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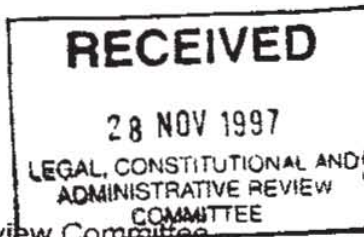


57.

27 November 1997

The Research Director  
Legal, Constitutional and Administrative Review Committee  
Parliament House  
Brisbane Qld 4001

Fax: 07) 34067691



STEP OUT OF THE SHADOW

**Re: The Preservation and Enhancement of Individual's Rights and Freedoms :  
Should Queensland Adopt a Bill of Rights.**

The Queensland Association for Mental Health (QAMH) considered the issues of a Bill of Rights during the EARC review and consultation process. These views were communicated to EARC through written submissions from Ms Judy Magub (then Executive Director) and former President Mr Tony Wade and an appearance before a public hearing. The review conducted by EARC was a comprehensive and inclusive process and the Commission and its staff should be congratulated for the quality of the Issue Paper, the seminars and public Hearings and most importantly, the Final Report. That Report and its recommendations has the strong support of this Association.

Unfortunately, the Parliamentary Committee's consideration of the Report was only recently brought to the attention of QAMH and we have not had sufficient time to prepare a full response to the issues raised by the Committee. We would however, like to re-iterate the points made in our previous submissions to EARC and address the list of questions given in the section - Issues for Consideration, of the Committee's issues Paper No.3.

1. *Does Queensland needs a bill of rights to protect individuals' human rights and freedoms in Queensland or does the common law and specific statute law provide adequate protection?*

The experience of people with mental illness clearly demonstrates the inadequacies of the common law and current statutes in protecting human rights. For evidence on this issue please refer to the National Inquiry into the Human Rights of People with Mental Illness (1993), the Commission of Inquiry into Ward 10B at Townsville General Hospital (1990), the Health Rights Commission Report on Investigations into Baillie Henderson Hospital (1996). These reports and many others detail a range of human rights abuses that have occurred within our mental health system. The introduction of a comprehensive bill of rights has been shown in other jurisdictions (See New Zealand Bill of Rights Reports, etc.) to make a significant contribution to attaining basic human rights for mental health consumers.

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2. *If a bill of rights is not introduced in Queensland, what other steps, if any should be taken to enhance and preserve individual's human rights and freedoms?*

The discrimination experienced by people with mental illness effects many facets of their lives and it is difficult to address these issues within the time frame required for this submission. At the very least, an alternative to a bill of rights would require a much broader reform program and would have to address a large number of areas of discrimination. In addition, complaints based mechanisms such as the Anti-Discrimination Commission or the Health Rights Commission, while valuable in themselves, are of limited effectiveness in addressing systemic problems. A bill of rights represents the most comprehensive and potentially effective response to the experience of people with mental illness.

3. *If a bill of rights is recommended for Queensland, what specific rights should, or should not be included? Should it include all the rights contained in EARC's draft bill of rights? Are there any rights not included in EARC's draft bill of rights which should be contained in a Queensland bill of rights?*

The EARC draft bill of rights provides a comprehensive scheme and the selection of rights to be included seems entirely appropriate. QAMH believes that the procedural rights in relation to involuntary detention, which are framed to primarily address the criminal law process and the corrections system, should be extended to people who are placed in involuntary detention under the Mental Health Act. While the actual process used in the criminal law system and the mental health system should be appropriate to the circumstances, the basic procedural rights to fairness and natural justice should be no different.

QAMH would strongly oppose any proposal for the inclusion of a right to bear arms in a Queensland bill of rights. In effect, such a right could be reframed as the right to access the most lethal means of suicide.

4. *Is it desirable that a bill of rights contain economic, social, cultural or community rights?*

The inclusion of these rights is important to reduce the extent of unintended consequences from the interpretation of civil and political rights. In other jurisdictions the interpretation of some civil and political rights has produced outcomes which have resulted in substantial hardship and material loss. In particular, this has occurred following de-institutionalisation process in some countries. The economic, social, cultural and community rights are important in the interpretation of the overall package.

- *If economic, social, cultural or community rights are to be included, should they be enforceable rights?*

These rights do not have to be directly enforceable to have a beneficial impact.

- *Is it possible to make economic, social, cultural or community rights enforceable?*

Unsure.

- *Does the inclusion of economic, social, cultural and community rights without making them enforceable give the impression of downgrading those rights?*

No. As stated above, economic, social, cultural and community rights provide an important reference point for the interpretation of other rights.

5. *To what degree, if at all, should a bill of rights be entrenched (be made difficult to amend)?*

The adoption of an entrenched bill of rights should require broad community support and acceptance. It may be appropriate to consider the adoption of a New Zealand model of a bill of rights in the first instance, with such a bill to be entrenched after a period of five or

ten years. Such a procedure would enable the community to be exposed to the operation of a bill of rights before requiring a popular vote for its entrenchment.

6. *What remedies should be available for contravention of any bill of rights? For example, should any evidence obtained in breach of any Queensland bill of rights be automatically excluded or should the judiciary have a discretion as to its admission?*

The remedies available should be appropriate to the status of the bill of rights in terms of whether it is entrenched or an ordinary Act of Parliament. In general, any contravention of the provisions of a bill of rights should be considered to be a most serious matter. In the example given above, this should lead to the exclusion of that evidence.

QAMH would appreciate the opportunity to explore some of these issues further with the committee and would be happy to appear at any hearings that may be held.

Thank you for your consideration.

Yours sincerely,



Keith Williams  
Executive Director