Speech By

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MEMBER FOR MOGGILL

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HUMAN RIGHTS BILL

Dr ROWAN (Moggill—LNP) (12.55 pm): I rise to make a contribution on the Human Rights Bill 2018. Australia can count itself as a relatively young country. In our nation's history, and in particular since 118 years of federation, we have rightly earned our place as one of the world's most successful and stable democracies. Fundamental to this stability and success has been this nation's ongoing commitment to preserving our great democratic institutions and recognising the supreme importance of maintaining the separation of powers.

Since Federation, our nation—particularly right here in Queensland—has known great trials and tribulations, be it politically, socially or economically or even through natural disasters, which we have seen recently. I certainly take this opportunity to offer my support to the people of North Queensland, given the recent flood events and ongoing recovery efforts. Through every challenge we have faced, every important issue we have been forced to confront, our nation and our great state has been able to survive and thrive thanks to the great strength not just of its people but also of our democracy and, in turn, the strength in the separation of powers.

The legislation before us today presents the clearest threat to our democracy and parliamentary sovereignty since the election of the Palaszczuk Labor government. Already in this House, we have had to suffer the crippling of Queensland's democracy and democratic processes, as sitting week after sitting week elected members of parliament are silenced by a government that is hell-bent on guillotining debate. We only have to look to the last sitting week when I was talking on Labor's waste tax and I was cut off from making a contribution in relation to my electorate of Moggill. Each and every week, we must suffer the indignity of the Premier and the Leader of the House dictating exactly how long we can speak to legislation or, if we are lucky, whether we can speak at all. We are all elected to this House to represent our electorates—to speak on, debate, support or oppose legislation that affects our electorates.

Honourable members interjected.

Madam DEPUTY SPEAKER (Ms Pugh): Order! Members, there will be no cross-chamber chatter.

Dr ROWAN: We were not elected to be a rubber stamp for this arrogant government, nor were we elected to be a prop or a mere formality for this socialist Labor government. Not content with curtailing our democracy through the legislature, this government now seeks to go further and erode our separation of powers through the enacting of this bill.

From the outset, it must be stressed that to oppose this bill is not to oppose human rights. To oppose this legislation is not to be seen as opposing the rights and welfare of those with disabilities or the rights and self-determination of first nations people. It is a sad reflection that a civilised debate cannot be had on this bill and its many implications without the simplistic argument being peddled by many that to raise serious questions on this bill, or even to oppose it, is akin to questioning or denying human rights.

Government members interjected.

Dr ROWAN: I hear those opposite as they carry on. They do not like hearing—

Madam DEPUTY SPEAKER: Order! There is far too much cross-chamber chatter. Can we please listen to the contribution from the member for Moggill.

Dr ROWAN: As the former LNP senator for Queensland and former attorney-general, the Hon. George Brandis QC, stated in an address to James Cook University, the debate about a bill of rights 'should not be a debate about whether Australian citizens should enjoy the full range of civil, political and other rights which are the defining characteristic of modern liberal democracies. The reason why we need not have such a debate is that the issue is uncontroversial.'

All Australians, all Queenslanders, living freely in this great country should be afforded and enjoy their human rights. In fact, we would be hard pressed to find anyone who would believe otherwise. Instead, what this debate is about, as former senator Brandis succinctly put it, is means not ends. Are our rights better served through the enactment of a bill of rights than they are under existing law? Are our rights better served through the hampering of parliamentary sovereignty and empowering an unelected judiciary? I certainly acknowledge the submission of Professor Nicholas Aroney to the parliamentary committee. I also take this opportunity to acknowledge professor of law at the University of Queensland, James Allan, as I have attended a number of public lectures and presentations he has given in relation to opposing a human rights bill.

When he was the chief justice of Queensland, His Excellency the Hon. Paul de Jersey AC wrote 'A reflection on a bill of rights', in which he said the bill of rights debate 'is not so much about whether human rights should be protected, but about the best means of achieving that protection'. Simply put, while no-one on this side disputes the ends—ensuring and maintaining our human rights—it is the means, which, in this case, is the fracturing of the fundamental foundations of our state's democratic society.

Sitting suspended from 1.00 pm to 2.00 pm.

Dr ROWAN: Our state is by no means the first to consider implementing its own bill of rights. At the turn of this century New South Wales examined and rejected implementing its own bill of rights with the standing committee on law and justice at the time stating—

... it is ultimately against the public interest for Parliament to hand over primary responsibility for the protection of human rights to an unelected Judiciary who are not directly accountable to the community for the consequences of their decisions. The Committee believes an increased politicisation of the Judiciary, and particularly the judicial appointment process, is an inevitable consequence of the introduction of a Bill of Rights.

Former chief justice of the High Court of Australia and Queensland's own Sir Harry Gibbs has previously argued that if our courts were given the power to make determinations on social and economic policy, this would enable the temptation to appoint judges for their political or ideological beliefs and attitudes rather than their capacity for independence and legal ability. Similarly, former High Court chief justice Sir Gerard Brennan has previously argued that—

Over time, the function and significance of the third branch of Government will be substantially changed and the relationship between the courts and the political branches of Government will be altered.

With reference to the Human Rights Bill before the House, such cause for concern lies with the so-called dialogue model that this bill seeks to implement. The explanatory notes for this bill make clear—

Under this model each of the three arms of government the executive, the legislature (parliament) and the courts have a legitimate role to play, while the parliament maintains sovereignty.

It goes on—

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).

Such a model is fundamentally flawed and marks a significant deterioration in the foundations of our democracy and parliamentary sovereignty. Under this model, it is envisaged that when considering laws that have been enacted by the legislature, the courts will be empowered to make declarations of incompatibility, effectively telling the government of the day that it got it wrong and must go back and do it again. For some, this may be considered a dialogue, but really it is a one-way conversation weighted in favour of the courts, in favour of judges that are unelected and unaccountable to the broader Queensland public. If there is truly to be such a dialogue between the legislature and the judiciary, there would be times when elected representatives, upon being informed that the Supreme Court has made a ruling of incompatibility, can stand firm, disagree with the court's ruling and let the law stand. Anything short of that is merely the court forever overriding the will of the parliament, effectively ensuring that the views and the will of the judiciary prevail over elected representatives.

As the vast international and indeed domestic experience has shown, rulings of incompatibility have rarely, if ever, been made which have not resulted in the parliament of the day amending or repealing provisions. While in theory the dialogue model is attractive to many, in practice it would take, to paraphrase Sir Humphrey Appleby, a very courageous government and Attorney-General to reject any ruling of incompatibility. This is no way to hold a dialogue.

If there is to be a dialogue at all, then surely that dialogue must be between constituents and their elected representatives. We have all been sent here to represent our electorates, to be their voice. Parliamentarians are elected to enact the will of the electorate. This key cornerstone of our democracy is significantly diminished if that will can be turned on a dime through a ruling of the Supreme Court based on principles that are so broadly defined that even a full range of stakeholders have expressed their concern. That is why the Liberal National Party will be seeking to move amendments to remove the power of the court to make a declaration that a statutory provision cannot be interpreted in a way that is compatible with human rights. As I have said from the outset, what is at issue here is not the end but the means. We on this side of the House will always support laws and policies that protect Queensland's most vulnerable and which are supportive of the current laws and provisions in place that already offer such protection and remedies.

We are fortunate in this state and this country to already be well served through state and national legislation protecting our rights and freedoms. Our democracy is the envy of the world and that strength lies in its people—our constituents freely having their say and knowing that those elected are sent to act on their behalf and do so to enact laws that are representative of the collective will of the people.

I would like to thank my colleague the shadow Attorney-General, the member for Toowoomba South, David Janetzki MP, for his work in preparing and bringing these amendments to the House. For the sake of the sovereignty of this great parliament I ask that all representatives support the Liberal National Party's amendments. As a doctor, I certainly appreciate the importance of human rights. I know the medical profession more broadly appreciates that because as a society we must protect the vulnerable.

With that in mind, I wish to conclude by paying my respects and offering my condolences to the family of former Liberal Senator for Queensland the late Dr John Herron AO. Dr Herron made an enormous contribution to the medical profession as a surgeon and former AMA president, to public life, to his family, to the Liberal Party and as federal minister for Aboriginal and Torres Strait Islander affairs in the Howard government between 1996 and 2001. He was a mentor to me, a colleague, a true gentleman, an accomplished surgeon and a great Queenslander.