




Speech By
James Lister

MEMBER FOR SOUTHERN DOWNS

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HUMAN RIGHTS BILL

 **Mr LISTER** (Southern Downs—LNP) (4.45 pm): I rise to speak against the Human Rights Bill 2018. I am a member of the Legal Affairs and Community Safety Committee and I acknowledge my colleagues on the committee and, of course, as always, the staff, who do such a great job to support us.

I commend the shadow Attorney-General, the member for Toowoomba South, for his excellent speech earlier. Given that I have less time to speak than he had, there is not much I can add to the excellent observations he made regarding some of the absurdities that could well arise from this bill and how it represents a complete incompatibility with our long-established system of government in Queensland under the Westminster system. Vital and sacrosanct though human rights are, this bill is not the way to protect them. The LNP will be moving amendments to make sure that our long-established mechanisms for protecting human rights under our Westminster system are protected.

The purpose of the bill is to implement 23 human rights and bring about the following changes: the government must have regard to human rights principles when drafting laws; government agencies must have regard to the human rights of people they are dealing with, especially when making important decisions that affect their lives; courts must consider and uphold human rights when determining legal issues affecting people who appear before them; and any person can make a complaint to the newly named Human Rights Commissioner if they believe their human rights have been breached. I believe that all of those protections are available to Queenslanders now, without the need for this bill.

Our amendments propose to remove the power this bill confers on judges to declare legislation that we pass—that is, legislation that we as people representing our constituents in Queensland pass—to be incompatible with human rights. We believe that the declaration of incompatibility impairs the institutional integrity of the Supreme Court as it goes beyond the court's ordinary duty to only make observations in its judgements. The LNP does not agree with changing the role of the judiciary by making it a legislative requirement for the judiciary to refer a notice to the minister that one piece of legislation conflicts with another. The role of the judiciary, in our view, should remain as it is—that is, they express their concerns through their judgements.

The LNP is opposing this bill on the grounds that it is not the best way to protect human rights and because it is fundamentally undemocratic. The bill distorts the separation of powers by empowering judges and disempowering the legislature. We are basically giving away our job to the judiciary, which was not the intention of the founding fathers of our Federation or of this state.

A human rights act will fracture the fundamental foundations of Queensland's democracy by allowing judges to take on what has always been the role of the parliament and us as the people's representatives. We will not support a bill which will give judges the ability to ignore the intent of parliament and to scrutinise the intent of every piece of legislation that comes before it to determine whether it is inconsistent with a broad and fixed definition of human rights. We will not support a bill that

explicitly gives the judiciary the power to depart from the literal meaning of words in legislation, which creates an extraordinary power to effectively rewrite the law. This is why the LNP will be moving amendments.

There are other considerations as well which I can add to those that the shadow Attorney-General raised earlier. With regard to cost, we have no idea what the financial implications of this law would be.

Mr Stevens interjected.

Mr LISTER: I take that interjection from my honourable friend the member for Mermaid Beach. Yes, I do not think those opposite care and will think, 'We'll just chalk it up on the tab with the other \$83 billion.' In committee hearings I asked but had no success in getting an answer from representatives from the department of corrections as to their view on the likelihood that there may be increased costs to their department as a result of this bill. I would say that they are probably facing a very substantial increase in costs when prisoners start using this as a way to vexatiously tickle the legal system and make trouble. Perhaps the officer was wise not to answer the question because I suspect a full answer under the circumstances may not have been appreciated. What about the rights of victims? We hear about the rights of offenders throughout this, but there is no enshrinement of the rights of victims, which is an omission. This escapes no-one's notice thanks to the appearance of Teeshan Johnson, who gave a very fiery submission to us that the rights of the unborn are not referred to or protected in any way under this bill.

Queensland already has a robust system for protecting the vulnerable from poor democratic decision-making through the Ombudsman, the Public Service and of course through our judiciary. Queenslanders already have ample protection of their human rights embedded in Queensland and Commonwealth legislation and common law protections such as the freedoms of association, expression and belief—express or implied—and constitutional rights such as religious freedom, and these have been operating for a long time in Queensland. There is no need to duplicate that. Rights are already contained in legislation and case law and are thorough and have been developed over time to reflect the growing need to protect rights.

I turn to a very good written submission that was provided by professors Nicholas Aroney and Richard Ekins, two very eminent legal minds. Their objections to a statutory enshrinement of rights were quite persuasive I felt. To paraphrase their submission, they said that respect for human rights does not require enactment of a statutory charter of rights and that human rights are best protected by carefully drafting legislation which specifically addresses particular issues in a manner that gives certainty to all of those affected by the law. That is an important concept that they are talking about there. The uncertainty that this introduces is a bad thing. Secondly, they said that they invite judges to evaluate matters which are essentially political in character. I think it would be bad for Queensland to have members of our judiciary, which in future will be appointed with the expectation that they would have to work under this law, appointed—that is only a perception—because of a view they hold on certain matters that may bear on this law. That would be a bad thing because we need to have an independent judiciary, one without a skerrick of tainting by political affiliation or open political views. Paul de Jersey, our Governor, in his previous capacity as chief justice and an eminent jurist expressed similar concerns in a paper that he wrote some years ago concerning bills of rights.

Statutory charters of rights do not produce a dialogue, so once we are done here what happens to the debates which are supposed to shape our perception of what human rights are as they evolve? We are here to represent Queenslanders and do that job. Charters of rights are in essence a constitutional statute and it is a long accepted tradition in our system that such constitutional matters should be bipartisan if they are to proceed, and we do not have a bipartisan position on this bill. Previous Labor governments have not gone here and this bill seems to accompany the progressive march of Queensland Labor to the left, towards activism and symbolism and away from practicalities—the sorts of things we would have seen from premiers like Goss and Beattie.

Mr Stevens: What happened to the AWU?

Mr LISTER: What did happen to the AWU? I take that interjection. There are a number of serious concerns that we have around this bill. As I said, we will be moving amendments which I will be supporting. Other than that, I do not commend this bill to the House.