



*Defending the right
to live by integrity.*

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

**Submission by the Whistleblowers Action Group
to the
Legal, Constitutional and Administrative Review Committee
on the
Preservation and Enhancement of Individuals' Rights and Freedoms:
Should Queensland adopt a Bill of Rights?**

Is Queensland at a crisis point?

"Without the Rule of Law, democracy is but a misleading and empty phrase, for the contrast between a democracy and the totalitarian State lies essentially in the reliance, by peoples wedded to the democratic ideal, upon the Law. The substance of democracy is that the State should be subordinate to the ends and welfare of the common individual, and that subordination can only be achieved where the structure of the State ensures that all are bound by a system of law which is defined and ascertainable; which is capable of change in accordance with the wishes of the majority, constitutionally expressed; and which is publicly and effectively administered according to known forms by judicial officers drawn from a profession trained in traditions of impartiality and incorruptibility."¹

It is debatable whether the rule of law, as the condition is generally understood, prevails under all circumstances in Queensland.

Does Queensland need a Charter or Bill of Rights?

The answer is an unequivocal 'Yes'. In Queensland, the Crown has deserted those who need its protection - the citizenry of Queensland. The State needs a Charter or Bill of Rights to protect the rights of its citizens.

Without such a Charter or Bill, who will look after the rights of the people?

And with such a Charter or Bill, who will guard the integrity of the system of justice that it promises?

In their issue paper the Committee recognised that judges play an essential role in protecting individual rights. The issue paper states: *"Judges are often regarded as protectors of the individual's interests. Judges have developed procedural safeguards for defendants in criminal trials. They have also develop principles of natural justice in administrative law for individuals adversely affected by bureaucratic decisions. However, common law does not provide complete, or systematic, protection of fundamental rights."²*

What is detrimental to our society is that judges may fail to uphold the rights of the individual, not because of a lack of integrity or knowledge, but because of the way our judicial system operates. Our judicial system relies upon honesty of the practitioners placing material before the Court. Justice Williams in his book,³ explains: *"Now it is clear that unless justice is to be perverted the assistance given to the Court by barristers and solicitors must at least be given honestly, and not as is calculated to deceive the Court or hamper it in its tasks. The present system rests on the assumption that under it justice can be obtained although*

the Courts receive no assistance except from the agents of the opposing parties. But the assumption is valid only if practitioners are honest; and if they ceased to be honest some other system would have to be substituted for it."

The Committee may view some of the views expressed in the preceding paragraphs as abhorrent. But it should not judge in haste. There is clear available evidence that persons within Queensland have been judicially assassinated by those who have perverted our system of justice already. There is also clear evidence that those in power are able to protect themselves by using the judicial system to place redress beyond the economic reach of the average citizen.

These are compelling reasons to provide the citizens of Queensland with a Charter or Bill of Rights. Yet even if we obtain such a Charter or Bill of Rights in this State, it will be doomed to fail unless the issue of access to its protections is also addressed. There is already protective legislation in this State which does not fulfil its function.

Relations between the Citizen and the State

There are many parallels between present day society and that which existed in this country when the convicts were first transported to Australia. We still see deep divisions on class lines. The poor, the unemployed and the disadvantaged, because of their economic standing, do not have the resources to go through expensive legal processes to obtain their 'rights'. Nor can very many members of our so-called middle class. The Crown does not assist them and it turns the other way so that it does not see the high expense of such actions which is created by politics. The situation begs the question of why we have courts if only those with wealth are able to access them.

Our history is a fight for rights and the issue of justice has gone hand in hand with those rights down through the centuries. The fight for rights has created wars, revolutions, the demise of the powerful, and the destruction of kingdoms and empires. The past has shown us that very few people have the ability to such a torch, and that those in power rarely recognise the danger signs before it is too late. The crisis facing the rule of law in Queensland suggests that such a time may be close upon us.

When one reads the debates of the Queensland Parliament it becomes apparent that there are few politicians in this State who are wedded to the principles of democracy. Thus the interests of ordinary Queenslanders and their rights are diminished to a degree that causes serious concern among the citizenry. Concern over the withholding of rights creates a dangerous undercurrent that governments, politicians and bureaucrats ought not ignore.

The Separation of Powers is the basis on which our Westminster system of Government is founded. It provides checks and balances, and the ability to question the motives of the different arms of Government. But, at present, this does not happen in Queensland. No matter which political party is in power, Queensland is ruled in a Neronian fashion. Tough talking rhetoric flows freely while political favours are done to protect those in power at the cost of the rights and liberty of individuals. Political and bureaucratic alliances are formed and fostered, while justice is trampled and the citizens are disenfranchised.

The Committee should consider the some examples of this behaviour in recent practice. The Whistleblowers' Action Group is willing and eager to provide documentary evidence to any public inquiry or hearing on the matter of a Charter or Bill of Rights.

- A secret report has been furnished and tabled in the Queensland Cabinet to destroy credibility. The secret report contained a specific proviso that unless certain conditions were adhered to by the persons who were the subject of the report, it would be made public. This was done despite the High Court ruling on a similar issue which stated that such actions were against the principles of natural justice.

- The Crown in Queensland has trampled on the age old notion in common law that every citizen has the right to a fair trial, by withholding from the Court evidence that proves the citizen's innocence.
- An innocent person has been damnified by having false criminal history recorded.
- False reports have been prepared for the express purpose of character assassination.
- Individuals have been forced to sign secret contracts and hand away their legal rights, under threat of economic sanctions.
- The Crown has protected criminal behaviour at the expense of the citizen by hiding behind legal privilege.
- The Crown has prosecuted people to protect criminal behaviour.

And so the list goes on. It is a never ending litany of rights destroyed and overridden. Yet not a finger is raised by the Crown to assist, even after the Crown becomes aware of the facts.

The Crown is suppose to be the model litigant, the upholder of the rights of the citizen.

The Future

For democracy to survive in Queensland two very important matters have to be considered and raised. The first is the present subject - the need of a Charter or Bill of Rights. The second is the need for an Upper House in Queensland.

Without a Charter or Bill of Rights, or an Upper House in Queensland, the citizen is at the mercy of the political party which ultimately controls the politician in Parliament.

The models espoused in the issue papers call for strong and rigorous debate. Fact and opinion must be presented in an open forum and placed on the public record for the citizens of Queensland to debate. Only then can the representatives of the people - the members of Parliament - make the appropriate decisions to protect the people of Queensland and redress the injustices that they have suffered.

Unless this happens, our politicians will continue to fiddle and ignore the citizenry, and Queensland will burn.



Gordon Harris
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- 1 Sir John Barry, "The Ethics of Advocacy," Albury, July 1941.
 - 2 Legal, Constitutional and Administrative Review Committee Issue Paper No 3, September 1997.
 - 3 Harrison's Law and Conduct of the Legal Profession in Queensland.