

The Research Director,
Legal, Constitutional and
Administrative Review Committee,
Parliament House, Brisbane,
Queensland, 4000.

10th November 1997.

Dear Sir,

Submission Re: Bill of Rights for Queensland.

Why do we need another Bill of Rights?

The Queensland Attorney General's office Has confirmed the 1688/89 Bill of Rights remains in force in Queensland. See enclosure No 1. Also enclosed items 2, and 3 which show that it is in force in all other States as well as Federally in Australia.

The issues Paper No 3. states there are reasons why we should have a Bill of Rights, as if we did not already possess one. Why? It makes no reference to 1688/89 whatsoever.

Even the Courts seem strangely reluctant to acknowledge its existence and the Politicians only do so in respect of their Parliamentary Privilege from whence it is derived. Very little else is acknowledged especially "the Right to have arms for our defence suitable to our condition, and as allowed by Law" . (Note : and means as well as, not if.)

In other words, only they can enjoy its Rights and protection. These days this is called elitism.

Do you and your Committee also deny the existence of another Bill of Rights known as the First Optional Protocol, dated 25th December 1991? Do you also deny we are also obligated to the United Nations Universal Declaration of Human Rights and that Australia is a signatory to it and that it is still Law? Yet another Bill of Rights. We have Bills of Rights coming out of our ears which are not giving us any tangible Rights and now you want another?

The common thread running through the paper suggests that we do not have enough Rights to protect us and we should because all sorts of nasties could happen to us if we don't. Well with four sets of Bills of Rights to "protect" us now, and which are not working, what makes you think that another will be any better?

What if it were modelled on the USSR Bill of Rights? Article 55 of which states, "No one may, without Lawful grounds, enter a home against the Will of those residing in it".

What it fails to spell out is, what constitutes "Lawful Grounds". These could be anything from the fact that you were not a member of the Communist Party, to your Grandmothers eyes were the wrong colour. Do we need it? Our own Bill of Rights of 1688/89 demands "Freedom from Unwarranted Search". (see Dillon v Plenty). Our new Police Powers give them the right to Covert entry and Search.

So why should we believe any new Bill of Rights will better protect us when they are not complying with the ones we already have? What will your Committee do about such situations?

continued:-

The Bill of Rights of 1688/89 is, in fact, a Statute Law and is there for all time, but the Courts ignore it when it suits them. Judges and Magistrates are a Law unto themselves and please themselves what they allow. Many politicians are corrupt and so are some members of the Judiciary. (Justice Yeldham?) There are many who believe (with some justification) that a number of Judges are pedophiles. How will your Committee frame a Bill of Rights to protect us from them?

In Courts, significant evidence is often disallowed and court transcripts are tampered with. We have an expensive system of Law and very little Justice.

The original EARC investigation into a Bill of Rights received considerable opposition. At one meeting Justice Michael Kirby spoke and he had a fairly hostile audience, the video of the meeting was offered for sale afterwards and surprise, surprise, all hostile comment to him was completely eliminated. (It is thought he must have re-recorded it.) So much for Judicial integrity.

Referring to 6.1 Arguments for a Bill of Rights:

Paragraph 1: the statement "A Bill of Rights provides an appropriate legal framework ..." It does not and never will.

Paragraph 2: refers to "Common law and legislative protection can be overridden by later inconsistent legislation, etc...." It happens now and another Bill of Rights will not change that.

Paragraph 3: Queensland should have the Upper House re-instated under a Statute Law and the Party Political system outlawed. (This might, in fact, not be practically possible but some means should be found to compel Members of Parliament to (a) ascertain the Will of their Electorates, (b) Re-present it, (c) make Party dictates illegal and subject to penal clauses.)

Paragraph 4: A Bill of Rights would not improve anything.

Paragraph 5: Yes, Common Law is becoming increasingly "internationalised" and it should not be. It is due to the growing interference with the Sovereignty of this Country and its States by the United Nations. We should withdraw our membership of that "dis"-organisation.

Paragraph 6: A Bill of Rights does not "empower the socially disadvantaged" etc... Money is what empowers our Justice system and if you "aint got no money, you aint got no Justice".

Paragraph 7: Queensland Law would be a whole heap better if it ceased to reflect "international obligation".

In 6.2 paragraph 3 makes a very good case for leaving things alone. The rights which can become "fossilised" are more likely to occur when every conceivable (at the time) aspect of Rights' is attempted to be addressed in "brass bound legislation". That is why Common Law is so important. It allows a "trial by Peers" to use their commonsense.

In conclusion may I state, I do not have the time to make further detailed comments. I have observed the growing tendency of the elitists to tell us what is good for us and that every time we carry out their suggestion we finish up worse than before and lose more and more freedoms.

If there is a real need for a Bill of Rights it is the need for a Re-Affirmation of our existing Bill of Rights of 1688/89 the Common Law, Habeas Corpus and the Magna Carta.

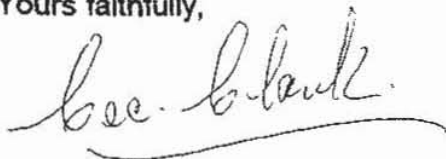
The Judiciary and the Politicians should incur heavy penalties if they fail to observe them and justice should be affordable to all. Rich or Poor.

The EARC's Bill of Rights has some good features, but many are empty rhetoric when we are faced with the total disregard of the Rights we inherited. In other words, as previously inferred, if the Judiciary ignore the Law, as they often do, WE HAVE NO JUSTICE.

Regarding 9 - Issues for Consideration:

1. Not if the law is obeyed.
2. Re-affirmation of existing system with severe penalties to Politicians and Judiciary for disregarding it and perversion of justice.
3. No comment other than previous.
4. NO to items 1 and 2. YES to item 3.
5. Our existing Bill of Rights is for all time. Any Bill of Rights which can be amended by Politicians is useless. Item 1 YES. Item 2 YES. Item 3 NO.
6. The over-ruling consideration should be "Does it contribute to a JUST outcome?".

Yours faithfully,



C.E. Clark. MIIExE.

Enclosed: Three A3 sheets.

P.S. Article 62 of the Constitution of the USSR completely negates any rights you thought you may have had in the previous articles.



Attorney General's Department

NEW SOUTH WALES

28 October 1996

Mr B Lawlor
Lot 12 Falbrook Road
FALBROOK NSW 2330

Dear Mr Lawlor,

The Attorney General, the Honourable JW Shaw QC, MLC, has asked me to respond to your inquiry concerning the Imperial legislation of 1688 known as the Bill of Rights.

I have carefully noted your inquiry, and I can assure you that the 1688 enactment remains part of the law of New South Wales. Section 6 of the Imperial Acts Application Act 1969, specifically provides that the bill of Rights remains part of our law. That same Act also provides that the Magna Carta of 1297 remains part of the law of New South Wales.

However, as I am sure you are aware, the Magna Carta, the Bill of Rights, and all the legislation in force in New South Wales, is subject to legal and judicial interpretation by our courts. How the Bill of Rights impacts upon the daily administration of the State and upon members of our community remains an issue of legal interpretation.

If you are interested to know how these Imperial Acts apply in any particular case or circumstance, I would suggest that you seek some form of legal advice.

I hope this information will be of interest to you.

Yours faithfully,

Mrs Johnson for
DIRECTOR GENERAL

Entrenched Laws are those laws put into place to govern the behaviour of the parliament and the monarch. They are locked firmly into place, so the powerful entities the laws control cannot remove, disobey or subvert those laws.

Australian politicians, governors, legal advisers, and bureaucrats huff and puff that they can amend or repeal these laws in the vain hope that we will believe them and, in believing will sit back and let them subvert our laws.

These pages show that the Bill of Rights 1688 is law in every state in Australia, federally and in every country of the British Commonwealth of Nations.

The laws are your umbrella. The huffing and puffing politicians are like kids whistling in the dark to prove how brave they are as they walk past the cemetery. They know the power of these laws. They saw what Kerr did to Whitlam and they tremble in fear.

They may have appointed lame ducks and stooges as governors and as Governor General but the mills of God grind exceeding slow but exceeding small. They will get their just deserts.

08:58 0400 027934

ANDREW FRASER MP

6/01



ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Reply please to Mr. 904 00911

16 AUG 1996

Your ref:

Mr A. Fraser MP
Member for Coffs Harbour
Suite 2, 1 Duke Street
COFFS HARBOUR NSW 2450

Dear Mr Fraser

Status of the Bill of Rights 1688

The Honourable Donver Beaudin MLA, Attorney-General and Minister for Justice has asked me to thank you for your letter of 17 June 1996 and to respond to you on his behalf.

The Honourable the Attorney-General has taken legal advice on the question raised by you being the status of the Bill of Rights 1688 ((1688) 1 William & Mary Sess. 2 c. 2).

The legal advice to the Honourable the Attorney-General is that the Bill of Rights 1688 continues in force in Queensland.

Yours sincerely

Stephen Coates
STEPHEN COATES
LEGAL ADVISER



The Hon John Tingle, MLC
Legislative Council
Parliament House
SYDNEY NSW 2000

907950

13 - 100

Dear Mr Tingle

I refer to your letter dated October 23 requesting advice as to the applicability of the United Kingdom Bill of Rights 1688.

Section 6 of the *Imperial Acts Application Act 1969* serves to preserve the validity of the (1688) 1 William and Mary sess. 2 c. 2 (the bill of Rights) under New South Wales law. It is, therefore, correct to say that the Bill of Rights is law in New South Wales and that this has been effected by Statute. However, the Statute does not carry constitutional force.

Consequently, the 1688 Bill of Rights can be, and indeed has been, used as a basis for legal action in New South Wales. The important point to appreciate, however, is that where other statutes (State or Federal) deal with matters covered by the Bill of Rights, there will be a question of whether the sections of the Bill of Rights sought to be relied upon have been overridden.

It is one of the functions of the judiciary to consider whether particular laws are in conflict with each other and to determine the appropriate application of conflicting laws where there is no statute which resolves the matter. Therefore, in an examination of the applicability of a particular provision of the Bill of Rights 1688, consideration would need to be given to any subsequent case law and/or statutes which deal with the area of law in question.

I trust this information is of assistance to you and thank you for bringing your concerns on this matter to my attention.

Yours faithfully

JW Shaw
J W Shaw QC, MLC
ATTORNEY GENERAL

ENC 1



Office of General Counsel

OGC96079375
M156352
M156527

14 August 1996

Mr NJ Smith
PO Box 1275
ALBURY NSW 2640

Dear Mr Smith

THE AUSTRALIAN CONSTITUTION

I refer to your letters to the Attorney-General (dated 30 June 1996) and Mr David Bennett of this Department (dated 1 July 1996) asking a number of questions about the Australian Constitution and certain important enactments in English constitutional history. I have been asked to reply on behalf of the Attorney-General and Mr Bennett.

First, you ask whether the Justices of the High Court must 'abide' by the Constitution. The short answer to your question is yes; the Constitution creates the institutions of national government in Australia, including the High Court.

One of the High Court's functions is to resolve legal disputes about Australia's federal system of government. While the performance of this function necessarily involves interpretation of the Constitution, it is nonetheless directed at establishing the meaning and effect of the Constitution where these are at issue.

Turning to the Constitutional requirements relating to members of the Commonwealth Parliament, I note that s.44(i) provides that any person who is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges or a subject or a citizen of a foreign power, cannot be a member of Parliament. Sections 353 and 354 of the Commonwealth Electoral Act 1918 effectively provide that the Court of Disputed Returns (usually the High Court) is to determine questions relating to the validity of any election of a person to Parliament.

Section 42 imposes a separate requirement: it requires every member of Parliament to take the oath set out in the Schedule to the Constitution. I have no information that would suggest any current member has failed to comply with s.42.

As to the statutory enactments of Magna Carta, the Bill of Rights and the Petition of Right, they are all prominent landmarks in English constitutional history. Further, they are part of the law of Australia. However, they do not have any special status in Australia and, like other legislation, may - to the extent that they have any continuing effect in a particular

Central Office

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jurisdiction - be amended, repealed or superseded by the legislation of the relevant Australian parliament.

I take your reference to 'the Coronation Oath' to be a reference to the oath taken by the monarch on coronation. Historically, these oaths have served to define aspects of the relationship between the monarch and his or her subjects. However, the oath does not create any particular legal obligation in relation to the High Court.

Your final point in relation to the Australia Acts raises a different issue. The enactment of the Australia Acts in 1986 by the Commonwealth, State and United Kingdom Parliaments certainly marks a formal acknowledgment of Australia's status as an independent nation. However, as the Acts in question do not amend the Constitution, it was not necessary to approve their enactment at referendum in accordance with s.128 of the Constitution.

I would only add that I have no information about any expenditure of Commonwealth funds in support of the Republican movement in 1986.

I trust this information is of assistance.

Yours sincerely

James Faulkner
AG Senior General Counsel
Constitutional Policy

14 August 1996
The Australian Constitution
2



Government House
Canberra ACT 2600

9 December 1996

Dear Mr Pitt,

As is normal practice, Buckingham Palace has referred to this Office your letter of 24 October 1996 to Her Majesty The Queen concerning the Bill Of Rights of 1688.

The Governor-General has been advised by the Attorney-General that:

"The statutory enactment of the Magna Carta and the Bill of Rights are part of the law of Australia. The enactment of the Australia Acts in 1986 does not affect this; rather, it marks the formal abdication by the British authorities of their powers over the Commonwealth and the States of Australia. I note in passing that the Australia Acts do not amend the Constitution and the enactment of the Australia Acts does not raise any issue in relation to s.128 of the Constitution.

"While provisions of the Magna Carta and the Bill of Rights have a continuing application, Magna Carta has little, if any, practical effect; many of the provisions of the Magna Carta have effectively been superseded by more modern law. The application of the Bill of Rights is discussed from time to time in Australian courts."

"It should also be noted that these provisions, to the extent that they remain part of the law of Australia, may be repealed or amended by the relevant Australian Parliament."

I trust this information is helpful to you.

Yours sincerely,

Carol Summerhayes
Deputy Official Secretary

Mr A.R. Pitt
National Chairman
THE AUSTRALIANS
79 Ferry Street
MARYBOROUGH QLC 4850



THE HON K TREVOR GRIFFIN LL.M. MLC
ATTORNEY GENERAL
MINISTER FOR CONSUMER AFFAIRS

Reference: AGD 201-93 TEMPI
AGD(KTC.053.nh)
Please quote: 14 17766

4 DEC 1996

Mr G Diamantes
501 Radium Street
BROKEN HILL NSW 2380

Thank you for your letter enquiring about the status of the Bill of Rights 1688 in South Australia.

I advise that the Bill of Rights was regarded as a piece of legislation which was received as part of the law of the colony of South Australia last century by the South Australian Law Reform Committee in its 96th Report "relating to inherited imperial law and constitutional status". The Report states that the Bill of Rights is "most certainly in force in South Australia and is the major statute of the rights of the subject in force in this State".

However, for the sake of completeness, I must point out that the Bill of Rights is not constitutionally entrenched. It can be repealed, and inconsistent provisions can be enacted, by the South Australian Parliament. The South Australian Parliament's powers to make laws are plenary, the only limitations being the Commonwealth Constitution, limitations upon power to legislate with extraterritorial effect, and "manner and form" requirements. None of these limitations is applicable to any modification of the Bill of Rights.

I hope the above information will be useful.

Yours sincerely

K Trevor Griffin
ATTORNEY GENERAL

45 PIRIE STREET, ADELAIDE 5000 SOUTH AUSTRALIA
BOX 464 G P O ADELAIDE 5001 SOUTH AUSTRALIA DX 336
Facsimile: (08) 8207 1736 Telephone: (08) 8207 1723



Premier

Mr R Chilcott
Puttans Road
NORTH MOTTON
Tasmania 7315

Dear Mr Chilcott

I refer to your recent contact in respect to the *Bill of Rights 1689* and advise I referred the matter to the Attorney-General, the Hon Ray Gium MHA, for his advice.

The Attorney-General informs me that the *Bill of Rights 1689* applies in Tasmania, but only to the extent that it is not inconsistent with Tasmanian legislation, or at the very least, Tasmanian legislation enacted since 1986. On that basis, it does not invalidate the *Firearms Act 1996*, but is itself invalid to the extent it is inconsistent with this Act.

Thank you for contacting my office.

Yours sincerely

Tony Rundle MHA
PREMIER

Executive Building, Level 11, 35 Murray Street, Hobart 7000
Telephone: (0021) 33 3464 Fax: (0021) 34 4572

DEPARTMENT OF
JUSTICE
VICTORIA
ATTORNEY-GENERAL'S
POLICY DIVISION

Our Ref: RW

27 May 1997

Mr Ross Wilmoth
1296 Dandenong Road
MURRUMBEI NA VIC 3165

Dear Mr Wilmoth

BILL OF RIGHTS

The Attorney-General has asked me to reply to your letter of 5 May 1997 querying the status of the Bill of Rights 1688 (UK) in Victoria.

The Bill of Rights applies in Victoria by virtue of its incorporation in the *Imperial Acts Application Act 1980*.

Yours sincerely

CYNTHIA MARWOOD
Acting Assistant Director - Civil
Attorney-General's Policy Branch

01073117

ATTORNEY-GENERAL'S POLICY DIVISION
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THE
STATUTES

OF
WESTERN AUSTRALIA.

ADMINISTRATION OF JUSTICE (CIVIL)

49

appointed by the Governor as aforesaid shall to all intents and purposes be and be deemed and taken to be the Chief Justice of Western Australia.

24 VICTORIA
No 15

Oath of office

12. That the said Chief Justice shall, previously to entering on his under this Ordinance, duly qualify himself for the same, by taking the usual oaths prescribed by Acts of parliament to be taken by persons holding public offices of trust, and also the following oath: "I, A. B. (naming himself), do solemnly promise and swear that I will not deny or delay justice to any person, but will with my utmost care and diligence and to the best of my ability, truly and faithfully execute the office of Chief Justice of Western Australia, and that I will to the best of my skill and learning do impartial justice between the Queen and her subjects, and between subject and subject, and judge and determine in all matters which shall come before me to be adjudged and determined, according to the Laws and Statutes of Great Britain in force in the said Colony and the Ordinances of the said Colony, without interest, partiality, prejudice, fear, favour or affection. So help me God!" Which oath shall be administered to the said Chief Justice by the Governor in Executive Council.

By Authority:



M'CARRON, BIRD & CO., PRINTERS, 37 FLINDERS LANE WEST, MELBOURNE

1882

Entrenched Laws are like a harpoon. If they were ever in force they are still in force BECAUSE they are ENTRENCHED

Page 3