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SUBMISSION TO QLD HUMAN RIGHTS INQUIRY

http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/14-HumanRights

I HAVE BEEN INFORMED BY THE COMMITTEE SECRETARY THAT INTERNET LINKS WILL BE DISPLYAED SO THAT THEY MAY BE USED AND THAT ATTACHMENTS ARE ALLOWED. ATTACHED :

POWER V COLEMAN COURT FILE NO. 19102000 T/3 SML (VERRA SM)

THE ICCPR

Hrc1.pdf

Hrc2.pdf

INTRODUCTION

I am aware that when the Peaceful Assemblies Act 1992 was before the Qld Parliament in 1992, that the 2nd reading speeches by the then labor leaders such as Peter Beattie (Qld Parliamentary Hansard 17 June 1992) , Dean Wells, Matt Foley and Rod Welford all stated that the Joh era was a period of totalitarian dictatorship. It was therefore necessary to implement the International Covenant on Civil and Political Rights article 21 to help prevent such suppression of rights again.

I am aware that in 1993 The then Electoral and Administrative Review Committee of the Legislative Assembly proposed a statutory bill of rights protecting civil and political rights including environmental rights. This was not enacted.

I am aware that in 1998 the then Legal Constitutional and Administrative Review Committee of The Legislative Assembly held an inquiry into whether Qld should adopt a bill of rights **(Report no. 12 1998, "The preservation and enhancement of individuals rights and freedoms in Qld: Should Qld adopt a bill of rights?" Link? Attached).** And that the committee said no because politicians like "parliamentary supremacy " the way it is.

As to what parliamentary supremacy means in law I direct lay observers of this submission to my 2002 Submission to the 2nd Australian Senate inquiry into an Australian republic (Pat Coleman

submission 727 , entitled **"Inspire me with a democratic republic!" at pp 45-46 ,archived here http://www.aph.gov.au/~/media/wopap...).**

I incorporate what I have said in that submission even though it was written in 2002, as it sets out a draft bill of rights including environmental rights incorporating The EARC BILL OF RIGHTS and the SOUTH AFRICAN BILL OF RIGHTS .

I am aware that Qld has already had a scrutiny of legislation committee which had to act according to the ICCPR and it no longer exists.

It is clear that the Joh era has not ended it just goes by another name.

Increasingly Australia and Qld has been found to be in breach of United Nations Human Rights Law (see www.remedy.org.au and HUMAN RIGHTS WATCH and Amnesty websites)

All people in Qld's jurisdiction should have their human rights protected by positive rights that will inform individual security of the person rights and protections against abuses of power under The Criminal Code Act 1889 Qld . Moreover , these rights should be enforceable against our own politicians who write the definitions of corruption in a unicameral legislature, and write the laws to suit their donors and order the police to enforce them.

RIGHT TO INFORMATION

IN ANNEXURE 1 AT THE END OF THIS SUBMISSION I HAVE PLACED 3 CASE STUDIES ON HOW I HAVE BEEN TREATED HERE IN TOWNSVILLE BY THE TOWNSVILLE COPS, THE PREVIOUS CJC, CMC AND SO CALLED ESC PRIOR TO THE PALM ISLAND EPISODE. I HOPE IT IS INFORMATIVE OF THE INVESTIGATIVE DEBACLE THAT BEFELL THE PEOPLE OF PALM ISLAND IN 2004 AND THE CULTURE THAT EXISTED IN THE NORTHERN REGION THAT LED TO IT. It has copies of relevant documents , transcripts and mp3's of ESC recordings . Its part of my story.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) (ATTACHED)

Australia is a party to The ICCPR and the 1st Optional Protocol allowing complaint to be made to the UNITED NATIONS HUMAN RIGHTS COMMITTEE (UNHRC) and the 2nd abolishing the death penalty.

Australia is obligated to uphold it and its articles and write them into our laws and practices . And the UNHRC has found the CTH responsible for violations by the State of Qld and its agents (Coleman v Australia: Communication 1157/2003). The CTH is therefore responsible TO The UNHRC for the actions of all governments and their agents in its jurisdiction.

This is not to say that some rights contained in the articles of the ICCPR may have to be reinterpreted to accord with contemporary times , but only in a way which furthers the enhancement of individual rights and freedoms . I speak of how in the Australian constitutional law that a constitutional right may not be waived in relation to the Federal right to a trial by jury. Under state law , this right can be waived for "Judge Alone" trials both for indictable offences and in the civil context.

In the context of female reproductive rights , the right to choose an abortion , and voluntary euthanasia , any new provisions would have to be explicit in that they take into account the effect of the CTH jury cases in my view. In that anything in conflict must be subject freedom of choice.

As mentioned above , the labor party invoked the ICCPR in enacting the Peaceful Assemblies Act 1992.

MY EXPEREINCES WITH TRYING TO GET COLEMAN V AUSTRALIA UPHELD

The best way to explain this is that for a while now www.remedy.org.au has been trying to help us people who have been to the UNHRC out . Its been no go for me with Brandis as I met him when he was campaigning against a bill of rights and he knows I want a bill of rights . He also is only interested in upholding the rights of bigots , not people who have read out the universal declaration without a permit.

Also the best way is to provide you with the evidence that I tried Qld first when Kerry Shine was AG but got knocked back . In my republic submission linked above I have a draft bill of rights with judicial interpretation provisions mirroring South Africa which would allow beaks and judges to apply the ICCPR and international law (as the full federal court did in Goldie-extracted below).

I want my case COLEMAN V AUSTRLIA upheld by the Qld government and Parliament , but in a way that benifets everybody, not just me. Although I do want to be compensated and have everything overturned (I got another 25 of those convictions!!)

I PROPOSE THAT [S672A] OF THE CRIMINAL CODE ACT 1899 BE AMENDED TO ALLOW FOR THE ATTORNEY GENERAL TO BRING A CASE TO THE COURT OF APPEAL TO GIVE EFFECT TO THE DECISIONS OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN REPECT TO ITS OBLIGATION UNDER THE 1ST OPTIONAL PROTOCOL.

The provision currently states:

[s.672A] Pardoning power preserved
Nothing in sections 668 to 672 shall affect the pardoning power of the Governor on behalf of Her Majesty, but the Crown Law Officer, on the consideration of any petition for the exercise of the pardoning power having reference to the conviction of any person or to any sentence passed on a convicted person, may—

(a) refer the whole case to the Court, and the case shall be heard and

determined by the Court as in the case of an appeal by a person convicted;
(b) if the Crown Law Officer desires the assistance of the Court on any point arising in the case with a view to the determination of the petition, refer that point to the Court for its opinion thereon, and the Court shall consider the point so referred and furnish the Crown Law Officer with its opinion thereon accordingly.

STATUTORY INTERPRETATION ISSUES FOR A BILL/CHARTER OF RIGHTS

Prof George Williams et al , in their submission to this inquiry very adequately set out judicial conflicts in relation to interpretation of the Victorian and NSW charters , however they are too nice.

One should first look to what the courts have done in the criminal context (in the absence of charters) relating to the so called presumption in favour of liberty **I take you all again to my submission "Inspire me with a democratic republic" Chapter 1. at p9-16 (http://www.aph.gov.au/~/media/wopap...**)

In a judgement of the South Australian Supreme Court in STEFANOPOULOS v POLICE No. SCGRG-00-120 [2000] SASC 59 (21 March 2000) http://www.austlii.edu.au/au/cases/sa/SASC/2000/59.html Martin J stated the following in relation to weather legislation explicitly curtailed liberty:

"13. If the interpretation for which the appellant contends is correct, the purposes of ss 29 and 30, namely, the use of the profile in ongoing and future investigations and the creation of a database of DNA profiles, would be defeated. Viewed in the context of the Act, the evident purpose of s 49 is to authorise the storage of DNA profiles derived from material obtained from both categories of persons to which I have referred. The critical question is whether that purpose was achieved by the legislation. As Kirby J pointed out in Byrnes v R [1999] HCA 38; (1999) 164 ALR 520 at 542:

*"**[80]** However, subjective intentions, even those that may reasonably be imputed to the makers of legislation, are irrelevant. The purposes of a legislature must be ascertained from the language of the legislation which it enacts. [Re Bolton; Ex part Beane [1987] HCA 12; (1987) 162 CLR 514 at 518; [1987] HCA 12; 70 ALR 225.] This is a cardinal rule. There are strict limits on the extent to which courts can fill gaps in legislation where they come to light, particularly where such gaps expose a person affected to additional criminal punishment involving the deprivation of liberty. [Piper v Corrective Services Commission of New South Wales (1986) 6 NSWLR 352 at 361.] These considerations reveal, once again, why it is incorrect, and potentially misleading, to talk of the "intention" of Parliament. Here the "intention", in a general sense, is clear enough. But the focus must be upon the meaning and effect of the legislation appearing from its words. As this case*

illustrates, to conceive of the problem in terms of legislative "intention" is to invite a risk of error. Avoidance of that fiction helps us to prevent such a risk."

14. *The Act authorises the performance of forensic procedures upon persons against their consent. Those procedures include invasive procedures. In these circumstances, it is often said that a strict construction should be adopted. However the rule should now be expressed, courts have always taken the view that such legislation will not be interpreted in a manner which extends its operation to cover a situation inadvertently omitted by the legislature (Ex parte Fitzgerald: Re Gordon (1945) 45 SR(NSW) 182). In a different context, Deane J canvassed the obligation of the courts in dealing with legislation adversely affecting the common law rights of individuals in Donaldson v Broomby [1982] FCA 58; (1982) 40 ALR 525 at 526. His Honour's remarks can be applied to the Act. He said:*

"It is plainly of critical importance to the existence and protection of personal liberty under the law that the circumstances in which a police officer may, without judicial warrant, arrest or detain an individual should be strictly confined, plainly stated and readily ascertainable. Where the Parliament has legislated so as to define those circumstances, neither legal principle nor considerations of public interest commend or support a search among the shadows of earlier subordinate legislation for the means of evading the constraints upon the interference with the liberty of the subject which the Parliament has imposed."

15. *I proceed on the basis, therefore, that while it is important for courts to adopt a construction which will give effect to the provisions in the legislation, if there is doubt or ambiguity as to whether s 49(2)(a) extends to the situation of the appellant, that doubt or ambiguity should be resolved in favour of the appellant.*
16. *In my opinion, although the language in s 49(2)(a) is not ideal, considered in the context of the entire Act and its obvious purposes, the proper meaning and effect of the legislation as ascertained from the words is to authorise the storage of DNA profiles derived from material obtained from carrying out forensic procedures pursuant to the Act upon both categories of persons to which I have referred. In order for the procedure to be authorised with respect to the taking of material from the appellant for the purpose of obtaining a DNA profile, the appellant must have been convicted of a major offence. In that way, the forensic procedure was linked to the offence of which the appellant was found guilty. For the purposes of s 49(2)(a), the appellant was found guilty of the offence in relation to which the forensic procedure was carried out. To interpret s 49(2)(a) as excluding the circumstances of the appellant would be to deny the obvious purposes of the Act and to deny ss 29 and 30 any effective operation."*

And to show how the High Court of Australia judges have sent a message to the parliaments see McCloy v New South Wales [2015] HCA 34 (7 October 2015) http://www.austlii.edu.au/au/cases/cth/HCA/2015/34.html

Per : FRENCH CJ, KIEFEL, BELL AND KEANE JJ.

88. "It will be evident from the conclusion to these reasons that the methodology to be applied in this aspect of proportionality does not assume particular significance. Fundamentally, however, it must proceed upon an acceptance of the importance of the freedom and the reason for its existence. This stands in contrast to the basic rule of balancing as applied to human rights, which has been subject to criticism for failing to explain the

reasons underlying the creation of the right in order to put the reasons for its protection, or which justify its limitation, in perspective[111].
89. The balance struck between the importance of the purpose and the extent of the restriction on the freedom necessarily involves a value judgment. The fact that a value judgment is involved does not entitle the courts to substitute their own assessment for that of the legislative decision-maker[112]. This accords with the view, so often expressed by this Court, as to the role of Chapter III courts under the separation of powers effected by the Constitution. However, the courts have a duty to determine the limit of legislative power affecting constitutionally guaranteed freedoms, and assessments by courts of the public interest and benefit in a piece of legislation are commonplace. In ACTV and Nationwide News, and in later cases, the public interest pursued by the legislation in question was identified as relevant to whether a restriction on the freedom was justified[113].
90. To say that the courts are able to discern public benefits in legislation which has been passed is not to intrude upon the legislative function. The courts acknowledge and respect that it is the role of the legislature to determine which policies and social benefits ought to be pursued. This is not a matter of deference. It is a matter of the boundaries between the legislative and judicial functions.
91. Deference to legislative opinion, in the sense of unquestioning adoption of the correctness of these choices, does not arise for courts. It is neither necessary nor appropriate for the purposes of the assessment in question. The process of proportionality analysis does not assess legislative choices except as to the extent to which they affect the freedom. It follows from an acceptance that it is the constitutional duty of courts to limit legislative interference with the freedom to what is constitutionally and rationally justified, that the courts must answer questions as to the extent of those limits for themselves."

There are Federal and State Acts Interpretation Acts and the courts readily engage in statutory interpretation. The High Court has consistently said that legislation should be "read down" if it is at all possible to avoid invoking the constitution . The High Court has done this recently in contentious refugee cases .

The Court of Appeal Qld has shown to some extent that is able to apply the constitution to Qld statutes striking down legislation as beyond the power of the Qld Parliament . I refer to my own case Coleman v Power [2001]QCA 539 http://www.austlii.edu.au/au/cases/qld/QCA/2001/539.html , and the well known case of the now Mayor of Townsville , Jenny Hill , who voted as a councillor to bankrupt me in for that UNHRC business and who, incidentally, used the above precedent in her s109 case invalidating that part of the Queensland Electoral Act 1992 which would have prevented her from standing as a federal candidate (Herbert 2001)whilst being a councillor.

The point is , the courts will have no trouble applying "RIGHTS" AS LONG AS THEY ARE EXPLICITLY PROTECTED. AND THIS PROTECTION CAN BE EFFECTED BY STATING THE HISTORY OF AUSTRALIA AND OF QLD DEMANDS THAT WE NEED A RIGHTS ACT AND THE PURPOSE OF ANY RIGHTS ACT IS TO DEFINE US AS A DEMOCRACY IN WHICH THE PEOPLE ARE SOVEREIGN! (McCloy v NSW at Par[45])

This above paragraph leads me into whether a criminal court of 1st instance can apply the **ANTI DISCRIMINATION ACT QLD 1991** in criminal proceedings.

<u>THE ANTI DISCRIMINATION ACT QLD 1991 AND EQALITY BEFORE THE LAW AS IT "PURPOSE"</u>

It would seem to be an anomaly that the Anti Discrimination Act (ADA) could not be applied in criminal cases and by the courts in the exercise of their functions. This is due to the operation of THE ACTS INTERPRETATION ACT

https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/ActsInterpA54.pdf showing that all provisions but the CRIMINAL RACE HATE LAW (124A -131 are provisions I agree with) https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AntiDiscrimA91.pdf are not free standing. A point I made to the former Qld Attorney General Rod Welford in a submission asking for equality before the law to be made free standing. He refused!

A court of 1st instance is where it is all at . What happens there in my experience determines the hand you are dealt and the appeal cards you are left to play with.

In a magistrates court they can sometimes act like no one is watching and the matter could not possibly end up in the highest court of the land.

You may end up with acting magistrates. Acting magistrates along with acting judges are sometimes publicly criticised by esteemed colleagues as being too eager to impress and an internet search will guide you in this respect on judicial accountability **(see also Magistrates Court Victoria v Robinson [2000] VSCA 198 http://www.austlii.edu.au/au/cases/vic/VSCA/2000/198.html).** You may end up with "media magistrates" who do not care who they impress unless its a right wing daily and again consult the net.

You can end up with a beak that will have the opinion that a cop can do no wrong and must not be seen to be doing anything, lest it upset that "public legitimacy thing".

But, whilst there is heavy judicial authority to the effect that police can and do lie and they are not to be given any special status as witnesses (**John Dennis Tegg (1982) 7ACRIMR 188 r v rds https://www.cjc-ccm.gc.ca/cmslib/general/Matlow_Docs/Authorities/Book%20of%20Authorities%20-%20Tab%2028%20R.%20v.%20S..pdf**) , something more is needed like a free standing provision that so called people in authority are equal before the law . This would get around the verbal gymnastics used by the appellate courts who like to say in insult (and Nuisance) cases "Police are the public too" , because then they would be able to treated as such by the beaks at 1st instance. Just like anyone else trying to cover wrong doing up.

You can have an anomaly as in my case Coleman v Greenland and ors [2004] QSC37 http://www.sclqld.org.au/caselaw/QSC/2004/037

That is a situation where anti discrimination legislation can be used on the ground, or at the bar with a very loud banging of the fist and demand for equality.

The above paragraph to and lay person and any other reasonable person would not seem to provide evidence enough of the claims I have made about crimes committed by the cop. That would be a fair cop but for the fact that the transcripts in this CIVIL CASE are in the hands of Qld Crown law, not mine, which brings me to my next point as to how a free standing right to equality before the laws can apply .

In a Magistrates Court under all of the Acts Concerning it including the code, there is a discretion to do all that is necessary to serve the interests of justice including providing a record of proceedings and a decision. All courts acts show a discretion to allow filming of proceedings. However an anomaly exists between the Magistrates Court Act and the District Court Act. In the District Court if you are up on criminal charges you are entitled to a transcript yet and the lower court it is not a requirement and requests can be denied though there is Australian authority at common law that it is a denial of

procedural fairness (Kalifeh v District Court Judge Job (1996) 85 ACRIMR 68 at 69) and that there is an implied right to procedural fairness (WA v Ward (1997) 145 ALR 512).

Denial of the right to call evidence is also a denial of procedural fairness **(See Noble [2000] NSWSC 920 link here)**

The High Court has found that self representation is a fundamental "right" **Cachia v Hanes [1994] HCA 14; (1994) 179 CLR 403; (1994) 120 ALR 385; (1994) 68 ALJR 374 (13 April 1994) at par 22 http://www.austlii.edu.au/au/cases/cth/HCA/1994/14.html**

The High Court has found the right to a fair trial to be implied in CH3 of the Constitution (Dietrich v The Queen link here).

In the US jurisdiction where lack of access to transcripts had denied justice to indigent appellants, their Supreme Court said to the effect that because all were equal before the laws that poor people should be allowed to have transcripts so that they seek justice **(Griffin v Illinois** http://caselaw.findlaw.com/us-supreme-court/351/12.html **).**

Simply having the right to equality before the laws may not completely cut it in an appeal from the magistrates court to higher courts in relation to a discretion to provide a record of proceedings. What is needed is that article 14 of the ICCPR be incorporated into any positive rights act.

Personally , I have in a case at 1st instance requested of an acting beak "access" to the transcripts before making final submissions **(Kinbacher v Coleman mags court file number) .** Access was denied . The matter went all the way to the high court again and I lost. And I have had many other cases where access to a transcript in the magistrates court would have helped.

Because the committee has asked how things can be approved I suggest the following .

If one is to look at the now Right To Information Act Qld it states that information may be provided on a disk which may be CD-Rom or DVD I expect. And the courts already have a discretion to allow filming. Filming proceedings will enhance the right to a fair trial for a number of reasons :

- First of all , it puts everyone on notice that the legal backwater days are numbered and everyone is being watched
- Given that even magistrates court trial can take days and maybe even weeks spread over months, a defendant can be given a DVD which is cheap as chips at the end of everyday , or be given access so that film can be uploaded to memory devices or laptops during breaks .
- My own cases and transcripts which have been in the possession of both sides of politics controlling the AG's office and Crown Law has a tendency to prove that what is claimed and pleaded does not always make it into a decision. For Instance In Coleman v Watson Cullinane J said that Access to the Qld Parliament was a fundamental right . Yet he could only have reached that conclusion via my arguments on the authorities (Access to the seat of Government : Nationwide News) which were not stated in his decision. Thus a decision can be denied precedential value .
- Because the authorities have stated that there is a reluctance to overturn findings of fact where the lower court had the ability to see and hear witnesses , this may enhance

the ability of appellate courts to see and hear those witnesses themselves. (see Watson v Trennery [1998] 122 NTR 1 per Mildren J
http://www.austlii.edu.au/au/cases/nt/NTCA/1998/22.pdf
http://www.supremecourt.nt.gov.au/archive/doc/sentencing_remarks/0/98/0/NS000280.htm

- Because it is the duty of a justice to state accurately (see my comments above relating to Cullinane J) and set out their reasoning for an appellate court (See generally for instance Wynwood [2000] TASSC 28 and KEYTE [2000] SASC 382)
- Because an indigent (poor) person will be able to take a DVD straight to any prospective legal representative to seek representation pro bono on spec.
- Because it may reduce delays.
- Because it may be instructive to law students and the general public and there is a public interest in this.

DISCRIMINATORY ARREST AND THE RIGHT TO FREEDOM OF EXPRESSION

But, let me get to the point about how people end up in court in the first place.

I dare say that many other people will make submissions on this , or related to this topic.

There is something which all know as "A FAIR COP". That someone has done something which by all standards is patently wrong, unlawful , maybe even evil , been caught re handed doing something they cannot deny is wrong . These people are still entitled to rights of arrested and detained persons and these standards should be stated in an easily accessible way. People even the uneducated should know their rights.

I will be concentrating in my submission on areas where a person comes into "CONFLICT" with the state , and its agents who may claim to have power to use violence on their own or the states behalf to prevent people from doing what they believe they are lawfully entitled to do .

I again bring up the issue of discrimination. Racial and also political.

There have been a number of reports dealing with discriminatory arrest. Some of them include :

- The Royal Commission into aboriginal deaths in custody
- The 1997 Qld CJC report "Reducing Police- Civilian Conflict" http://www.ccc.qld.gov.au/research-and-publications/publications/cjc/reducing-police-civilian-conflict-an-analysis-of-assault-complaints-against-queensland-police.pdf and:
- CMC Research report 05.2008 Policing public order: a review of the public nuisance offence (http://www.ccc.qld.gov.au/research-and-publications/publications/police/2008-review-of-the-public-nuisance-offence/review-public-nuisance.pdf)(PDF, 2.5 MB) at p49 -50 , 108-109 , 112-120

The CMC 2008 report has basically said police are still doing the same things under the public nuisance laws in the Summary Offences Act that they have been doing before . "Contempt of Cop" (see CJC report "Reducing Police Civilian Conflict" above)

The Public Nuisance laws are being used in the old ways to target protesters with a "catch all charge".

The benefit of this new fangled internet thingy is you can simply "google it"see the famous "Im with stupid shirt" Public nuisance charge that was dropped https://www.google.com.au/search?hl=en-AU&source=hp&biw=&bih=&q=public+nuisance+im+with+stupid&gbv=2&oq=public+nuisance+im+with+stupid&gs_l=heirloom-hp.3...5957.21595.0.23148.30.15.0.15.4.2.1129.3170.1j0j3j2j0j1j0j1.8.0....0...1ac.1.34.heirloom-hp..22.8.1153.2MHGlJxfFDE

You can also search generally where it has been used.
https://www.google.com.au/search?q=public+nuisance+charge+protest+queensland&hl=en-AU&gbv=2&oq=public+nuisance+charge+protest+queensland&gs_l=heirloom-serp.12...82308.100139.0.103047.39.19.0.14.14.10.613.6028.2j3j4j4j4j2.19.0....0...1ac.1.34.heirloom-serp..31.8.1541.KJe94C5FoUw

The CMC report hinted at the pages cited that many charges for public nuisance have gone uncontested and that many charges have been dropped . This is because its the law that a charge must be dropped if it cant be proved.

I refer you also to 2 recent cases appealed to the district court on public nuisance issues. One was a protest case :

- Courtney v Peacock [2008] QDC 87

http://archive.sclqld.org.au/qjudgment/2008/QDC08-087.pdf

- *Scanlon v Queensland Police Service* [2011] QDC 236 (10/D2) Andrews SC DCJ 10/10/2011

http://archive.sclqld.org.au/qjudgment/2011/QDC11-236.pdf

<u>POWERS OF ARREST UNDER THE POLICE POWERS AND RESPONSABILITIES ACT 2000 Qld</u>

S365 . Arrest without warrant
(1) It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—
(a) to prevent the continuation or repetition of an offence or the commission of another offence;
(b) to make inquiries to establish the person's identity;
(c) to ensure the person's appearance before a court;
(d) to obtain or preserve evidence relating to the offence;
(e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
(f) to prevent the fabrication of evidence;
(g) to preserve the safety or welfare of any person,

including the person arrested;
(h) to prevent a person fleeing from a police officer or the location of an offence;
(i) because the offence is an offence against section 790 or 791;
(j) because the offence is an offence against the *Domestic and Family Violence Protection Act 2012*, section 177, 178 or 179;
(k) because of the nature and seriousness of the offence;
(l) because the offence is—

(i) an offence against the *Corrective Services Act 2006*, section 135(4); or
(ii) an offence to which the *Corrective Services Act 2006*, section 136 applies.
(2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 15.
(3) Subject to the *Youth Justice Act 1992*, section 13, it is lawful for a police officer to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence.

S376. When arrest may be discontinued—general rule
(1) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was arrested.
(2) Subsection (1) does not apply if the person—
(a) is reasonably suspected of another offence, whether or not arising out of the circumstances of the offence for which the person was arrested; or
(b) may be detained for another reason, for example because of a breach of a bail condition; or
(c) is in custody for another offence.
(3) Also, it is the duty of a police officer to release an arrested person who is reasonably suspected of committing the offence for which the person was arrested if, within a reasonable time after the arrest, the police officer considers there is not enough evidence to bring the person before a court on a charge of the offence.

S391. Information to be given to arrested person
(1) A police officer who arrests a person, whether or not under a warrant, must, as soon as is reasonably practicable after the arrest, inform the person that the person is under arrest and of the nature of the offence for which the person is arrested.
(2) A police officer who arrests a person with a warrant must inform the person that the person is under arrest and of the

nature of the warrant.
(3) Before the person is released from police custody, a police officer must give to the person, in writing, the name, rank and station of the arresting officer.

THE QLD CRIMINAL CODE PROVISION DEALING WITH INTERFERING WITH POLICAL LIBERTY

S78 Interfering with political liberty
(1) Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of a misdemeanour, and is liable to imprisonment for 2 years.
(2) If the offender is a public officer, and commits the offence in abuse of the offender's authority as such officer, the offender is liable to imprisonment for 3 years.

The Qld Criminal Code escape clause Provision dealing with telling people why they are arrested.

S255 Duty of persons arresting
(1) It is the duty of a person executing any process or warrant to have it with him or her, if reasonably practicable, and to produce it if required.
(2) It is the duty of a person arresting another, whether with or without warrant, to give notice, if practicable, of the process or warrant under which the person is acting or of the cause of the arrest.
(3) A failure to fulfil either of the aforesaid duties does not of itself make the execution of the process or warrant or the arrest unlawful, but is relevant to the inquiry whether the process or warrant might not have been executed or the arrest made by reasonable means in a less forcible manner.

THE QLD CRIMINAL CODE PROVISION DEALING WITH ABUSE OF OFFICE

92 Abuse of office
(1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of the person's office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for 2 years.
(2) If the act is done or directed to be done for purposes of gain, the person is liable to imprisonment for 3 years.
The right to assembly is protected by s5 of the Peaceful Assemblies Act 1992 Qld. With or without a permit as long as there is substantial compliance with the act . However , in a manifest absurdity (see s14b Acts Interpretation Act Qld) a single person is not protected and this is what lead to Coleman v Sellars and Coleman v Australia cos a council by law would have been subject to the act.

Peaceful political protest in public places such as A PERSON carrying a flag, peacefully politically petitioning , public speaking , marching in places that is public but not a road, gathering , showing placards , handing out leaflets etc is at common law protected by the constitution and common law free speech. Why, if you are doing nothing political and you cannot be found to be breaching the peace , being disorderly or being a public nuisance where conduct necessarily is out of the ordinary– can you be charged or arrested simply because A PROVISION HAS AS ITS PURPOSE AND INTENT TO SANCTION IT IF IT IS POLITICAL???

I take you to the NT full Court case of Watson v Trennery [1998] 122 NTR 1

http://www.austlii.edu.au/au/cases/nt/NTCA/1998/22.pdf
http://www.supremecourt.nt.gov.au/archive/doc/sentencing_remarks/0/98/0/NS000280.htm

which sets out why (quoting the authorities) political protest in itself is neither a breach of the peace nor disorderly .

Per Angel J " *The peaceable combination of people in public places for the purposes of expressing opinions and of protest against political decisions is but the exercise of the ordinary civil freedoms of opinion, of speech, of assembly and of association. These freedoms reflect the importance our society places on open discussion and the search for truth, the need for diversified opinions to be known and for the strengths and weaknesses of those opinions to be identified, the right to criticise, the value of tolerance of the opinions of others, and the social commitment to the value of individual autonomy, all vital to the health of any democratic system of open government. A peaceful demonstration or protest, whether by assembly or procession in a street is nowadays accepted by members of the community as a safety valve for the community and potentially at least as an agent for change and for the good. An ordinary incident of any assembly or procession through the streets is some inconvenience to others. Protests test tolerance of difference and of inconvenience. There may be some noise. Members of the public may witness and hear messages they did not wish to see and to hear. They may consider such messages to be anathema. There may be a gross affront to some sensibilities. Nonetheless peaceable protests are to be tolerated in the recognition of the freedom of others to hold different opinions, to speak, to assemble, and to associate. As Bray CJ said extra-curially on one occasion, "Diversity is the protectress of freedom.",*

Per Mildren J ..... "it is not against the law to protest at the actions of a foreign government or its armed forces or to burn its flag or the flag of its army, as such, as a means of political protest. Whatever we may think of this type of political protest or the message it conveys, is not to the point. Nor are we in the least concerned by any clamour by politicians or the popular press that people who do these things should be prosecuted. But, because it is of the nature of things that protestors are sometimes prosecuted by the authorities, and there are sometimes serious misgivings about the motives for such prosecutions" (This mirrors what is said by the High Court in McLoy)

The Above case is authority on disorderly . See also *Dillon v Byrne (1972) QPJR 112 at 133, 22 QLR 4 , Williams v Pinnock [1983] 68 FLR 303, Turner v Patterson [1908] NZLR 207, R v Howell [1981] 3 ALL ER 383 at 388 and 389, Inness v Weate [1984] Tas R 14, Wornes v Rankmore [1986] QR 85 at 87, 104,105, Bhattacharya v State of New South Wales & Anor [2003] NSWSC 261 at [39]) Forbutt v Blake [1981] 51 FLR at 469 Per Connor J "I do not accept the suggestion that a remote possibility of a breach of the peace will call up a duty in a constable to act"*

And at 475 *"I am unable to attribute an intention to the legislature to expose a person to such a penalty for disobeying a police order to cease lawful activity where the only relevant police duty is to prevent a breach of the peace by other citizens . What was said by Justice Obrien in R v Londonderry justices seems much in point "if danger arises from the exercise of lawful rights resulting in a breach*

of the peace, the remedy is the presence of sufficient force to prevent the result, not the legal condemnation of those who exercise those rights"

See also *Osullivan v Lunnon [1986] 163 CLR at 554 "a police instruction to disperse, is not of course any evidence that an offence was being committed"*

"Blind unquestioning obedience is the law of tyrants and of slaves" (see Christie v Leachinsky (1947 AC 573 at 591-592, applied in Adams v Kennedy (2000) 49 NSWLR78 at 83)

See also Coleman v Power[2002] 2 QDR 620
http://www.austlii.edu.au/au/cases/qld/QCA/2001/539.html and High Court [2004] HCA 39; 220 CLR 1; 209 ALR 182; 78 ALJR 1166 (1 September 2004)
http://www.austlii.edu.au/au/cases/cth/HCA/2004/39.html

A constitutional right to ignore such a direction (*Metwally [1984] 158 CLR at 477per Deane J http://www.austlii.edu.au/au/cases/cth/HCA/1985/28.html*

I have pasted above the arrest powers of Qld Police under the PPRA, ss365,376 and 391(relating to what should be told to an arrested person and corresponding s255 of the code and the s92 abuse of office provision.

It is clear from what the CMC said in its report that the scope of the public nuisance arrest power is so wide that people do not know what they have been arrested for , simply public nuisance.

How is it that a citizen determine for themselves whether an arrest is unlawful or an abuse of office if they haven't been told the substance of what they have been arrested for. **Trobridge v Hardy [1955] HCA 68; (1955) 94 CLR 147 (7 December 1955)**
http://www.austlii.edu.au/au/cases/cth/HCA/1955/68.html

I take you to the Power v Coleman decision in the magistrates court for one of the many times i have experienced it myself and also to *Adams v Kennedy and ors (2000) 49 NSWLR 78 at par [17] applying Christie v Leachinsky (1947) AC 573 at 587-588).*
http://www.austlii.edu.au/au/cases/nsw/NSWCA/2000/152.html

17 In Christie, Viscount Simon, after referring to decisions and authorities going as far back as the first edition of Burn's Justice of the Peace in 1755, said:

*"The above citations, and others which are referred to by my noble and learned friend, Lord du Parcq, seem to me to establish the following propositions. (**1**) If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words a citizen is entitled to know on what charge or on suspicion of what crime he is seized. (2) If the citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment. (3) The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained. (4) The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is,*

prima facie, entitled to his freedom and is only required to submit to restraints on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed. (5) The person arrested cannot complain that he has not been supplied with the above information as and when he should be, if he himself produces the situation which makes it practically impossible to inform him, eg, by immediate counter-attack or by running away. There may well be other exceptions to the general rule in addition to those I have indicated, and the above propositions are not intended to constitute a formal or complete code, but to indicate the general principles of our law on a very important matter. These principles equally apply to a private person who arrests on suspicion. If a policeman who entertained a reasonable suspicion that X has committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed." (at 587-8)

18 Lord Simonds spoke to the same effect:

"Putting first things first, I would say that it is the right of every citizen to be free from arrest unless there is in some other citizen, whether a constable or not, the right to arrest him. And I would say next that it is the corollary of the right of every citizen to be thus free from arrest that he should be entitled to resist arrest unless that arrest is lawful. How can these rights be reconciled with the proposition that he may be arrested without knowing why he is arrested? ... Is citizen A bound to submit unresistingly to arrest by citizen B in ignorance of the charge made against him? I think, my Lords, that cannot be the law of England. Blind, unquestioning obedience is the law of tyrants and of slaves: it does not yet flourish on English soil. I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested, and then, since the affairs of life seldom admit an absolute standard or an unqualified proposition, see whether any qualification is of necessity imposed upon it." (at 591-2)

19 A little later Lord Simonds cited with approval what had been said by Lord Cranworth in Hooper v Lane [1857] EngR 830; (1859) 6 HLC 443; 10 ER 1368, speaking of the obligation of the Sheriff when executing a writ of arrest for debt:

"... to make known the ground of the arrest, in order, among other reasons, that the person arrested may know whether he is or is not bound to submit to the arrest." (at 592)

20 Lord Simonds remarked that what Lord Cranworth had said was "a clear illustration of the principle ... that if a man is to be deprived of his freedom he is entitled to know the reason why" (at 592).

21 Lord Simonds said (at 592-3) that the qualifications which he thought should be imposed upon the fundamental rule were: (a) an arrest would not be wrongful if the arresting constable told the person arrested that he was to be charged for one felony, say murder, notwithstanding that the person was subsequently charged with another felony, say manslaughter, so long as the arresting constable reasonably suspected that murder had been done; (b) there was no need to explain the reason of arrest if the arrested person was caught red-handed; (c) nor when it was important to secure a possibly violent criminal; (d) nor when a person was arrested and detained upon a stated charge of which the person was reasonably suspected, with a view to further investigation of a second charge. A little later he said that "the principle" which was "the heart of the matter" was that the arrested person was entitled to be told what was the act for which the arrest was made (at 593).

22 Lord du Parcq also accepted (at 598) the general rule which Lord Simon had quoted from Burn's Justice of the Peace (at 598) and that the general rule was subject to exceptions. He went on:

"*The principles ... follow from the governing rule of the common law that a man is entitled to his liberty, and may, if necessary, defend his own freedom by force. If another person has a lawful reason for seeking to deprive him of that liberty, that person must as a general rule tell him what the reason is, for, unless he is told, he cannot be expected to submit to arrest, or blamed for resistance.*" (at 598)

23 Later in his opinion, Lord du Parcq concisely stated two points directly relevant to the present case:

"*The omission to tell a person who is arrested at, or within a reasonable time of, the arrest with what offence he is charged cannot be regarded as a mere irregularity. Arrest and imprisonment, without a warrant, on a charge which does not justify arrest, are unlawful and, therefore, constitute false imprisonment ...*" (at 600)

It does not matter that a person may be released .That person or persons have been deprived of their liberty which is an assault, breach of the peace and otherwise renders police liable to arrest is a person stands their ground and calls in a crowd for a citizens arrest under any number of provisions of the code (see s254 , s546 (c) s260 of the Criminal Code Act 1899 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CriminCode.pdf).

A person is entitled to resist an unlawful arrest **(see Power v Coleman Townsville Magistrates Court , 19/10/2000 , Court File Number 19102000 T1/3 SML (Verra SM) Attached** *See Adams v Kennedy and ors (2000) 49 NSWLR 78 at p 83 applying Christie v Leachinsky (1947) AC 573 at 587-588). http://www.austlii.edu.au/au/cases/nsw/NSWCA/2000/152.html Coleman v Greenland and The State of Qld and ors [20004] QSC 37* http://www.sclqld.org.au/caselaw/QSC/2004/037 Coleman v Watson and The State of Qld and ors [2007] QSC 343 http://archive.sclqld.org.au/qjudgment/2007/QSC07-343.pdf

The Christie principles must be written into law as a right of a person arrested, or to be arrested (see Goldie below)

REASONABLE BELEIF AND SUSPICION AND CIVIL AND CRIMINAL LIABILITY

The powers of arrest pertaining to a police officer is expressed in terms of reasonable suspicion

On that point and applying into Australian Civil law Article 9 of the ICCPR (Arbitrary arrest) the majority of the Federal court in Goldie v Commonwealth of Australia [2002] FCAFC 100 (12 April 2002) http://www.austlii.edu.au/au/cases/cth/FCAFC/2002/100.html

had this to say :

"4 The definitions of the words "suspect" and "suspicion" in the Macquarie Dictionary make it plain that a suspicion may be formed "with insufficient proof or with no proof", or "on little or no

evidence", or "on slight evidence or without evidence". By itself, the word "suspects" would be capable of being construed to include the formation of an imagined belief, having no basis at all in fact, or even conjecture. Plainly, to empower an arrest on the basis of an irrational suspicion would offend the principle of the importance of individual liberty underlying the common law. It would also allow the possibility of arbitrary arrest, with the consequence that Australia would be in breach of its international obligations pursuant to Article 9 of the International Covenant on Civil and Political Rights. To avoid these consequences, the word "reasonably" has been placed before the word "suspects" in s 189(1). The adverb makes it clear that, in order to justify arrest and detention, the suspicion that a person is an unlawful non-citizen must be justifiable upon objective examination of relevant material. Given that deprivation of liberty is at stake such material will include that which is discoverable by efforts of search and inquiry that are reasonable in the circumstances.

5 The phrase "reasonably suspects" is used as an alternative to "knows". Before an officer could know that a person is an unlawful non-citizen, the officer would have to have reached a level of satisfaction of that fact approaching certainty. If, as in the present case, the person concerned were not an unlawful non-citizen, because he or she was the holder of a visa entitling him or her to be in Australia, it would be impossible for the officer to know the contrary. The context of the phrase "reasonably suspects" suggests that something substantially less than certainty is required. Reasonable suspicion, therefore, lies somewhere on a spectrum between certainty and irrationality. The need to ensure that arrest is not arbitrary suggests that the requirement for a reasonable suspicion should be placed on that spectrum not too close to irrationality.

*6 It is trite to say that what is reasonable in a particular case depends upon the circumstances of that case. It is worth remembering, however, that all of the circumstances must be considered. If, as in the present case, an officer is aware of conflicting facts, the reasonableness of any suspicion formed by that officer must be judged in the light of the facts available to him or her at the particular time. It may be that the existence of a particular fact would ground a reasonable suspicion in the mind of the officer if it were the only fact known to him or her. If, at the time of forming the suspicion, the officer is aware of conflicting facts, it may not be reasonable simply to discard those facts and to form a suspicion on the basis of the single fact capable of supporting such a suspicion. That is, the officer is not empowered to act on a suspicion reasonably formed that a person **may** be an unlawful non-citizen. The officer is to detain a person whom the officer reasonably suspects **is** an unlawful non-citizen. That, of course, is consonant with the serious act the officer is empowered to carry out. Section 196 operates upon a person detained under s 189 who **is** an unlawful non-citizen, not upon a person **reasonably suspected of being** an unlawful non-citizen. The scheme contemplated under the Migration Act is indefinite detention pending removal or deportation under administrative fiat. It is not detention for the purpose of curial review or determination of status. These provisions confirm that the appropriate construction of s 189 is that an officer in forming a reasonable suspicion is obliged to make due inquiry to obtain material likely to be relevant to the formation of that suspicion.*

7 One further consideration should be mentioned. A suspicion that is not grounded in fact to the point of becoming reasonable does not become reasonable because of a perceived need to act quickly."

Yet a person exercising the right to citizens arrest or even self defence under the code must have a belief on reasonable grounds and be in compliance with the Christie v Leachinsky principles.

If there was a statutory right to freedom of expression, the power to arrest falls away and the normal civil and criminal penalties should apply

Thus there should be a statutory right to freedom of expression consistent with the common law, the constitutional common law and the decision of THE UNHRC IN COLEMAN V AUSTRALIA (COMMUNICATION 1157/2003).

As I have stated before , anti discrimination law should apply to the criminal law . It would therefore apply to freedom of expression in public places . The High Court stated in McCloy at par[45]:

"Equality of opportunity to participate in the exercise of political sovereignty is an aspect of the representative democracy guaranteed by our Constitution. In ACTV, the law which was struck down was inimical to equal participation by all the people in the political process and this was fatal to its validity. The risk to equal participation posed by the uncontrolled use of wealth may warrant legislative action to ensure, or even enhance, the practical enjoyment of popular sovereignty."

Our history is much the same as South Africa, The USA among others as far as historical racism is concerned. History, said the whole court in Lange is one of the matters that should be taken into account in freedom of communication cases. The Federal RDA requires our history to be taken into account (See also the Bolt case). And as to who people should be protected against in order to feel equal see :

BRANDER v RYAN AND MESSENGER PRESS NEWSPAPERS No. SCGRG-99-119 [2000] SASC 2 (12 January 2000) http://www.austlii.edu.au/au/cases/sa/SASC/2000/2.html

And

Gaynor v Chief of the Defence Force (No 3) [2015] FCA 1370 (4 December 2015)

http://www.austlii.edu.au/au/cases/cth/FCA/2015/1370.html

That is why also I refer you back to my 2002 republic inquiry submission why any rights act must have a statement about our history, but unlike the anti discrimination act a court MUST take it into account.

ENVIRONMENTAL RIGHTS

As I have sought to incorporate what the last bill of rights inquiry into this one, with a different outcome I hope, I incorporate what I have said to the 2nd Australian Senate inquiry into an Australian republic (Pat Coleman submission 727 , entitled **"Inspire me with a democratic republic!" at pp 45-46 ,archived here http://www.aph.gov.au/~/media/wopap...**) on the matter of environmental rights building on The Proposed EARC Bill of Rights , The South African Bill of Rights and the precautionary Principle .

Pat Coleman