Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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HUMAN RIGHTS BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.57 pm): I move—

That the bill be now read a second time.

On 31 October 2018, the Human Rights Bill was introduced to parliament and was referred to the Legal Affairs and Community Safety Committee. The committee has tabled its report, making one recommendation: that the bill be passed. The bill before the House demonstrates the Palaszczuk government's commitment to a better Queensland—a modern, fair and responsive Queensland. This is our commitment to making sure that we put people first in all that we do: in our actions, in our decisions and in our interactions with one another.

In 2016, the Legal Affairs and Community Safety Committee completed a seven-month inquiry into whether it was appropriate and desirable to legislate for a human rights act in Queensland. In 2017, after considering the evidence and findings from the committee's inquiry, the Palaszczuk government committed to the introduction of a human rights act for Queensland modelled on the Victorian Charter of Human Rights and Responsibilities Act 2006. In 2018, we delivered on that commitment by introducing the bill that we debate in this House today.

The committee received over 280 submissions from stakeholders and members of the public and held public hearings, hearing oral submissions and evidence from over 20 stakeholder groups and individuals. The committee, including both government and non-government members, noted the overwhelming support for the bill from the vast majority of submitters.

The bill will ensure that human rights are a key consideration in public sector decision-making and in the development of policy and legislation in Queensland. In doing this, the bill facilitates a discussion, or dialogue, about human rights within and between the three arms of government: the executive, the legislature and the judiciary. Each has an important role to play.

The majority of submissions supported the dialogue model of the bill, which follows the example of various other jurisdictions in legislating for human rights protections, including Victoria, the ACT, the United Kingdom and New Zealand. The bill before the House builds on a wealth of experience from those jurisdictions with human rights legislation and is tailored to our system of government, maintaining the sovereignty of the parliament. The bill provides a consolidated statutory protection of human rights recognised under international law—protecting 23 rights drawn primarily from the International Covenant on Civil and Political Rights.

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (4.01 pm), continuing: The bill provides a consolidated statutory protection of human rights recognised under international law—protecting 23 rights, drawn primarily from the International Covenant on Civil and Political Rights. The bill also includes cultural rights, both for Aboriginal and Torres Strait Islander people and more broadly, recognising our culturally and linguistically diverse communities.

The protection of civil and political rights is often the first step in legislating human rights protections, and thus equivalent legislation in other jurisdictions generally includes a similar selection of those rights enumerated in the bill. While those examples provided a good base in that regard, this bill also goes beyond other jurisdictions by incorporating two rights from the International Covenant on Economic, Social and Cultural Rights—the right to health services and the right to education. The first review of the operation of the act will occur as soon as practicable after 1 July 2023 and will include consideration of whether additional human rights should be included under the act.

The bill will impose obligations on public entities to act and make decisions in a way that is compatible with human rights. Clause 9 sets out the definition of 'public entity' under the bill, which includes entities that could be understood as core public entities—for example, government departments, statutory bodies and local government—and entities whose functions are or include functions of a public nature, but only when that entity is performing those public nature functions on behalf of the state.

The bill does not bind private corporations that may perform functions of a public nature but are not doing so on behalf of the state. For example, the delivery of education services by non-state schools would not be captured within the definition of public entity on the basis that, while a non-state school may arguably be performing a public function, it is not doing so on behalf of the state. This approach is consistent with the Victorian charter and reflects the position that parents have a right to choose to send their children to privately operated non-state schools. State schools are clearly captured by the definition and as public entities state schools—and decisions made by principals in state schools—will need to comply with the obligations imposed by the bill.

The bill also makes it clear that registered providers of supports or registered National Disability Insurance Scheme providers are public entities when they are performing their functions as a registered provider under the Commonwealth NDIS Act 2013 in Queensland. This means that registered providers will be required to comply with the human rights obligations on public entities when they are providing publicly funded services to participants in the NDIS in Queensland.

The specific inclusion of registered providers is necessary to ensure coverage of this type of service delivery traditionally delivered by the state as Queensland transitions to the new national scheme. As in other jurisdictions, the particular characteristics of the entity in question, its relationship with the state government and the nature of its functions will be determinative as to whether it is a public entity for the purposes of the bill.

Where it is necessary for certainty, the bill provides a facility whereby an entity can be prescribed as either a public entity or not a public entity for the purposes of the bill. The application of the bill will be monitored, including by the Queensland Human Rights Commission, and if issues arise they can be considered in the first review of the act under the terms of the bill.

The intention of this bill is to put human rights at the centre of public sector decision-making and to establish a mechanism whereby individuals aggrieved by decisions of public entities may have their issues resolved in a way that is accessible and focused on practical outcomes. There is no stand-alone legal course of action created by the bill, although a claim of unlawfulness under the Human Rights Act may be attached or piggybacked to an independent claim. This reflects a sensible and measured approach to introducing a human rights framework into the Queensland public sector landscape.

This approach is consistent with the Victorian charter and the dialogue model adopted by the bill, which promotes discussion, awareness raising and education to encourage compliance with human rights rather than a strong enforcement and compliance model. It is also consistent with the position the Palaszczuk government took to the people of Queensland. I also note that the committee considered this was in keeping with the dialogue model utilised by the bill and that the bill provides a sufficiently effective mechanism to address grievances.

This leads to the overwhelming support noted by the committee for the transformation of the Anti-Discrimination Commission into the Queensland Human Rights Commission, the QHRC, along with their new functions to support the proposed Human Rights Act. The QHRC will play an important role in promoting the understanding, acceptance and public discussion of human rights in Queensland, including educating and informing the community about human rights and the act. This function will be the first across Australian human rights jurisdictions, based on the learnings from the Ombudsman's report in Victoria.

The QHRC's complaints conciliation role was supported by the majority of submitters to the committee who welcomed the provision of an accessible, affordable and effective complaints mechanism that the bill provides. Should a complaint not be resolved by the QHRC, there are a number of actions the QHRC may take that will encourage public entities to ensure human rights compliance. For example, if a complaint cannot be resolved, the commissioner must prepare a report for the

respondent and complainant which may include details of the actions the respondent should take to ensure its actions are compatible with human rights. Information, not including personal information, from this report may be published. The commissioner will also report on the outcome of complaints in the commissioner's annual report.

Courts and tribunals will play an important role under the bill in interpreting statutory provisions, to the extent possible consistent with their purpose, in a way that is compatible with human rights. The government has achieved the correct balance. The interpretative provision at clause 48 has been very carefully drafted in light of experience from other jurisdictions and is intended to avoid a strong remedial approach that would facilitate a legislative role by the courts. The emphasis on giving effect to the legislative purpose in interpretation means that the provision does not authorise a court to depart from parliament's intention.

If the Supreme Court or Court of Appeal is unable to interpret a statutory provision compatibly with human rights then it may issue a declaration of incompatibility under clause 53. Importantly, any declaration made by the court does not affect the validity of the law with which it is concerned, but instead triggers consideration of the relevant statutory provision by the minister, portfolio committee and parliament.

I note amendments circulated by the shadow Attorney-General seek to remove the powers and role of the courts altogether, including the ability to issue a declaration of incompatibility. This would mean that our legislation would be inferior to other charters in other jurisdictions and would not allow proper scrutiny of our laws. If the opposition were to understand this bill properly, they would clearly see that this bill does not infringe on the separation of powers or the independence of the courts but importantly allows the courts to decide matters where they are piggybacked in relation to an existing claim that does allow for the legislation to be considered and scrutinised, but still ultimate power rests with the parliament as to whether that legislation should be changed in the future. We believe this is the appropriate balance going forward.

The bill aims to ensure that consideration of human rights is an integral part of the development of legislation. When bills are introduced into parliament by any member, government or non-government, they must be accompanied by a statement of compatibility which assesses the human rights impact of the legislation. Portfolio committees will also have a complementary role in scrutinising legislation, adding another dimension of scrutiny to their existing role.

The facility in the bill for parliament to make an override declaration is consistent with the Victorian charter and, along with the statement of compatibility, ensures that transparency and accountability is maintained throughout parliamentary processes. When it comes to crime and, importantly, victims, keeping our community safe is a priority for the Palaszczuk government. This is reflected in a number of government initiatives including the suite of legislative and administrative reforms arising out of the *Not now, not ever* report of the Special Taskforce on Domestic and Family Violence in Queensland and the work arising out of the Queensland government's response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

Some submissions were concerned that the bill focuses too much on the rights of defendants to criminal charges and that explicit rights for victims of crime should be articulated. This particular bill, however, is not just the best vehicle for that commitment. This bill does not privilege or elevate the rights of criminal defendants over the rights of victims in the criminal process. Rather, the government explicitly delivered on this commitment with the introduction in 2016 and passage of the Victims of Crime and Other Legislation Amendment Act 2017.

Human rights in the bill are not absolute. The general limitations provision, clause 13, recognises that human rights may be subject to reasonable and demonstrably justifiable limits. Implied legitimate reasons for limiting human rights, as drawn from human rights jurisprudence, include community safety and the protection of the rights of others including, for example, children and victims of domestic violence.

Clause 12 of the bill also clarifies that the human rights in the bill are in addition to other rights and freedoms included in other laws, meaning that victims' rights that are contained in other sources of law will continue to apply. In this regard, the committee noted the victims' rights charter in the Victims of Crime Assistance Act 2009 and the existing complaints mechanism that is available under the victims' rights charter, as I referred to earlier.

The consequential amendments to the Youth Justice Act 1992 and the Corrective Services Act 2006 are intended to provide clarity and guidance to decision-makers under those acts about the relevant factors in making certain decisions. The amendments mean that, just because those additional factors have been considered, the decision or act will not be unlawful for the purposes of the Human

Rights Act. Importantly, the amendments do not prevent a person from making a complaint to the QHRC or attaching the ground of unlawfulness under the Human Rights Act to an independent claim as a piggyback action.

A number of submissions raised concerns about the inclusion of these consequential amendments in the bill. Clause 95(4) requires that, at the time of the first review of the act, consideration must specifically be given to whether the amendments are operating effectively or whether further or different provision should be made for the interrelationship between the Youth Justice Act, Corrective Services Act and Human Rights Act.

It was pleasing to read in their statement of reservation that opposition members of the committee recognised the strong support for the bill and the pressing need to offer our community's most vulnerable as much legal protection as possible. In light of their commitment to the objectives of the bill, I would like to address a number of other issues that were raised in the statement.

The statement of reservation notes a concern as to whether the bill 'appropriately adds any additional substantive legal protection' for those who are vulnerable in our community. In response to this concern, I would point those opposite to the multitude of submissions to the committee that explained exactly how the bill will do just that. It is true that the rights protected by the bill are the subject of international treaties to which Australia is a party and in many cases they are also recognised common law rights, but their protection and access to remedies where those rights are breached is currently partial and fragmented. I do find it surprising that in a statement of reservation from the opposition they talk about whether there is substantial legal protection, yet the amendments circulated seek to remove any legal scrutiny in relation to statutes that are passed by this parliament.

The bill delivers a consolidated statutory protection of selected human rights, facilitating a more transparent and systematic examination by government of how our laws, decisions and actions impact on those rights, whilst providing a meaningful and accessible avenue for members of the community to raise human rights concerns with public entities with a view to reaching a practical resolution.

Stephen Keim SC, barrister and member of the Criminal Law Committee of the Bar Association Queensland, summed it up nicely in his evidence before the committee. What the Human Rights Bill does is 'provide to the most powerless among us and the most disadvantaged among us—who are probably more than most of us very, very dependent on government services—with an option to look after themselves, to complain, to have themselves treated properly and decently in accordance with human rights'. That is the substantive legal protection that this bill offers, and it is so very important.

Further, experience from Victoria and the ACT, which both have similar legislative frameworks, does not indicate a misuse of the rights in the bill or an explosion of frivolous complaints. The High Court's decision in the case of Momcilovic v the Queen is authority for the proposition that the Victorian Charter of Human Rights and Responsibilities Act 2006, the model upon which this bill is based, is valid, rejecting suggestions that it gives courts some type of remedial legislative power or law-making function that is inconsistent with the judicial function of courts.

More importantly, feedback from human rights advocates in Victoria have stated that they have witnessed positive change for the most vulnerable over the years since the Victorian charter was introduced more than 10 years ago. It is as simple as putting people first in everything that we do. If the opposition are truly committed to the protection of the most vulnerable in our community then they will support this bill in its passage through the House.

The issues dealt with by the committee throughout their inquiry and in their report are complex and challenging. I thank the committee members for their thorough and thoughtful consideration of the bill. I would also like to thank the stakeholders who have advocated for this bill for many years: without your tireless work we would not be where we are today. I understand that some of these people may be joining us in the gallery over the next two days for this debate. I welcome them and I thank them for their advocacy and hard work over so many years.

I was encouraged and moved by the many written and oral submissions given to both inquiries—from individuals who shared their personal stories and aspirations of what this bill would mean for them to the organisations and community service providers that work tirelessly to support and advocate for our most vulnerable Queenslanders. Thank you for sharing your views and experiences. They embody what this bill is about: recognising the equal and inalienable human rights of all persons that are essential in a democratic and inclusive society and doing all we can as a government and as a community to protect them. I commend the bill to the House.