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**SHOULD QUEENSLAND HAVE A BILL OF RIGHTS?**

In 1993, EARC recommended that Queensland introduce a Bill of Rights. There are, in my view, several issues the committee should address. The first general issue is whether our current system of (limited) common law and constitutional rights will prove adequate for the needs of citizens in the 21<sup>st</sup> century. The committee should consider whether those rights will prove too individualistic for the collective problems and expectations that lie ahead. An example is that under the current system various rights have been developed for the accused in a criminal trial but no real collective rights to protection have emerged for those threatened by criminal conduct.

**Protection of the third generation of rights**

More specifically, there are two main issues that the committee should address in this new inquiry into this matter. They are similar to what has just been said: they relate to the so called 'third generation' of rights of a collective nature. The particular issue would be the protection of the environment. The committee should consider whether a Bill of Rights would provide greater protection of the environment and whether individual citizens might be empowered through a Bill of Rights to gain protection for the environment. Under the current system, individual citizens cannot afford to tackle

through the law the crucial decisions that affect the environment. Indeed, it would appear that under the current system, those who seek to protect the environment may run the risk of being sued by wealthy developers. Without a general right to a clean safe environment it is difficult for citizens to pursue that goal. An area that is particularly relevant in the Australian context is freight transport (its persistent use as opposed to use of rail). The committee should ask how, under the current system, individual citizens can be empowered to deal with the following facts. Australia has the highest road freight per capita with latest ABS data indicating some 119 billion tonne km for 1995.<sup>1</sup> This has arisen partly because road transport undertakes significant interstate and bulk freight tasks.<sup>2</sup> As a result of the concentration of Commonwealth funding for transport on road building,<sup>3</sup> we lack adequate public transport to undertake these tasks: the resulting environmental costs are enormous and the costs in human lives lost or injuries incurred on the roads massive. There have been several cases where trucks have mown down people in cars ahead of them, because they have been too heavy to brake adequately when confronted with a sudden need to stop. In one recent case the driver had taken pills to stay awake to meet the 'gruelling schedule' set for him for the transport of the freight, swerved to the wrong side of the road, and killed people in two cars. How could the individual citizen challenge the government without a Bill of Rights in this situation? A transport company employed and directed the dangerous driving by Snewin, who used stay-awake drugs to meet the 'gruelling schedule'<sup>4</sup> set by the company. The newspaper heading said: 'Truckies like 'time bombs' road carnage case told.'<sup>5</sup> Yet it is ultimately government that has failed to provide a risk free environment, through regulation, on our roads. It is government that has failed to make the transport companies bear their realistic share of the costs of this means of transportation. The courts, including the High Court, have simply said that the common law cannot deal with this form of destruction, and where criminal prosecutions are sought, they founder on archaic individualistic concepts like intention. Nor does the fact that this situation reflects the priorities of government ever enter into the equation. This is why I wish the committee to consider the possible significance of this 'third generation' of collective rights. At present it would appear citizens are powerless to challenge this form of harm. The third generation of rights might empower citizens to take action against this failure by government to provide them with protection and to undertake cost benefit analyses that genuinely factor in all the respective costs of this current situation in human and environmental terms.

For if there were a collective right to a safe and clean environment, governments would have to act to lessen such risk producing activities. For it is clear and no longer really

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<sup>1</sup> Laird, P., 'Energy and Transport' (1997) 4 *The Australian Journal of Environmental Management* 183-4

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Sydney Morning Herald*, 22 Jan. 1997

<sup>5</sup> *Ibid.*

disputed that much of these freight tasks could be performed by an upgraded rail system. This would make the roads safer, improve our energy efficiency and contribute considerable savings, in terms of lives lost, the overall drain on the health system and the environment.

The committee therefore should address the issue of whether a Bill of Rights would empower ordinary citizens who feel threatened with respect to this lack of safety and environmental destruction to bring an action to enforce a right they currently lack or could not afford to access.

### **Protection of indigenous rights through a Bill of Rights**

Related to the environmental protection possibility is the issue of the protection of indigenous rights. The committee should consider whether a Bill of Rights would afford greater protection for indigenous rights, particularly to health and to own property than is proving the case under the current system.

The two issues I consider the committee should address are inextricably linked, since the increasing loss of biodiversity means the increasing loss of cultural and traditional links with nature for indigenous Australians. If it can be argued that biodiversity treaties can be viewed as human rights treaties, then a vital link can be drawn because traditional knowledge is being lost, and customs and culture lost through the loss of global diversity. With the rights to traditional land and self government comes the preservation of indigenous peoples' own environmental ethics.

### **Summary**

Citizens should enjoy the right to a clear, safe environment. In the two areas discussed here, they cannot easily obtain access to justice to insist upon that right. Nor are such rights enshrined in the Constitution or the common law. To try to ensure them under our current system is to endeavour to confront the costly and complex processes of the law.