

Bar Association of Queensland

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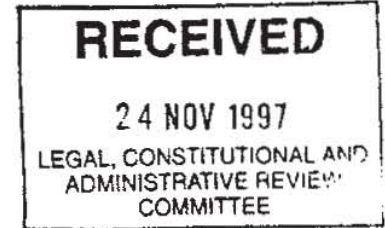
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18 November 1997



Mr Neil Laurie
Research Director
Legal, Constitutional and Administrative
Review Committee
Parliament House
BRISBANE Q 4000

Dear Mr Laurie

RE: ISSUES PAPER NO 3 - SHOULD QUEENSLAND ADOPT A BILL OF RIGHTS?

I enclose herewith a Submission by the Bar Association of Queensland in response to Issues Paper No 3.

Yours faithfully
BAR ASSOCIATION OF QUEENSLAND

A handwritten signature in cursive script, appearing to read "R. W. Gotterson".

R. W. GOTTERSON QC
President

SUBMISSION
by
THE BAR ASSOCIATION OF QUEENSLAND
to
LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Call for Submissions

This submission is provided in response to Issues Paper No 3, dated September 1997.

No Official Stance by Bar Association

The Bar Association of Queensland ("the Association") has given consideration to the matters canvassed in Issues Paper No 3. For the reasons appearing below, the Association holds no view on the matters so raised. In particular, as is apparent from a perusal of the Issues Paper, the Association considers that it is impractical to attempt to distil discrete legal issues from the inevitable mix of social, economic, cultural, political and legal issues which collectively require consideration. The Association does not regard itself as authorised to address matters involving such value judgments on behalf of its members, and is conscious that individual members of the Association are able to address submissions on the Issues Paper in their individual capacities.

Should a policy decision be taken to adopt a bill of rights for Queensland, the Association would be pleased to provide a submission in relation to identifiable legal issues which may arise.

The two matters which it is considered appropriate to briefly address are:

No scope for Minimalist Change in this Field

The EARC Report is accompanied by a draft "*Bill of Rights Bill 1993*".

The draft Bill is intended to over-ride ordinary State legislation (s.6) and (subject to important exceptions) to be enforceable against all persons performing public

functions (s.4). It confers jurisdiction on the Supreme Court of Queensland to enforce those rights which the Bill requires to be observed by persons.

The draft Bill, being a proposal which expressly and intentionally results in an alteration to the statute law of Queensland, should not be regarded as merely a general reaffirmation of existing principles, not intended to have specific consequences. Its practical implications may be far reaching. Upon Parliament conferring a statutory jurisdiction on the Courts to give effect to a substantive application of rules, such as those proposed by the draft Bill, the courts will (correctly) consider themselves obliged to exercise, and exercise widely, the jurisdiction conferred.

It is readily apparent that the proposals contained in the draft Bill are extensive, and of a serious nature, such as will require the Committee's close attention.

Implications for Court Infrastructure

The enforcement provisions of the draft Bill are likely to impose considerable demands on Court time and facilities. The Committee's consideration of the merits of the draft Bill should not ignore the practical consequences of the effect of the generation of additional litigation on the Courts, and particularly, on the ability of the Courts to cope with any such additional litigation without an increase in the number of judges, staff and facilities.

Dated the 14th November 1997



For the Bar Association of Queensland