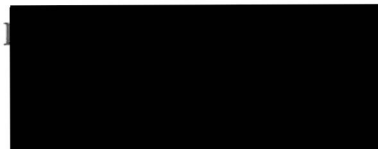


18/04/2016

Human Rights Inquiry

Submission No. 465



18th April 2015

**Research Director
Legal Affairs & Community Safety Committee
Parliament House
Brisbane Qld 4000**

Dear Sir/Madam

**Submission in Support of A Human Rights Act/Charter
for Queensland**

Please find attached the submission as identified above.

**As I only became aware yesterday that the closing time and date
was 4pm Monday 18th April, and I am not online I will be
delivering the submission by hand to the Parliamentary Annexe.**

Yours faithfully

A solid black rectangular redaction box covering the signature of the sender.

(N C Bullen)

SUBMISSION IN SUPPORT OF A HUMAN RIGHTS ACT FOR QUEENSLAND

Introduction

This submission is made in support of the legislation of a Human Rights Act for Queensland, as the most practical way of promoting and protecting the Human Rights of all Queenslanders.

I believe that the current protection of human rights in Queensland is inadequate for the following reasons;

- **The the Legislative Standards Act 1992 requires that new Queensland laws have sufficient regard to, among other things, “the rights and liberties of individuals”, but this requirement is vague and the recommendations of the Scrutiny of Legislation Committees are often disregarded in this State with a Government majority and no House of Review;**
- **There is no comprehensive statement of “rights and liberties” in Queensland that operates as a minimum standard for the protection of human rights.**
- **Statutory or common law protections can be easily removed;**
- **International human rights law that has not been incorporated into Queensland law is not enforceable.**

Advantages

Statutory protection for human rights in Queensland would;

- **Improve the process of Government and set minimum standards to be observed;**
- **Contribute to bringing Australia into line with every other western democracy and meeting its international human rights obligations;**

Cont'd

- **It would play a significant role in educating Queenslanders about the importance of their rights and responsibilities, and the need to maintain an acceptable human rights culture when interacting with their fellow Queenslanders.**

Historic Factors

Governments of all persuasions, either consciously or by default, have created, and perpetuated the myth that the basic human rights of all Australians/Queenslanders are in some way protected by the belief that most share the values “of a fair go” for all.

History records that past Queensland Governments, mainly from the conservative side of politics, rather than protecting and improving basic human rights, by changes to the Constitution, or by enacting a Human Rights Act, have denied, and diminished basic human rights of Queenslanders by the enactment of draconian legislation.

It is fair, and reasonable, to suggest that Queensland citizens have been subjected to an ever increasing erosion, blatant abuses, and even the denial of basic human rights over time.

This was particularly apparent under the Bjelke-Petersen Government, and one could argue to an even greater extent under the Newman regime.

The fact that such draconian anti human rights laws can be passed without proper process, scrutiny, and debate, is clear evidence of the inadequacy of the current system.

State Charters/Acts

The ACT Government recognised the need to protect it's citizens and enacted Australia's first Human Rights Act on the 2nd March 2004.

Victoria passed Australia's first State Charter of Human Rights on 25th July 2006, following a six month public consultation process with 94% of submissions supporting greater protection of human rights.

Cont'd

It is my understanding that the 1998 review by the Queensland Legal, Constitutional and Administrative Review Committee, found that a human rights Act would;

- **Involve an inappropriate transfer of power from parliament to an “unelected” judiciary.**
- **It was concerned that a human rights Act would have an unpredictable impact on the amount and cost of litigation, and that increased legal costs would make such an Act favour the wealthy.**

More recent evidence suggests that modern forms of statutory protection of human rights such as those in the ACT and Victoria, and other jurisdictions have not;

- **Caused the transfer of power and the ultimate-decision-making role from the parliament to the courts;**
- **Resulted in the increase of litigation and expense for the government;**
- **Undermined religious freedom.**

**National
Human Rights
Consultation
Committee Report**

The most recent comprehensive report was completed in September 2009, and it clearly indicates the increasing number of citizens across all States and Territories who want the protection of a Human Rights Act.

The Committee received the largest public response to any Government Inquiry in Australia's history, with over 35,000 submissions, with 27,888, or 87% in favour of a Human Rights Act .

It conducted 66 community roundtables at 52 locations 11 of which were held in metropolitan and country locations in Queensland.

Cont'd

Whilst it recommendations were made in relation to a national Human Rights Act, I believe a number would be instructive in the preparation of a Queensland Act or Charter. (Recommendations Appendix 1)

For example Recommendations 1 and 2, dealing with education programmes, tailored to meet Queensland circumstances.

The LCARC in 1998 focussed on education, and it prepared a handbook, Queenslanders' Basic Human Rights.

In the preface to the handbook the then chair of the LCARC, made the following valid point;

- **“In the modern state our rights and freedoms will face new and unanticipated demands. Our rapidly changing world will mean that rights that we have taken for granted will come under new pressures. Our concept of rights will no doubt change”.**

The Chair also made the following comments;

- **“In other words, our approach is to build citizens' rights and freedoms from the people up”.**
- **We hope that this handbook will be used wisely in Queensland as a ready-reference guide by and within many organisations such as schools, government departments, workplaces and community advocacy groups”.**
-

It recommended that the handbook form an integral part of rights and civil education, this was part of a broader plan to include the matter in school curricula.

I am not aware of any information that suggests the full programme was implemented, or if it was whether it is still current.

Recommendations 13, and 17, provide a guide to what rights and instruments should be included in the Human Rights Act/Charter.

**Qld Labor State
Policy Platform
2015**

When preparing this brief submission I have been inspired by the contents of Labor's 2015 State Policy Platform.

I believe the 2nd paragraph of the preamble encapsulates the unequivocal intent, values, and undertakings given throughout the document;

“For more than 120 years since Labor, in partnership with our great trade union movement, has continued to stand up for workers' rights and for a dignified life for Queenslanders”.

I particularly commend and support and believe that the current Queensland Labor Government will honour it's commitment to all Queenslanders;

“That Labor will introduce a charter of human rights and responsibilities in Queensland”.

This submission will be personally delivered by hand to the Parliamentary Annexe, in advance of the 4PN closing deadline.

Submitted by;



(N C Bullen)



Monday 18th April 2015

Recommendations

Creating a human rights culture

Recommendation 1

The Committee recommends that education be the highest priority for improving and promoting human rights in Australia.

Recommendation 2

The Committee recommends as follows:

- that the Federal Government develop a national plan to implement a comprehensive framework, supported by specific programs, of education in human rights and responsibilities in schools, universities, the public sector and the community generally
- that human rights education be based on Australia's international human rights obligations, as well as those that have been implemented domestically (whether in a Human Rights Act or otherwise), and the mechanisms for enforcement of those rights
- that the Federal Government publish a readily comprehensible list of Australian rights and responsibilities that can be translated into various community languages
- that any education and awareness campaign incorporate the experiences of Indigenous Australians—with a particular focus on recent and historical examples of human rights concerns
- that the Federal Government collaborate with non-government organisations and the private sector in developing and implementing its national plan for human rights education.

Recommendation 3

The Committee recommends that its proposed readily comprehensible list of Australian rights and responsibilities include commitments such as the responsibility:

- to respect the rights of others

- to support parliamentary democracy and the rule of law
- to uphold and obey the laws of Australia
- to serve on a jury when required
- to vote and to ensure to the best of our ability that our vote is informed
- to show respect for diversity and the equal worth, dignity and freedom of others
- to promote peaceful means for the resolution of conflict and just outcomes
- to acknowledge and respect the special place of our Indigenous people and acknowledge the need to redress their disadvantage
- to promote and protect the rights of the vulnerable
- to play an active role in monitoring the extent to which governments are protecting the rights of the most vulnerable
- to ensure that we are attentive to the needs of our fellow human beings and contribute according to our means.

Human rights in policy and legislation

Recommendation 4

The Committee recommends as follows:

- that the Federal Government conduct an audit of all federal legislation, policies and practices to determine their compliance with Australia's international human rights obligations, regardless of whether a federal Human Rights Act is introduced. The government should then amend legislation, policies and practices as required, so that they become compliant
- that, in the conduct of the audit, the Federal Government give priority to the following areas:
 - anti-discrimination legislation, policies and practices
 - national security legislation, policies and practices
 - immigration legislation, policies and practices
 - policies and practices of Australian agencies that could result in Australians being denied their human rights when outside Australia's jurisdiction.

Recommendation 5

The Committee recommends that the Federal Government immediately compile an interim list of rights for protection and promotion, regardless of whether a Human

Rights Act is introduced. The list should include rights from the International Covenant on Civil and Political Rights as well as the following rights from the International Covenant on Economic, Social and Cultural Rights that were most often raised during the Consultation: the right to an adequate standard of living (including food, clothing and housing); the right to the highest attainable standard of health; and the right to education.

The government should replace the interim list of rights with a definitive list of Australia's international human rights obligations within two years of the publication of the interim list.

Recommendation 6

The Committee recommends that a statement of compatibility be required for all Bills introduced into the Federal Parliament, all Bills before the third reading (so as to allow scrutiny of amendments) and legislative instruments as defined by the *Legislative Instruments Act 2003* (Cth). The statement should assess the law's compatibility with the proposed interim list of rights and, later, the definitive list of Australia's human rights obligations.

Recommendation 7

The Committee recommends that a Joint Committee on Human Rights be established to review all Bills and relevant legislative instruments for compliance with the interim list of rights and, later, the definitive list of Australia's human rights obligations.

Human rights in practice

Recommendation 8

The Committee recommends as follows:

- that the Federal Government develop a whole-of-government framework for ensuring that human rights—based either on Australia's international obligations or on a federal Human Rights Act, or both—are better integrated into public sector policy and legislative development, decision making, service delivery, and practice more generally
- that the Federal Government nominate a Minister responsible for implementation and oversight of the framework and for annual reporting to parliament on the operation of the framework.

Recommendation 9

The Committee recommends that the Federal Government incorporate human rights compliance in the Australian Public Service Values and Code of Conduct.

Recommendation 10

The Committee recommends that the Federal Government require federal departments and agencies to develop human rights action plans and report on human rights compliance in their annual reports.

Recommendation 11

The Committee recommends that the *Administrative Decisions Judicial Review Act 1975* (Cth) be amended in such a way as to make the definitive list of Australia's international human rights obligations a relevant consideration in government decision making.

Recommendation 12

The Committee recommends that, in the absence of a federal Human Rights Act, the *Acts Interpretation Act 1901* (Cth) be amended to require that, as far as it is possible to do so consistently with the legislation's purpose, all federal legislation is to be interpreted consistently with the interim list of rights and, later, the definitive list of Australia's human rights obligations.

Recommendation 13

The Committee recommends that the functions of the Australian Human Rights Commission be augmented to include the following:

- to expand the definition of 'human rights' in the *Australian Human Rights Commission Act 1986* (Cth) to include the following instruments:
 - the International Covenant on Civil and Political Rights
 - the International Covenant on Economic, Social and Cultural Rights
 - the Convention on the Elimination of All Forms of Racial Discrimination
 - the Convention on the Elimination of All Forms of Discrimination against Women
 - the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
 - the Convention on the Rights of the Child
 - the Convention on the Rights of Persons with Disabilities
 - the Declaration on the Rights of Indigenous Peoples.

- to examine any Bill at the request of the federal Attorney-General or the proposed Joint Committee on Human Rights for the purpose of ascertaining if any provision in the Bill is inconsistent with or contrary to any human right in the interim list and, later, the definitive list of Australia's human rights obligations
- to inquire into any act or practice of a federal public authority or other entity performing a public function under federal law that might be inconsistent with or contrary to any obligation in the interim list of human rights and, later, the definitive list of Australia's human rights obligations
- to provide the same remedies for complaints of human rights violations and International Labour Organization Convention 111 complaints as for unlawful discrimination, permitting determination by a court when settlement cannot be reached by conciliation—except in relation to complaints of violations of economic, social and cultural rights, in which case there should be no scope to bring court proceedings where conciliation has failed.

The Federal Government should be required to table a response to any Australian Human Rights Commission report on complaints within six months of receiving that report.

Recommendation 14

The Committee recommends that the Federal Government develop and implement a framework for improving access to justice, in consultation with the legal profession and the non-government sector.

Human rights and Indigenous Australians

Recommendation 15

The Committee recommends that a 'statement of impact on Aboriginal and Torres Strait Islander peoples' be provided to the Federal Parliament when the intent is to legislate exclusively for those peoples, to suspend the *Racial Discrimination Act 1975* (Cth) or to institute a special measure. The statement should explain the object, purpose and proportionality of the legislation and detail the processes of consultation and the attempts made to obtain informed consent from those concerned.

Recommendation 16

The Committee recommends that, in partnership with Indigenous communities, the Federal Government develop and implement a framework for self-determination, outlining consultation protocols, roles and responsibilities (so that the communities

have meaningful control over their affairs) and strategies for increasing Indigenous Australians' participation in the institutions of democratic government.

A Human Rights Act

Recommendation 17

The Committee recommends that the Federal Government operate on the assumption that, unless it has entered a formal reservation in relation to a particular right, any right listed in the following seven international human rights treaties should be protected and promoted:

- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights
- the Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination against Women
- the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- the Convention on the Rights of the Child
- the Convention on the Rights of Persons with Disabilities.

Recommendation 18

The Committee recommends that Australia adopt a federal Human Rights Act.

Recommendation 19

The Committee recommends that any federal Human Rights Act be based on the 'dialogue' model.

Recommendation 20

The Committee recommends that any federal Human Rights Act protect the rights of human beings only and that the obligation to act in accordance with those rights be imposed only on federal public authorities—including federal Ministers, federal officials, entities established by federal law and performing public functions, and other entities performing public functions under federal law or on behalf of another federal public authority.

Recommendation 21

The Committee recommends that any federal Human Rights Act protect the rights of all people in Australia and all people who are overseas but subject to Australian jurisdiction.

Recommendation 22

The Committee recommends that, if economic and social rights are listed in a federal Human Rights Act, those rights not be justiciable and that complaints be heard by the Australian Human Rights Commission. Priority should be given to the following:

- the right to an adequate standard of living—including adequate food, clothing and housing
- the right to the enjoyment of the highest attainable standard of physical and mental health
- the right to education.

Recommendation 23

The Committee recommends that a limitation clause for derogable civil and political rights, similar to that contained in the Australian Capital Territory and Victorian human rights legislation, be included in any federal Human Rights Act.

Recommendation 24

The Committee recommends that the following non-derogable civil and political rights be included in any federal Human Rights Act, without limitation:

- *The right to life.* Every person has the right to life. No one shall be arbitrarily deprived of life. The death penalty may not be imposed for any offence.
- *Protection from torture and cruel, inhuman or degrading treatment.* A person must not be
 - subjected to torture
 - or
 - treated or punished in a cruel, inhuman or degrading way
 - or
 - subjected to medical or scientific experimentation without his or her full, free and informed consent.

- *Freedom from slavery or servitude.* A person must not be held in slavery or servitude.
- *Retrospective criminal laws.*
 - A person must not be found guilty of a criminal offence as a result of conduct that was not a criminal offence when the conduct was engaged in.
 - A penalty imposed on a person for a criminal offence must not be greater than the penalty that applied to the offence when it was committed.
 - If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, the reduced penalty should be imposed.
 - Nothing in the foregoing affects the trial or punishment of any person for any act or omission that was a criminal offence under international law at the time the act or omission occurred.
- *Freedom from imprisonment for inability to fulfil a contractual obligation.* A person must not be imprisoned solely on the ground of inability to fulfil a contractual obligation.
- *Freedom from coercion or restraint in relation to religion and belief.* No person will be subject to coercion that would impair his or her freedom to have or to adopt a religion or belief of his or her choice.

The right to a fair trial should also not be limited.

Recommendation 25

The Committee recommends that the following additional civil and political rights be included in any federal Human Rights Act:

- the right to freedom from forced work
- the right to freedom of movement
- the right to privacy and reputation
- the right to vote
- the right to freedom of thought, conscience and belief
- freedom to manifest one's religion or beliefs
- the right to freedom of expression
- the right to peaceful assembly
- the right to freedom of association
- the right to marry and found a family

- the right of children to be protected by family, society and the State
- the right to take part in public life
- the right to property
- the right to liberty and security of person
- the right to humane treatment when deprived of one's liberty
- the right to due process in criminal proceedings
- the right not to be tried or punished more than once
- the right to be compensated for wrongful conviction.

Recommendation 26

The Committee recommends that any federal Human Rights Act require statements of compatibility to be tabled for all Bills introduced into the Federal Parliament, all Bills before the third reading (so as to allow scrutiny of amendments) and legislative instruments as defined by the *Legislative Instruments Act 2003*.

Recommendation 27

The Committee recommends that any federal Human Rights Act empower the proposed Joint Committee on Human Rights to review all Bills and the relevant legislative instruments for compliance with the human rights expressed in the Act.

Recommendation 28

The Committee recommends that any federal Human Rights Act contain an interpretative provision that is more restrictive than the UK provision and that requires federal legislation to be interpreted in a way that is compatible with the human rights expressed in the Act and consistent with parliament's purpose in enacting the legislation. The interpretative provision should not apply in relation to economic, social and cultural rights.

Recommendation 29

The Committee recommends that any federal Human Rights Act extend only to the High Court the power to make a declaration of incompatibility.

(Should this recommendation prove impractical, the Committee recommends alternatively that any federal Human Rights Act not extend to courts the formal power to make a declaration of incompatibility.)

Recommendation 30

The Committee recommends that any federal Human Rights Act require Commonwealth public authorities to act in a manner compatible with human rights (other than economic and social rights) and to give proper consideration to relevant human rights (including economic and social rights) when making decisions.

Recommendation 31

The Committee recommends that under any federal Human Rights Act an individual be able to institute an independent cause of action against a federal public authority for breach of human rights and that a court be able to provide the usual suite of remedies—including damages, as is the case under the UK Human Rights Act. The independent cause of action should not be available in relation to economic, social and cultural rights.