of government and the rights of individuals vis-à-vis government, including an independent crime and corruption watchdog and an independent Electoral Commission. This bill will continue that history of reforms.

In November 1991, the then Labor government introduced the Anti-Discrimination Bill 1991 to protect people in Queensland from unfair discrimination, sexual harassment and other objectionable conduct. For nearly three decades, the Anti-Discrimination Commission has performed the important function of promoting the understanding, acceptance and public discussion of human rights in this state. Under the bill, the ADCQ will be rebranded the Queensland Human Rights Commission to build upon this important role.

In keeping with our longstanding commitment to government accountability and ensuring that government functions are exercised in a principled way, this bill will form part of an existing framework of oversight mechanisms and administrative law obligations, such as the Right to Information Act 2009, the Information Privacy Act 2009, the Judicial Review Act 1991, the Ombudsman Act 2001, the Anti-Discrimination Act 1991 and the Crime and Corruption Act 2001. It will also mean that Queensland joins other common law and Commonwealth countries, such as Canada, the United Kingdom, New Zealand and South Africa, as well as Victoria and the Australian Capital Territory in the legislative protection of human rights.

The bill protects 23 human rights. These are primarily civil and political rights drawn from the International Covenant on Civil and Political Rights but also include two rights drawn from the International Covenant on Economic, Social and Cultural Rights and one from the Universal Declaration of Human Rights. The bill also explicitly recognises the special importance of human rights to the Aboriginal peoples and Torres Strait Islander peoples of Queensland as Australia's first people and their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters and coastal seas. It also recognises the particular significance of the right to self-determination to Aboriginal peoples and Torres Strait Islander peoples.

The primary aim of the bill is to ensure that 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. The term 'compatible with human rights' is used throughout the bill. It is a unifying concept that is central to many provisions. The bill provides that an act, decision or statutory provision is compatible with human rights if the act, decision or provision does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with clause 13. Therefore, the bill acknowledges that human rights are not absolute and may need to be balanced against the rights of others and public policy issues of significant importance.

Clause 13, the general limitations clause, sets out the factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable. While these factors are only a guide, they are intended to align generally with the principle of proportionality, a test applied by courts in many other jurisdictions to determine whether a limit on a right is justifiable. The bill aims to promote a discussion, or dialogue, about human rights between the three arms of government: the judiciary, the legislature and the executive.

Importantly, in this model parliament remains sovereign and may, if it wishes, intentionally pass legislation that is not compatible with the human rights in the bill. In this sense, the bill draws on the tradition of legislative protection of human rights associated with the United Kingdom rather than the United States Bill of Rights. This bill, once enacted, will be an ordinary act of parliament.

Part 3 of the bill sets out the application of human rights in Queensland to the parliament, the courts and the executive. Parliament will scrutinise all legislative proposals—bills and subordinate legislation—for compatibility with human rights. The bill requires all bills introduced into parliament to be accompanied by a statement of compatibility and statements of compatibility to state whether, in the opinion of the member who introduces the bill, the bill is compatible with human rights.

The bill also provides for parliament, in exceptional circumstances, to make an override declaration in relation to an act or a provision in an act. If an override declaration is made, to the extent of that declaration, the Human Rights Act does not apply to the act or provision. So far as is possible to do so, the courts and tribunals must interpret legislation in a way that is compatible with human rights.

The bill requires all statutory provisions, to the extent possible consistent with their purpose, to be interpreted in a way that is compatible with human rights and, if a statutory provision cannot be interpreted in a way that is compatible with human rights, the provision must to the extent possible consistent with its purpose be interpreted in a way that is most compatible with human rights. The bill also provides that the Supreme Court may, in a proceeding, make a declaration of incompatibility to the effect that the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights.

Public entities must act and make decisions in a way that is compatible with human rights. There are essentially two types of public entities: core public entities and functional public entities, although these are not terms that are used in the bill. Core public entities are entities that fall within the definition of 'public entity' at all times regardless of the functions they are performing. These include, for example, a government department or a Public Service employee. Functional public entities are entities that fall within the definition of 'public entity' only when they are performing public functions. The inclusion of functional public entities reflects the modern operation of government, where non-government entities, including non-government organisations, private companies and government owned corporations, are engaged in various ways in delivering services to the public on behalf of the government or another public entity. Examples of a functional public entity include a private company managing a prison, or a non-government organisation providing a public housing service. Registered providers of supports or a registered NDIS provider under the National Disability Insurance Scheme Act 2013 are also public entities when they are performing functions of a public nature in Queensland. The bill provides, with some exceptions, that it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights, or, in making a decision, to fail to give proper consideration to a human right relevant to the decision.

But, as in Victoria, there will be no stand-alone legal remedy for a contravention of this bill. Rather, the bill adopts an enforcement mechanism known as a piggyback cause of action. A contravention of the Human Rights Bill will not create a right to any new remedies. It will create a new ground of unlawfulness—that is, a breach of the Human Rights Bill will be unlawful. Where an applicant has an existing right to claim for a remedy on another independent ground of unlawfulness, then that person can piggyback the human rights claim onto that existing claim. The remedy is the one the person would have been entitled to anyway on the basis of the existing claim.

It should be noted this remedy is available even if the applicant is unsuccessful on the independent ground but is successful in respect of the claim of unlawfulness under the Human Rights Bill. Importantly, however, there is no right to monetary damages on the basis of a breach of the Human Rights Bill alone. What this means in practice is that, if a person believes that they have grounds for a claim of unlawfulness under the Human Rights Bill, they may only bring such a claim together with a cause of action on a different ground of unlawfulness if one exists in relation to the same act or decision, such as the right to seek judicial review. A person will be entitled to any remedy arising from the independent cause of action, except if it is damages, even if the person is successful on the human rights claim alone and not the other cause of action.

Litigation is not the focus of the dialogue model of human rights acts like this bill. The regulatory model for this bill favours discussion, awareness raising and education about human rights. Importantly, it is also about the everyday interactions of individuals with government. As I mentioned earlier, the Anti-Discrimination Commission of Queensland will be rebranded as the Queensland Human Rights Commission and will be responsible for promoting an understanding, an acceptance and a public discussion of human rights and performing a dispute resolution process for human rights complaints. The current Anti-Discrimination Commissioner, Mr Scott McDougall, who commenced as the new commissioner on 8 October 2018, will become the Human Rights Commissioner.

A dispute resolution function for the commission will complement the dialogue model of the bill. It will provide an accessible, independent and appropriate avenue for members of the community to raise human rights concerns with public entities with a view to reaching a practical resolution. When a person believes they are the subject of a public entity's failure to act compatibly with human rights, they may make a complaint to the relevant public entity. If the complaint cannot be resolved with the public entity, a person may then make a human rights complaint to the commission. The commission may try to informally resolve the complaint by discussing the matter with the complainant and the public entity or, if appropriate, attempt to resolve the complaint through conciliation. This can include compulsory conciliation.

As this bill represents a significant reform for Queensland, there is a requirement that the act be periodically independently reviewed to ensure its effective operation. The first review will consider the operation of the act up to 1 July 2023. A subsequent review will examine its operation from 2023 to 1 July 2027, or an earlier date at the discretion of the Attorney-General.

The bill also amends the Youth Justice Act 1992 and the Corrective Services Act 2006 so that other factors relevant to determining how to act or make a decision under these acts will apply in addition to the human rights considerations under the bill. The effect of these amendments is that an act or decision made under those acts, taking into consideration these additional factors, will not be unlawful under the bill only because these additional factors were considered. In relation to the Youth Justice Act, this approach is limited to decisions about whether to segregate accused from convicted children in youth detention centres as required by the right to humane treatment in detention. In relation to the Corrective Services Act, this will be limited to decisions relating to the segregation of convicted and non-convicted prisoners and the management of prisoners where it is not practicable for a prisoner to be provided with his or her own room. Whether these amendments are operating effectively will be a topic of the first review of the Human Rights Act.

The bill will commence on proclamation. To ensure a smooth transition, it is the government's intention that the bill commence in two stages. The first stage will be the rebranding and role of the Queensland Human Rights Commission in mid-2019 to allow them to commence their educative function and promotion of the act. The second stage will be the commencement of the balance of the bill, including the obligations on government departments, agencies and public entities, on 1 January 2020. It is incumbent upon each agency and entity to ensure, over the next year, that they are prepared for commencement.

This year marks the 70th anniversary of the Universal Declaration of Human Rights. Like the UDHR, Queensland's human rights act will be a standard of achievement to which we all—government and citizens—should aspire. It is about embedding human rights understanding in thinking about policy and in promoting them across our community. It is a statement of aspirations and principles, of the rights to which all human beings are inherently entitled. We must recognise them, we must respect them and we must do all we can to ensure them. There is a collective responsibility that is inherent in the proposition that all people are of equal value and all entitled to be treated equally. We must think about our actions and our relationships in the context of these fundamental human rights and build a proactive, respectful and compassionate culture.

I would like to recognise the important contribution of many of those in this parliament, previous parliaments and in the community who have advocated for this important reform for so long. That includes so many across the Labor Party over so many years, including many sitting in this chamber today. I note the presence of some very active advocates in our local community in the gallery for the bill's introduction. I acknowledge their tireless dedication to this cause. I make special mention of the former attorney-general Matt Foley. It is a pleasure that he is joining us here today for this momentous occasion. A human rights act is something we should be proud of. We should champion it. The Palaszczuk government certainly will. I can only hope that all governments in the future continue to champion this historic and important initiative. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.35 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Community Safety Committee

Madam DEPUTY SPEAKER (Ms McMillan): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.