

Eugene H White



Secretary
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I support a Human Rights Act for Queensland. Having done so for many years, including involvement in campaigns, it suffices for me to endorse and join in the major human rights organisations in their detailed submissions to you.

I extract and repeat the sentiments of my submissions of 5 June 2009 to the National Human Rights Consultation Secretariat and 17 April 2016 to you, the Queensland Parliament's Legal Affairs and Community Safety Committee, to urge you to ensure that the concerns raised are appropriately addressed.

Three plus decades in law confirms my conclusion that the common law offers no secure protection of human rights as Parliament can extinguish past understood rights if it determines these as a lesser priority than responding to some perceived contemporary evils as terrorism or paedophilia with draconian laws upheld by courts eg *Al-Kateb v Godwin* 2004 HCA 37; *Fardon v A-G [Qld]* 2004 HCA 46. Sometimes legislation is passed where ancient rights as those to silence, association, legal representation and/or against self-incrimination are abrogated – often also excluding any judicial oversight - Juvenal asked: “quis custodiet ipsos custodes” [who shall guard the guards?].

Incompatibility findings will in part address this. With consequential publicity, an educated people can express their will, as a final resort, at an election.

Beyond such declarations in the macro context, I add that there needs to be, on the micro individual level, a complaint mechanism with a standalone cause of action in a no/low cost tribunal after a mandatory mediation. There needs to be a proper balancing

of competing rights as well as between rights and responsibilities [eg "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." OW Holmes J, *Schenck v US* 1919 249 US 47, at 52]. Further to minimise trivial, vexatious complaints especially those arising from personal malice or political agendas rather than genuine grievances, there needs to be a nuanced screening process. There will always be a tension between "lawfare" and the egregious ongoing course of misconduct trampling rights which needs consistent calling out. These are concepts well known in the law but reasonable minds may differ where to draw the line to create a systemically just regime.

Often the rights trampled are those of the most marginalised in our society and least able to defend themselves. While sometimes justice prevails notwithstanding the absence of such a charter [eg *Houda v The State of New South Wales* [2005] NSWSC 1053, *Evans v NSW* 2008 FCFCA 130 and especially *Rowe v Kemper* 2008 QCA 175] that is often due to coincidental personal tenacity, individual wealth or the skill, courage and commitment of lawyers; community advocates, political activists or crusading journalists. Those rights should be available as a matter of course and not dependant on chance acquaintance or champion. For this reason, adequate resourcing is vital.

Beyond the legal framework, human rights recognition requires social acceptance and cultural change. There need to be sufficient resourcing to include a comprehensive public education program which will facilitate a substantive permanent cultural and social growth which in itself will ultimately lead to less complaints or at least earlier and better resolution to them. Prevention and early intervention before escalation of issues will lead to revenue saving plus nonfinancial benefits as greater social and community harmony.

I thank the Committee for its time and consideration.

EUGENE H WHITE

[Signature on initial 170416 submission no 372; verification can be sought via above contact details]