

# Should Queensland adopt a Bill of Rights?

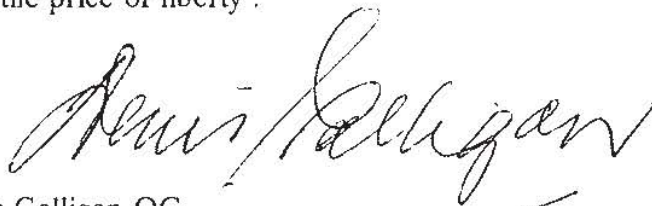
## INTRODUCTION

- 1.1 A Bill of Rights as an ideal is to be commended.
- 1.2 How effective a Bill of Rights could be in a world which is not an ideal one is another question.
- 1.3 Considerable debate could take place on what "rights" are to be included in the Bill.
- 1.4 One must remember that no right is an absolute one and that every right connotes a correlative duty.
- 1.5 How is any Bill of Rights to be implemented and what guarantees can effectively be made as to its enforcement?
- 2.1 To list a number of "rights" is not a sufficient exercise. Generally speaking the expression of pious principles has never been a practical way of ensuring that right has been or will be done.
- 2.2 Legislation can only achieve limited ends. It is impossible to forecast all possible situations which can arise and in which the question of rights of one or more has to be determined.
- 2.3 It is the function of the Courts to interpret legislation or common law in particular situations. If the relevant legislation is inadequate then some injustice may occur.
- 2.4 When legislation proves defective or inadequate, the capacity to amend, repeal, or enlarge, as the case may be, is a very vital one.
- 2.5 Accordingly, it is unwise to limit the capacity of the legislature to exercise such a power. In this regard, the suggestion that a Bill of Rights be entrenched so that, for instance, it would only be amended following a referendum, is to be carefully scrutinised.
- 2.6 It is a fundamental principle that a Parliament, acting within its powers, cannot and should not be limited in their exercise. An exception has been made as to those matters to which the "manner and form" provisions of the Queensland Constitution apply. It may be doubted whether a Bill of Rights could in fact, be entrenched.

## CONCLUSION

- 3.7 Most of the "Rights" which are listed on pages 10 to 12 of the Committees Report currently exist in one form or another.

- 3.8 The cardinal principle of law is that what is not unlawful is lawful. So that there would seem little need to prescribe specific rights.
- 3.9 The concept of natural justice looms large in the eyes of the Courts and, currently in our society, the rights of individuals are adequately protected.
- 3.10 As a statement of principles to be used as guidelines, a list of rights has something to recommend it. As criteria in the enactment and enforcement of the law, it could have value.
- 3.11 As a fixed and immutable piece of legislation, or embedded in a constitution, it has the capacity to cause considerable confusion, and, in many cases it could result in an abuse of rights.
- 3.13 As in every aspect of the law, there is a need to establish a balance between competing rights of individuals and rights of an individual in respect of public rights or interest.
- 3.14 I consider that except as guidelines as referred to above, there is no need to have a Bill of Rights.
- 3.15 If there is to be a Bill of Rights, it is necessary to define them with more specificity than in the list. In so doing it may well mean that their application is of limited use.
- 3.16 We live in an age where international bodies are more and more prescribing rights and obligations. In following us<sup>or</sup> adopting such prescriptions, we are abandoning or limiting our sovereignty.
- 3.17 Expressions of pious principles have never been a reliable guide to controlling human behaviour. Similarly, loose expressions of rights or duties have never provided definitive answers to legal problems. One need only instance Section 92 of the Australian Constitution which provides that "..... trade, commerce and intercourse among the States..... shall be absolutely free".
- 3.18 That simple phrase has been the subject of a long and costly series of cases before the High Court. The late Chief Justice, Sir John Latham is reported as lamenting! "When I die, Section 92 will be found inscribed on my heart".
- 3.19 The greatest safeguard against any arbitrary interference with rights is a continued monitoring of the legislature. In the old phrase: "Eternal vigilance is the price of liberty".



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