

62.



# Children by Choice Association Incorporated

PO Box 2005, 237 Lutwyche Road, Windsor Qld 4030, Australia  
Telephone: 61 7 3357 5570 Email: cbyc@powerup.com.au  
Facsimile: 61 7 3857 6246 URL: http://www.powerup.com.au/~cbyc

30/11/97

The Research Director  
The Legal, Constitutional and  
Administrative Review Committee  
Parliament House  
Brisbane Qld 4000

**RECEIVED**  
-2 DEC 1997  
LEGAL, CONSTITUTIONAL AND  
ADMINISTRATIVE REVIEW  
COMMITTEE

## SUBMISSION

Thank you for the opportunity to respond to your Issues Paper No. 3 on the questions of whether Queensland should adopt a Bill of Rights, and what should be contained therein.

A copy of our original submission is enclosed, and we reiterate the position expressed in that document.

Children by Choice expresses support of EARC's primary recommendation of a Bill of Rights for Queensland and EARC's proposed process for entrenching the Bill of rights through legislation after five years, so that it could not easily be over-ridden by legislation.

Children by Choice's comments on aspects of the draft Bill of Rights which was summarised in the issues paper are set out below.

We draw the Committee's attention to the need to define the term "person" in respect to the proposed provision that "A person has the following rights: to life, liberty and security of the person... and not to be deprived thereof except on a ground established by law and consistent with the principles of fundamental justice." (p. 10)

We assert that it is desirable to define personhood in such a way that it clearly prevents the use of the Bill of Rights from being used to restrict the right of women to control their fertility.

We are disappointed that the provision of "the right to personal autonomy over reproductive matters" does not include the right to abortion. We consider that this omission, especially in the absence of a definition of the person, would be likely to lead to repeated attempts to use the Bill of Rights as propaganda against abortion.

We are also disappointed that "the right to personal autonomy over reproductive matters" is included under Economic and Social Rights, which are "not intended to be enforceable."

We recognise that there may be value in including rights even without legal enforceability, but we are certain that legal enforceability would enhance these rights

### Counselling

Face to face and telephone counselling, information and referral on all options with an unintended pregnancy.

(07) 3357 5377 & 1800 177 725

### Education

Workshops and lectures on unintended pregnancy, contraceptive failure and the social, legal and political aspects of abortion.

(07) 3357 9933 & 1800 177 725

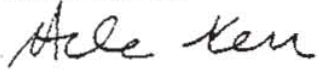
### Library and Information Service

Information resources on social, legal, ethical, health and political aspects of unintended pregnancy, abortion and reproductive rights.

(07) 3357 9933 & 1800 177 725

We thank you for your consideration of these matters.

Yours sincerely,



Helen Kerr  
President  
Children by Choice



*Submission to Electoral and Administrative Review  
Commission Issues Paper No. 20, Review of the Reservation  
and Enhancement of Individuals' Rights and Freedoms.*



# Children by Choice Association

237 LUTWYCHE ROAD  
WINDSOR 4030  
QUEENSLAND

PHONE: (07) 357 5377  
008 177 725  
FAX: (07) 857 6246

## SUBMISSION

THAT A BILL OF RIGHTS INCLUDE

### "THE RIGHT TO SELF DETERMINATION"

Queensland should have a Bill of Rights embracing the United Nations Conventions and Covenants that protect civil, political, social, economic, and cultural rights irrespective of gender, race, age or disability.

This would include the right to life, liberty and security of person.

#### 1. RATIONAL

1.1 Part 1 Article 1.1 of the International Covenant on civil and political rights states 'all peoples have the right to self determination. By virtue of that right they freely determine their political states and freely pursue their economic, social and cultural development.'

1.2 Articles 1, 3, 12 and 23 of the 1948 International Human Rights document, the Universal Declaration of Human Rights supports the individual's right to determine the course of their life, including child-bearing.

1.3 In 1968 the International Conference on Human Rights in Telaran recognised that "parents have a basic right to decide freely and responsibly on the number and spacing of their children."

1.4 The World population Plan of Action agreed to at the Bucharest Conference of 1974, reaffirmed that right and expanded on it stating "all couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have information, education and means to do so.....". The document also states that governments should "respect and ensure, regardless of their over-all demographic goals, the right of persons to determine in a free and informed manner, the number and spacing of their children". (Reproductive Health 1991 P11).

1.5 In July 1980 the world body adopted the Convention on the elimination of all forms of discrimination against women. This Convention (CEDAW) was signed by Australia in 1980 and ratifying countries.

Although several articles of this Convention imply a right to

reproductive choice and abortion. Article 12 is most relevant.

1.5(1) "State parties shall take all appropriate measures to eliminate all discrimination against women in the field of health care in order to ensure, on basis of equality of men and women access to health care services, including those relating to family planning".

1.5(2) "Notwithstanding the provision of paragraph 1 of this Article, State Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation".

1.6 Additional articles 14, 2(f), Article 5, Article 16 all add weight to the recognition of the rights of women to pregnancy control.

## 2. CURRENT LAW'S VIOLATE HUMAN RIGHTS

2.1 Given the international instruments that Australia is signatory to it is difficult to understand why countries such as Australia that professes to support human rights can still deny women the rights to reproductive choice so clearly stated and implied in these documents. Indeed governments may well act unlawfully.

2.2 In spite of Australia's professed commitment to anti-discrimination legislation at State and Federal levels, women are not trusted to know when to bear and not bear a child. This makes equal opportunity legislation for women a farce. Such attitudes further restrict the communities acceptance of women holding positions of responsibility elsewhere in Society.

## 3. OVERVIEW OF RESTRICTIVE LAWS

3.1 Historically laws that have been implemented to try and control the actions of people (in regard to victimless crime and healing) have been directed primarily against women and until recently men of 'devious' sexual behaviour.

3.2 From the 14th to the 17th centuries, up to 7 million witches - women of education and influence - were burned to death.

3.3 Women by law were considered the property of husbands, fathers, families, and masters of concubines.

3.4 Laws prevented women from owning real estate, wealth and having custody of their own children.

3.5 Women were denied the vote.

3.6 Women have been denied the right to education, paid employment and choice of employment including prostitution.

3.7 Women have been denied the right to reproductive choice, including the use of contraception, abortion, surrogacy and birthing choices.

## 5. THE ORIGINS OF THESE LAWS

5.1 ABORTION LAWS were enacted in the 19th century, NOT to protect the health of women or the wellbeing of the foetus but to:

- \* prevent women from hiding the evidence of 'illicit sex'.

- \* to eliminate traditional healers and women practitioners from the health area and consolidate the sphere of influence and control of the emerging medical profession.

- \* similar restriction on women's education and employment were to protect the emerging middle class and members of the professions who were mainly men.

## 6. CONSEQUENCES OF THESE LAWS AND POINTS OF CLARIFICATION

6.1 We know that a woman is a person and that she is entitled to exercise the rights as laid down in these International instruments.

- \*We will argue forever about the personhood of the foetus and when its rights become compelling.

- \*To date, the USA High Court Ruling Rowe v Wade (1973) No.US113 has the most persuasive argument.

6.2 While a person might be encouraged to be self-sacrificing and give life support (blood, kidney, bone marrow, use of a uterus) to another person or a foetus, we cannot compel them to do so. As a society that professes to support human rights, we have a responsibility to uphold the right of people to choose not to be involved.

6.3 While some women will regard the act of abortion as killing, we must remember that our society has justified killing in self defence and in war, "to protect our life and life styles". A women's life and life styles can be more gravely threatened by unwanted pregnancy than by war.

6.4 The violence in our society that treats woman as an object, a vessel, a slave is in a large part responsible for the broader violence against women.

6.5 Women are not regarded as equal human beings, their judgement is not trusted and they do not have the right to manage their lives as laid down in the International Covenants and Conventions.

6.6 There can be no valid justification in the late 20th century for denying women the right to self determination. This will mean that the issue of abortion will be treated as a health issue and be removed from the Criminal Code leaving women free to choose.

## 6. GENERAL COMMENTS

6.1 In answer 12.10 and 12.11 - all the International Human Rights Instruments should be ex-officio part of (Australia's) Queensland Bill of Rights.

6.2 The legislation or Bill or Rights should be a simple document that all can understand and will enhance those laid down in International Human Rights Instruments (12.4 and 12.17b).

6.3 There should be an ongoing and comprehensive education program to enhance compliance (12.8)

6.4 Adequate legal aid and legal services must be provided so that access and equity to legal solutions is available to anyone when a breach of rights occurs.

Katrina Barben, President  
Judy Petroeschovsky, Senior Vice President  
Beryl Holmes, Vice President

CHILDREN BY CHOICE ASSOCIATION INC  
237 Lutwyche Road  
Windsor 4030

per Nancy Leighton

Co-Ordinator