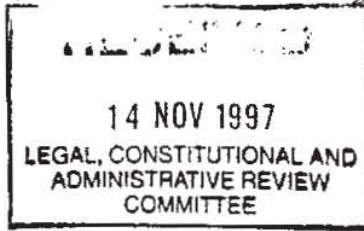


Research Director  
Legal Review Committee  
Parliament House  
George St Brisbane  
QLD 4000



36.  
6 Nov 97

Dear Sir,  
re Bill of Rights for Queensland?

I attach hereto <sup>my</sup> ~~the~~ Submission  
on the above matter, as advertised  
in the daily press.

Yours sincerely  
(Dr) Rupert Goodman

I regret I have no facilities  
for typing.

RG

~~Dr Rupert Goodman~~  
by Dr Rupert Goodman

If a Bill of Rights is introduced it should have no association with the Constitution, either Commonwealth or State. Much more thought needs to be given to the basic principles of a Constitution, what it should be and do. Clearly, as with constitutions of all organisations, it must be seen as an organisational + administrative framework for the government of this country. Of course there may be changes to that framework as there have been over the years by way of referenda and no doubt there will be more in the future. A review of the chapters of the Constitution reveals an objective statement of the lay-out of the organisation.

There is a danger at the present time that various interest groups are all claiming the right for inclusion in the Constitution - aborigines, feminists, environmentalists, civil rights, etc. If all these had their way, the result would be somewhat of a "dog's breakfast" to use a popular term.

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Could a Bill of Rights enshrine all the values that the society currently believes in and practices or should it enshrine all these "universal" values which we ought to uphold? History is full of the eternal verities of mankind. These include the Christian virtues of faith, hope and charity, Plato's cardinal virtues of prudence, justice, fortitude and temperance. Some societies in the past abhorred the seven Deadly Sins of pride, wrath, envy, lust, gluttony, avarice and sloth. Now of course we have in our society a degree of social pluralism, meaning that different values must be accepted on major social issues. It has been stated that in our multicultural society there are now no universally accepted values, no moral absolutes.

Where does this leave any attempt to prescribe "rights", when there is no agreement on social issues, such as smoking marijuana, euthanasia, abortions, homosexuality and lesbianism, marriages and de facto marriages, crime and punishment, etc. Will "rights" proposed by Christians be accepted by Moslems, Hindus and for that matter by Catholics and other religious groups.

Are we moving to a different, hedonistic,  
ego-centric life-style where the "self" is central, to use  
accepted expressions such as "self-indulgence",  
"self-awareness", "self-fulfilment", "self-interest",  
~~"self-indulgence"~~, "self-actualization<sup>etc.</sup>". In such  
a free society a person may do whatever  
he thinks is right and may shun any  
outside authority to tell him what  
is right. The Church, the family, the school  
are no longer the sources of value  
training. While there may be a right to  
vote, the individual may decide whether he  
exercises that right, without penalty.  
Freedom in our society has become more  
important than "rights".

I note the reference in your September  
document that Queensland's Constitution Act 1867  
does not contain any provisions guaranteeing  
individuals' rights and freedoms. The implication  
is that <sup>the</sup> Queensland Parliament should go it  
alone to introduce such rights. Common  
sense suggests this is the "wrong approach".  
Are you suggesting every state should  
do likewise? Obviously this is an  
area where the Commonwealth has taken  
an interest in recent years. Queensland would  
do well to look at this development  
rather than trying to duplicate or exceed  
such "rights".

4

Any attempt to extrude all current "human" rights into a Bill or Act of Parliament via a Constitution is doomed to fail. The lecturer has said so on numerous occasions. Such a Bill would either be so wide and general in its concepts that it would be meaningless and lawyers would have a field day for the next fifty years. Alternatively it could be so narrow and specific that it could never hope to cover all human rights now and in the future.

One must remember that society is constantly changing and the legal and political system must be flexible enough to accommodate these changes, once there is general agreement in society. The concept of "rights" must be seen in this evolutionary process.

Consider for example 'the right to life' versus abortion or 'the right to die' as against euthanasia. Queensland has done well in legislating for particular rights & in setting up boards and commissions to oversee any activities in society which might infringe any "human rights".

You mention in your Issues Paper the actions of the Commonwealth Government in signing international agreements to establish "rights", using the "External affairs" power of the Constitution (51(xxix)). Unfortunately the States have not challenged this method of establishing "rights". The External affairs power was originally conceived as a power to deal with matters outside or "external" to Australia, usually treaties & matters of defence. Hence the setting up of a Department of External Affairs and the appointment of a Minister for External Affairs. As many of these matters concerned war and peace, urgent decisions were made by the Executive before being reported to Parliament. It was never intended that this "External affairs" power be used for "internal" domestic matters such as human rights, discrimination on the grounds of race, sex, etc. By signing these Conventions, the Commonwealth is committed to implementing these provisions, even though it has no power to do so under the Constitution, on such matters as pollution, the environment, heritage etc which are State matters.

I enclose for your information copy of an article illustrating what can happen when the Commonwealth signed the UN Convention on the "Rights" of the child.

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The signing of these Conventions is often done without reference to the Parliament or to the States. In this situation there is bound to be duplication and conflict but international & Commonwealth Law must prevail. Frequently there is an air of secrecy about these "international" laws and rights. Evidence was given to a Senate Committee that ILO Convention 158 was ratified by the Executive the day after the 1993 election, without discussion with any State! Further, the National Action Plan on Human Rights was tabled in Geneva on 22 February 1994 but was not tabled in the Commonwealth Parliament until June 21! The States were not consulted. By this method the Commonwealth has acquired power over the States with respect to "rights", it can use international law and treaty obligations with respect to "rights" without having to legislate and in effect can amend the Constitution without a referendum. (e.g. The Dams Case in Tasmania)

All this means States can drop any individual approaches for a "Big Bill of Rights" Commonwealth and States

4.  
confer before any further international agreements relating to "rights" are concerned and all Parliaments, ~~and~~ the media and the public must be able to debate the issues.

EARC's proposed Bill of Rights is an unwise approach, for one reason it differs in many respects from that in Victoria. "Rights" do not belong to one State and cannot differ from State to State. The "rights" of Australian citizens should know no boundaries, which comes back to the point that any action must be a Commonwealth matter in consultation with the States. The trend to examine proposed legislation by a special committee for possible breaches of well established human rights is a wise one & could spread throughout the Commonwealth, with the Commonwealth Government taking the initiative.

Forwarded for your consideration

(D) Rupert Goodman



Family Update

Newsletter of the Australian Family Association  
Vol 13 NO 4 October 1997.

## **Continuing Inquiry into the UN Convention on the Rights of the Child**

Last year, a Victorian family objected to a play in which their daughter was compulsorily involved at her state high school, arguing that both language and plot were inappropriate. The Victorian Department of Secondary Education invoked the UN International Convention on the Rights of the Child to assert its direct authority over this student contrary to the wishes of her parents. In such cases parents argue that not only does invoking the UN Convention *not* protect their children from "abuse", but it actually allows a form of abuse which they themselves would never allow.

In the recent *B and B* Family Law judgment, the Full Court of the Family Court was asked to rule on a custody dispute which involved the mother taking her children from Queensland to rural Victoria, thus almost stopping the father's access to his children. Attorney-General Daryl Williams had introduced a reform to the Family Law Act entitled a "Parenting Plan" which was thought to prevent such an occurrence. But the Full Court allowed the mother to leave, in a decision which was widely regarded as a rebuff to the Attorney-General. This decision by the Full Court was greeted by protagonists such as the Human Rights and Equal Opportunity Commission as a victory for the best interests of children. The UN Committee on the Rights of the Child argue that "the rights and prerogatives of parents may not undermine the rights of the child as recognised by the Convention". The Convention is increasingly being used by bureaucrats and others who wish to subvert or decimate the authority of parents. In response to wide-spread community alarm, the Federal Government has requested community response to a re-evaluation of the United Nations Convention on the Rights of the Child, to which Australia is a signatory.

A strong statement in response to this Inquiry has been made by the Family Council of Western Australia, the peak body representing Western Australian family groups. At its August meeting, it called on the Federal Government to "*urgently and unambiguously denounce the Convention on the Rights of the Child as inimical to the well-being of Australian families and as an unacceptable intrusion on Australia's sovereignty.*"

"The Convention has formally adopted an anti-parent position stating that "*the rights and prerogatives of the parents may not undermine the rights of the child as recognised by the Convention.*"

"The Federal Attorney-General, Daryl Williams has embarrassingly failed in his attempt to persuade the Family Court of Australia that the Convention on the Rights of the Child is not part of Australian law. Rejecting his arguments, the Full Court of the Family Court, presided over by Chief Justice Nicholson, declared in July that the Convention was the best "*starting point for the Court to make an examination of what the rights of children are from time to time*" under Australian family law.

# JN declaration set to split nation over Aboriginal self-determination

**A** Draft UN Declaration which offers Aborigines the right to self-determination is likely to widen the deep divisions created by the High Court's Mabo and Wik decisions.

The Draft Declaration specifically declares that indigenous people (e.g. Australian aborigines) are entitled to self-determination, meaning that they have the right to choose their own form of government and law, and even whether they continue to remain part of the Australian Commonwealth.

The issue has particular significance because of the fact that Australian Aboriginal representatives have supported the inclusion of the right to "self-determination" at international forums, and the Aboriginal and Torres Strait Islander Commission (ATSIC) has thrown its weight behind endorsement of the Declaration at the national level.

The UN Draft Declaration was originally prepared by a United Nations working group on Indigenous Populations, for the UN Commission on Human Rights.

The UN Commission on Human Rights is currently looking at the Draft Declaration, which will be submitted to the UN General Assembly for final adoption.

Although the UN document is a declaration, and not a treaty, it would have immediate moral and political force, and would contribute to the body of international law which impacts on Australian domestic law, which is already in turmoil over the Mabo and Wik decisions, and now the Prime Minister's ten-point plan to resolve the impasse.

Article 3 provides the right of indigenous people to establish their own state and government, saying they have the right to "freely determine their political status".

Taken literally, the Draft Declaration would require non-Aboriginal Aus-

tralians to leave Australia. Article 28 declares:

"Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which has been confiscated, occupied, used or damaged without their free and informed consent.

"Where this is not possible, they have the right to just and fair compensation.

"Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status."

The issue raises the same types of questions which arose over Australia's adoption of the UN Convention on the Rights of the Child, which arguably pits the rights of children against the rights and responsibilities of their parents.

The proposed UN Declaration follows a string of earlier government decisions giving UN agencies unprecedented power to intervene in Australian domestic issues.

In 1991, the Hawke Government ratified the First Optional Protocol of the UN Convention on Civil and Political Rights which allowed individual Australians to take complaints to the UN Human Rights Committee.

Subsequently, two Tasmanian homosexual activists took the Tasmanian Government to the UN, which found that Tasmanian laws against sodomy infringed their human rights.

The then Federal Labor Government introduced legislation to over-ride the Tasmanian legislation, which has since been repealed in the state.

The Federal Labor government also used the "foreign affairs" power in the Constitution to allow trade unions in Victoria to escape the constraints imposed by the Kennett Government.

The official attitude of departmen-

tal officials in Aboriginal and Torres Strait Islander Affairs is supportive of the UN Declaration on the Rights of Indigenous People.

While conceding that Australian aboriginal spokesmen have supported the UN Draft Declaration's right to self-determination, officials have down-played this support, saying that Aboriginal spokesmen believe separate nationhood "is not likely to be a practical solution for indigenous people in Australia."

Yet the goal posts continue to be moved.

Until the High Court's Mabo case, it was the common view of lawyers and legislators that British settlement had extinguished native title throughout Australia.

The High Court, however, decided that this was not the case, and that native title could have continued to exist on unalienated Crown Land.

The Keating Government subsequently introduced the Native Title Act, which was designed to address the problems created by the High Court's Mabo judgment. It declared that native title had been extinguished by the grant of pastoral leases.

Yet the High Court subsequently ruled that Native Title on pastoral leases had not been extinguished automatically, and so now we have the Prime Minister's Ten Point Plan, designed to address this issue.

One Aboriginal leader, Mick Dodson, has declared that the UN Convention on the Rights of Indigenous People is "the floor, not the ceiling. We are still on the plains, but hope to climb the foothills and then the mountains in terms of our rights."

This is something which will cause deep concern throughout Australia, and resonate with deeply worried voters who have turned away from the major parties towards independents, including the Federal Member for Oxley, Pauline Hanson.

Unless the Government takes a firm line to reassure the Australian people that it will neither sign nor ratify any UN Declaration which offers any form of national sovereignty to Aboriginal people, the drift of voters to independents will continue.

— Peter Westmore

