

# Tharpuntoo Legal Service Aboriginal Corporation

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The Research Director  
Legal, Constitutional and Administrative Review  
Committee  
Parliament House  
Brisbane QLD 4000  
Fax No. (07) 34067691

Att: Mr Neil Laurie

Dear Sir

re: Bill of Rights - Issues Paper No. 3-Tharpuntoo's submissions

Herewith this legal service's submissions in relation to the Queensland Bill of Rights issue. We hope they assist. We thank you for providing us with the opportunity of participating in the discussion. We would be pleased to provide further more detailed submissions should we be invited to do so.

Would you please keep us informed as discussion around *this issue* develops.

Yours faithfully



Ian Pilgrim, LLB  
Solicitor/Researcher

**QUEENSLAND LEGISLATIVE ASSEMBLY - LEGAL CONSTITUTIONAL  
AND ADMINISTRATIVE REVIEW COMMITTEE**

**- ISSUES PAPER NO. 3, SEPTEMBER 1997**

***'THE PRESERVATION AND ENHANCEMENT OF INDIVIDUALS' RIGHTS AND  
FREEDOMS: SHOULD QUEENSLAND ADOPT A BILL OF RIGHTS?'***

**Submission of Tharpuntoo Legal Service Aboriginal Corporation**

Tharpuntoo's submission is based on the contents of the Committee's Issues Paper No.3, September 1997 entitled, 'The Preservation and Enhancement of Individuals' Rights and Freedoms: Should Queensland adopt a Bill of Rights?'. This submission was prepared without the benefit of its author having read EARC's report or EARC's Draft Bill of Rights. They are now to hand but were not at the time of preparation of this submission.

Tharpuntoo's primary concern is with the preservation and enhancement of the legal rights of Indigenous people in the Cape York region. Accordingly, this submission will be influenced by the potential that a Bill of Rights would have for preserving and enhancing the legal rights of Indigenous people in Queensland, and specifically those living in the Cape York region.

In preparing this submission the arguments outlined in the Issues Paper, for and against a Bill of Rights, have been considered. The descriptions contained in the Issues Paper of the Canadian model, the New Zealand model, the Australian Bill of Rights Bill 1985, and the Constitution Commission Final Report 1988 have been considered. The descriptions contained in the Issues Paper of the rights contained in EARC's Bill of Rights, especially as those rights compare with the rights created in other Bill of Rights models (Canada, New Zealand, the Australian Bill of Rights Bill 1985, the Australian Bill of Rights recommended by the Constitutional Commission 1988, as well as the Victorian Constitution [Declaration of Rights and Freedoms] Bill 1988) have been considered. Finally, the contents of 'ILO169' and the UN 'Draft Declaration of the Rights of Indigenous Peoples' have been considered. The Issues Paper has been of great assistance in considering how to respond in this submission.

Queensland should have a Bill of Rights and any future Bill of Rights, should address the following issues which are of concern to Queensland Indigenous people.

1. The special place that Queensland Indigenous people have as Queensland's first people,
2. Queensland Indigenous people's history of dispossession, dispersal, cultural genocide and disadvantage and the special needs of Queensland Indigenous people arising out of that dispossession, dispersal, cultural genocide and disadvantage.

3. The historical and spiritual connection of Queensland's Indigenous people to Queensland, its land and waters.

Any Queensland Bill of Rights should be entrenched within the Constitution. We should follow the example of Canada, not New Zealand. There is a special need for Queensland to entrench any future Bill of Rights particularly in view of its not having an upper house of Parliament to perform 'a review role', an issue referred to in the Issues Paper. Also, for a combination of reasons, Queensland has an unenviable history of denial of the rights of its people, particularly its Indigenous people, by the executive arm of Government.

Tharpuntoo believes that Queensland law should 'reflect International obligations which Australia has entered into'. Accordingly, proper consideration should be given to 'ILO169' and the expectations that Indigenous Queenslanders are entitled to have that the kinds of rights set out in "ILO169" and the UN 'Draft Declaration of the Rights of Indigenous people' will be enshrined in the most permanent way possible in the context of our legal system. Tharpuntoo believes that such things as the Parliamentary Committee System, 'other pre-legislative procedures to ensure the maintenance of high legislative standards,' 'Administrative Law Measures', the Judicial System, 'Specific Legislation which deals with Rights Issues of Concern', Government agencies, Welfare agencies and Public Interest Lobby Groups, all have a part to play in protecting and enhancing the rights of Queenslanders and Indigenous Queenslanders in particular, but that it is nevertheless still necessary for Queensland to have a Bill of Rights containing constitutionally entrenched guiding principles and enforceable standards.

Tharpuntoo believes that it is appropriate that as Australia moves inevitably towards a republican system of government, the need for a Bill of Rights may well become even greater than it presently is. It is readily acknowledged that the Common Law has, during Queensland's history, provided much needed protection against the excesses of the Executive and of some government agencies, and that in some way a future distancing of the Australian Common Law from British Common Law may result in a significantly less vigorous approach to the protection of rights by practitioners of the Common Law in Australia. However unlikely this scenario is, it needs to be considered as a possibility.

Rights in Table 2 at Page 12 of the Issues Paper, described as being 'Community and Cultural Rights not intended to be enforceable' which include 'various rights particular to Aboriginal people and Torres Strait Islanders' should in fact be 'enforceable' to the greatest extent possible. The argument here is a simple one. By making these rights enforceable, the ability of their intended beneficiaries to exercise them will be maximised.

Freedom from discrimination on the basis of race is an extremely important right from the point of view of Indigenous Queenslanders. Existing Queensland legislation currently plays an important part in protecting this particular freedom. But all that is required to remove that right is a simple act of Parliament. Tharpuntoo draws the Committee's attention to the disturbing increase in racism and racist violence which Queensland Indigenous individuals in particular are noticing in recent times. Tharpuntoo