



18 April 2016

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

Dear Sir/Madam

Thank you for the opportunity to comment on the possibility of enacting a Human Rights Act for Queensland.

I have completed a check list published on the web at the following site - www.humanrights4qld.com.au. This is attached. I am adding to this by detailing why I believe property rights should be included in the legislation.

I have recently responded to documents published by the Department of Infrastructure Local Government and Planning on the proposed Planning Bill 2015. That experience has demonstrated to me how important it is to have property rights included in Human Rights legislation because it has made me aware of how powerless ordinary people will be when it comes to having a say in what happens in their backyard and neighbourhood.

The current Chief Justice of the High Court outlined the following concerns about decision making processes when it comes to land use planning when he addressed the Planning Institute of Australia, National Congress on the subject of Property Planning and Human Rights:

"The process of the decision making should be fair — this is a central requirement of any form of justice, administrative or otherwise. Fairness, and in particular (P9) procedural fairness, is not an optional moral extra. It is linked to the requirements of lawfulness and rationality. The decision-maker should not be distracted, in assessing the evidence, making findings of fact or exercising discretion, by any actual bias which may also amount to giving effect to improper purposes. Nor should the decision-maker be handicapped by the absence of information which could have been provided by persons affected had they been given an opportunity to make a submission or comment on or to rebut adverse information before the decision-maker. The decision-maker should also avoid the appearance of bias which can undermine confidence in the integrity of the process. Pre-judgment or affiliations with interested parties can give rise to the appearance of bias. "(Canberra, 25 March, 2013, P9).

The development of Queensland planning legislation seems to be an unfair procedure because the Department of Planning consulted for almost two years with

major professional interest groups and local authorities involved in the land use planning area before the community was given the opportunity to review proposed planning laws and associated regulatory documents. This issue was mentioned in the report to Parliament published on the website of the Parliamentary Infrastructure and natural Resources Committee -Report No. 23, 55th Parliament (April 2016).

That proposed planning legislation appears, at the moment, to be initiating a planning process whereby major changes can be introduced into neighbourhoods without people having a say about what is happening in their local area. The planning process will allow almost 95% of development approval processes in Brisbane alone to be code assessable. The proposed legislation includes a presumption for code assessable development to be compliant with the planning benchmarks of any planning scheme. This allows for a great deal of discretion on the part of any development assessment manager.

Code assessable developments are not publicly notifiable and this puts further barriers in front of people having a say in the kind of developments which will be happening in their local area. The proposed legislation also includes the possibility for decision makers to hand out exemption certificates which will allow the development assessment manager to increase the height and mass of buildings. This decision is not appealable.

I have studied cases which have been heard before the International Court of Human Rights based on the European Convention of Human Rights based on the following rights:

“Article 1 of Protocol No. 1, which guarantees the right to property, provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

The cases which I studied ensured that people's natural rights were protected in terms of amenity and privacy so that people were not deprived of natural light and views and were protected from people being able to overlook their private spaces.

People were afforded natural justice so that planning laws were not able to be changed to deprive people of their amenity and privacy.

During my studies for professional qualifications, I became aware of a situation in Queensland where laws were changed at midnight to prevent people from being able to go to court to have their objections heard over the redevelopment of Suncorp stadium. This action might have been able to be challenged if property rights were included in human rights legislation.

Robert French CJ (High Court) also made the point in the presentation referred to above and referring to planning decisions:

The decisions should be explained intelligibly — generally by the provision of reasons so that persons affected by the decision, and perhaps the wider community, will know why it has been made. The provision of reasons for administrative decisions is not a requirement of the common law. However, it is often found in statutes conferring decision-making power or in administrative or judicial review statutes. Generally speaking, it is a good idea. Absent intelligibility in the decision, the first three standards of lawfulness, rationality and fairness may be of diminished practical effect because the capacity to judge compliance with them and to seek review will be compromised. (ibid P9)

Currently in Brisbane and particularly the western suburbs, there are decisions being made about heritage listed buildings and sites – Customs House, Toowong Memorial Park, the Enoggera Reservoir and Mt Coot-tha Forest Park. The State Assessment Referral Agency is responsible for the approval of development on these sites. There does not seem to be a process whereby the assessment of development applications for these sites is carried out in an open and transparent way unless they end up in Court as has happened with the Customs House decision.

Regarding the openness and transparency of planning decision-making, I would support the suggestion of the Queensland Environmental Defender's Office that a Human Rights Act:

“... would help to ensure that the Government gives appropriate consideration to the rights of all Queenslanders to transparency and accountability in governance, through ensuring rights such as the right to access to information, such as monitoring data, or the right to have a person's or groups concern's heard with respect to development proposals that might affect them.”

I also think that it is important that a Human Rights Bill should include the community's rights to live in a sustainable ecosystem, and to have climate change addressed instead of being ignored. The author Bill Mc Kibben wrote about climate change issues in a week-end paper:

“Right now, the impacts the Paris accord is designed to stop are unfolding at a terrifying rate. Record-breaking temperatures robbed the Arctic of its winter. The Great Barrier Reef is perishing in front of our eyes. February was the hottest month recorded to date. Last year bushfires in Western Australia raged so fiercely they created their own weather system.” (P7 *The Saturday Paper*, April 18-22 2016)

In Paris this last summer so many old people died of heatstroke that there were not enough undertakers to care for the dead. In India so many people died of heatstroke that the morgues could not cope.

I have recently read newspaper articles and watched TV current affairs shows where it has been suggested that people are not really concerned about climate change as a major issue in their lives. Yet, on the same day of one such current affairs show, a website was released which allowed people to find out how their properties were

affected by rising sea levels. The website crashed soon after opening because so many people tried to use it to assess their risks.

I think that the inclusion of property rights in a Human Rights bill can be integrated with the right to healthy ecosystems which are essential to address climate change issues. Our cities' green spaces, both private and public are being covered with hard, impervious surfaces increasing the urban heat affect and contributing to global warming even if it is at a local level. Our planning lawmakers do not seem to be taking this into account. The Dutch government, which openly acknowledges the impact of climate change has taken an ecological approach to planning decisions in their Blue-Green Cities strategy.

Wikipedia describes this approach in easily understood language:

"Blue-Green Cities aim to reintroduce the natural [water cycle](#) into [urban](#) environments and provide effective measures to manage [fluvial](#) (river), [coastal](#), and [pluvial](#) ([urban runoff](#) or surface water) [flooding](#) ^[1] while championing the concept of multi-functional greenspace and landuse to generate multiple benefits for the environment, society, and the economy." (downloaded 18th April 2016).

Because we no longer have a choice about addressing climate change issues, I support the recommendations of the Queensland Environmental Defenders office for a Human Rights bill to address environmental, and ecological issues. I have utilised their suggestions with a few modifications:

- Through introducing a human right to a healthy ecosystem, the government will be required to consider in a more fulsome way how proposed legislation or policy might impact on people, including the ecosystems those people are dependent on for their livelihoods or health.
- By providing a requirement for the consideration up front of the impact a proposed project, law or policy might have on the human right to healthy ecosystems, there is less chance that litigation might be undertaken to challenge that project, law or policy on the basis of the impacts to the right to a healthy ecosystem.

Because of my involvement with planning issues, I have become aware of the need for buildings to be more accessible for people with major health concerns including serious physical disabilities. I think we need a specific right for these people to be provided with accessible spaces and buildings so that they can express their concerns about what is happening in their area.

People living in remote and rural areas are also suffering from inappropriate planning decisions which impact on their ecosystems. Too often their voices aren't heard because the number of people living in those areas is dropping. As the population drops so does the significance attached to their concerns.

As the EDO (Qld) has pointed out:

- “Too often the rights of more marginalised Queenslanders are not given as strong a weight as the rights of others; for example, rural Queenslanders, including indigenous people, frequently suffer impacts to their air and water quality which would not be allowed to occur in urban Queensland. A Human Rights Act would help to address this imbalance in the concern for the ecological needs of marginalised people versus those in cities.”

I do realise the enormity of the task facing the committee and I hope you are successful in developing and implementing human rights legislation for Queensland.

Yours sincerely

A solid black rectangular box redacting the signature of Di Glynn.

Di Glynn

Which rights should be protected?

- Right to recognition and equality before the law
- Protection of family and children
- Right to life
- Right to participate in public life
- Protection from torture and cruel, inhuman or degrading treatment
- Cultural rights of ethnic religious or linguistic minorities
- Freedom from forced work
- Property rights
- Freedom of movement
- Right to liberty and security of person
- Privacy and reputation
- Humane treatment when deprived of liberty
- Freedom of thought, conscience, religion and belief
- Rights of children in the criminal process
- Freedom of expression
- Right to a fair hearing
- Peaceful assembly and freedom of association
- Protection of rights in criminal proceedings and against retrospective criminal law
- Right to be tried or punished not more than once.
- Right to housing
- Right to education
- Right to adequate health care
- Right to food
- A right to an adequate standard of living
- Right to a safe, clean, healthy and sustainable environment
- Participation in cultural life

Your name:

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Your mailing address:

Your email address:

Your daytime telephone: