

**THE HONOURABLE MATT FOLEY**

B.A., B.S.W., LL.B(HONS)

BARRISTER

18 April 2016

The Research Director

Legal Affairs and Community Safety Committee

Parliament House

Brisbane QLD 400

Dear Research Director

**Human Rights Inquiry**

I support the introduction of a Human Rights Act for Queensland.

This submission is structured along the lines of the inquiry terms of reference directed by the Legislative Assembly on 3 December 2015.

- 1. That the Legal Affairs and Community Safety Committee inquire into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.**

The Queensland Parliament has yet to make a comprehensive legislative statement of the human rights of Queenslanders. This bespeaks a fundamental weakness in our polity.

After the catastrophe of World War II the nations of the world came together to make *The Universal Declaration of Human Rights*. Article 1 provides:

*"All human beings are born free and equal in dignity and rights. They are endowed with reason and should act towards one another in a spirit of brotherhood."*

ATKIN CHAMBERS  
LEVEL 19 239 GEORGE STREET  
BRISBANE QLD 4000

PHONE: (07) 3012 9665 FAX: (07) 3210 6287

PO BOX 12184 GEORGE STREET POST SHOP  
BRISBANE QLD 4003

Liability limited by a scheme approved under Professional Standards Legislation

A Human Rights Act would operate not merely to protect the powerless but to guide the powerful to act in a spirit of brotherhood and sisterhood towards our fellow citizens.

A Human Rights Act can both protect and inspire.

**2. That, in undertaking the inquiry, the committee consider:**

- (a) the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms;**
  - (b) the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally;**
  - (c) the costs and benefits of adopting a HR Act (including financial, legal, social and otherwise); and**
- previous and current reviews and inquiries (in Australia and internationally) on the issue of human rights legislation.**

Some current Queensland laws have shown effectiveness in protecting human rights, including the following:

- In 1922 Queensland under the Theodore Government became the first jurisdiction in the British Empire to abolish the death penalty. (This followed the abolition of the Legislative Council which, far from being a protector of human rights, had steadfastly opposed this reform.)
- *Legislative Standards Act 1992* - Section 4 requires that legislation have sufficient regard to fundamental legislative principles, including the rights and liberties of individuals and the institution of Parliament. This Act gives a critical role to Parliamentary Committees to scrutinise Bills.
- *Child Protection Act 1999* - Schedule 1 provides for a *Charter of Rights for a Child in Care*. Section 74 requires the chief executive to ensure the charter is complied with for a child in the care of the State.
- *Guardianship and Administration Act 2000* – Schedule 1 sets out *Principles for adults with impaired capacity*. Section 11 imposes a statutory duty on persons exercising power under the Act for any matter (e.g. regarding property or health matters) in relation to an adult with impaired capacity.

These laws could be improved by an over-arching legislative statement of rights in a Human Rights Act.

Human rights legislation in Victoria and the ACT has proved beneficial. It has disproved the alarmist predictions of those opposed to human rights legislation. The sky has not fallen in.

In August 1993 the Electoral and Administrative Review Commission (EARC) presented a *Report on Review of the Preservation and enhancement of individuals' rights and freedoms*. In that report EARC recommended that Queensland should adopt a bill of rights. In November 1998 the Legal, Constitutional and Administrative Review Committee (LCARC) rejected EARC's report and recommended against a Bill of

Rights. In so doing, LCARC made an egregious error. That LCARC recommendation should no longer be relied on. The decision by the Government and the Parliament to refer this matter on 3 December 2015 to this Parliamentary Committee presents a golden opportunity to revisit this vital issue afresh.

The Commonwealth Government's review on the need for human rights laws, chaired by esteemed barrister, Father Frank Brennan SJ, presented a powerful case for the adoption of Commonwealth human rights legislation and evidenced broad community support for such a course.

**3. That, if the committee decides it would be appropriate and desirable to legislate for a HR Act in Queensland, the committee consider:**

- a. the objectives of the legislation and rights to be protected;**
- b. how the legislation would apply to: the making of laws, courts and tribunals, public authorities and other entities;**
- c. the implications of laws and decisions not being consistent with the legislation;**
- d. the implications of the legislation for existing statutory complaints processes; and**
- e. the functions and responsibilities under the legislation.**

In general terms the objectives of human rights legislation for Queensland and the rights to be protected thereunder should follow the models established in Victoria and the ACT, subject however to some important lessons to be learned, as outlined below.

The lessons to be learned from the experience of human rights legislation in Victoria and the ACT are elegantly summarised in the submission dated 11 March 2016 to this Parliamentary Committee by Professor George Williams AO and Daniel Reynolds of the Gilbert and Tobin Centre of Public Law, UNSW. I respectfully adopt their analysis and their recommendation that any Queensland human rights law should:

- Provide a stand-alone cause of action;
- Ensure that a parliamentary committee charged with a scrutiny function is empowered to scrutinise all kinds of legislation, and is given enough time to do so; and
- Contain a clear judicial interpretive provision.

I am available to give evidence in person and to be questioned before the Committee in support of the above submissions.

With compliments



Matt Foley