



WORKING FOR
Queenslanders

A BILL of RIGHTS
for QUEENSLAND

Introduction

In 2012 the Newman LNP government was elected with an unprecedented majority.

Over the next three years trampled on the rights of Queenslanders in ways no government ever had.

The Newman LNP government enacted legislation which was subject to High Court challenges.

Legislation was rushed through in late night parliamentary sittings.

The reports of their own Parliamentary Committees were ignored.

The existing rights of Queenslanders were stripped away without warning.

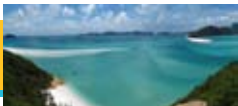
The three years of the Newman LNP government showed how a reckless government can abuse the parliamentary process to disadvantage of all Queenslanders.

In 2015 the Queensland community rejected the excesses of this government at the ballot box.

But the question for Queenslanders is how to avoid such abuses in the future?

Last year the Hon Peter Wellington, independent member for Nicklin and the current speaker of the Queensland Parliament said:

“Recently I spoke about the need for a bill of rights to protect the rights and liberties of Queenslanders... Queensland has no upper house or house of review, and the current committee system is not able to properly provide the necessary checks and balances on the excesses of ...government...I believe it is time for an act of parliament that enshrines the rights and liberties we value as important.”



Why now and why Queensland?

Currently there is no system in Queensland that requires governments to consider, justify and report on the human rights implications of harsh laws that they may introduce.

In Australia the separation of powers doctrine results in a system of checks and balances where legislative, judicial and administrative power is limited and the potential for an autocratic government is avoided.

An Upper House of parliament is one mechanism that usually functions to limit the power of the Executive, including through the ability to block government legislation. Because there is no Upper House in Queensland parliament can be dominated by the governing party. This can lead to concerns about the independence of decision-making.

A Human Rights Act could add to the system of checks and balances in Queensland by requiring governments to consider the human rights implications of their laws, strengthening the committee system, requiring public authorities to act consistently with human rights and requiring courts and tribunals to interpret legislation in a manner that is consistent with human rights – unless the legislator has clearly stated their intention to interfere with the human rights of Queenslanders. This means that government action is limited by the human rights of citizens.

A Human Rights Act would improve the relationship between the government and Queenslanders as a result of consultation, transparent decision-making and increased accountability.

A Human Rights Act would not prevent the government from passing laws that engage the rights of Queenslanders. However, it could provide that all proposed laws that are introduced to parliament are accompanied by a statement that explains how the law will interfere with human rights, that there is sufficient opportunity for public consultation through the committee system, that after the consultation process a human rights report is produced and that this procedure can only be avoided in circumstances of public emergency.

How does a Human Rights Act constrain the use of political power?

The way that a Human Rights Act constrains political power is to make governments consider the human rights implications of laws, policies and their actions.

A Human Rights Act does not however stop governments from interfering with citizen's rights.

According to international human rights law, while some human rights are absolute (such as the prohibition against torture), most can be limited. Some rights can be limited where there is a legitimate objective and it can be demonstrated that the engagement with those rights is necessary and proportionate. Other rights can be limited by restrictions that are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

International human rights law also makes it clear that the government's obligation in relation to civil and political rights is to immediately take the necessary steps to adopt such measures to give effect to the rights recognised in the International Covenant on Civil and Political Rights. Conversely, the government's obligation in relation to economic, social and cultural rights to take steps, to the maximum of its available resources, with a view to progressively achieving the rights contained in the International Covenant on Economic, Social and Cultural Rights.

Human Rights Acts can prescribe the circumstances in which government's are able to limit citizens' enjoyment of their human rights. For example, the ACT the Human Rights Act says that human rights may be subject to reasonable limits set by laws that can be justified in a free and democratic society. The Act sets out that what is reasonable is determined according to the nature of the right affected, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose and any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

What is a Human Rights Act?

A Human Rights Act (also called a bill of rights or a charter of rights) is a law that sets out the basic rights of citizens.

In the USA, South Africa and Germany a bill of rights is included in their constitution.

In the UK, Canada, New Zealand and in the ACT and Victoria the bill of rights is contained in an ordinary piece of legislation.

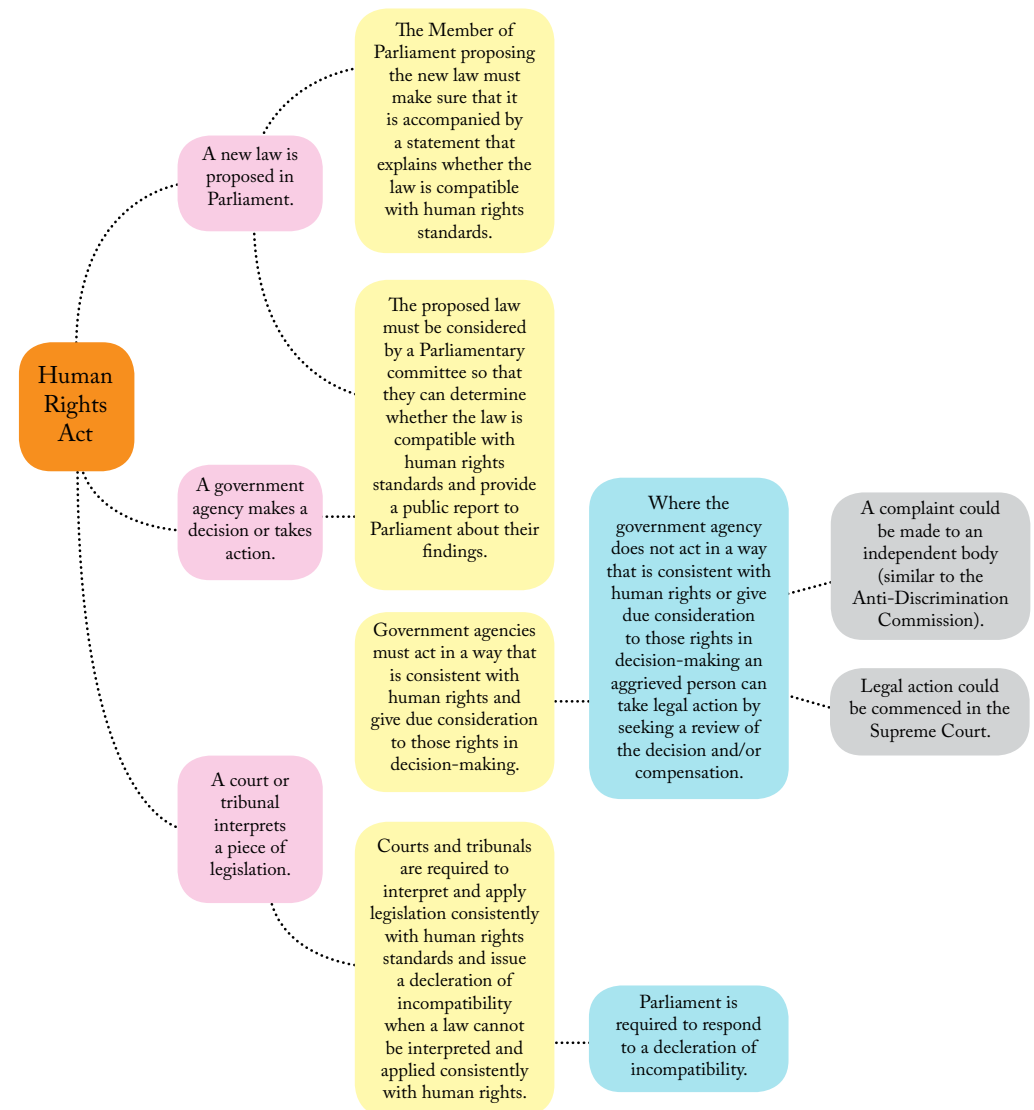
The Human Rights Act that is discussed in this booklet is an ordinary piece of legislation. While a bill included in a constitution is a more powerful way of protecting human rights, this type of amendment to the Constitution of Queensland would require a referendum.

By protecting the rights of citizens a Human Rights Act restrains the use of political power.

For example this could:

- require that all new laws that are introduced to parliament are accompanied by a statement that explains how the law is consistent or inconsistent with human rights standards,
- require that a parliamentary committee consider the law and provide a report about whether the law is consistent with human rights standards,
- require government agencies to act in compliance with human rights and give consideration to those rights when making decisions,
- require courts and tribunals to interpret laws in a way that is consistent with human rights or issue a declaration that the law is not consistent with human rights standards,
- enable people who are victims of contraventions of human rights standards to challenge the actions of government in court or through a complaint to an independent body and ask that the decision be reviewed and/or compensation paid.

The following diagram summarises how a Human Rights Act might work:



Human Rights in the ACT & Victoria

The ACT's Human Rights Act 2004 protects some civil and political rights (recognition and equality before the law, right to life, protection from torture and cruel, inhuman or degrading treatment, protection of the family and children, privacy and reputation, freedom of movement, freedom of thought, conscience, religion and belief, peaceful assembly and freedom of association, freedom of expression, taking part in public life, right to liberty and security of person, humane treatment when deprived of liberty, the rights of children in the criminal process, fair trial, rights in criminal proceedings, compensation for wrongful conviction, the right not to be tried or punished more than once, rights in relation to retrospective criminal laws, freedom from forced work, rights of minorities) and an economic, social and cultural right (right to education).

The Victorian Charter of Human Rights and Responsibilities Act 2006 protects civil and political rights (recognition and equality before the law, right to life, protection from torture and cruel, inhuman or degrading treatment, freedom from forced work, freedom of movement, privacy and reputation, freedom of thought, conscience, religion and belief, freedom of expression, peaceful assembly and freedom of association, protection of families and children, taking part in public life, property rights, right to liberty and security of person, humane treatment when deprived of liberty, rights of children in the criminal process, fair hearing, rights in criminal proceedings, right not to be tried or punished more than once, rights in relation to retrospective criminal laws) and some cultural rights including the collective right of Aboriginal peoples to enjoy their identity and culture, to maintain and use their language, to maintain their kinship ties and to maintain their distinctive spiritual, material and economic relationship with land and waters and other resources that they have a connection to under traditional laws and customs.

Although the human rights contained in ACT and Victorian the Human Rights Acts are related to international human rights treaties, the wording and meaning of the rights is not necessarily the same. This is because it is common for human rights to be adapted from international treaties to match the aspirations of the relevant country or state. It is also clear that there are examples of rights in some bills of rights that do not derive from international human rights treaties. For example, the US Constitution protects the right of Americans to keep and use guns. This is not a human right that would be protected under a Human Rights Act in Queensland.

How does a Human Rights Act constrain the use of power?

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How we got here

A number of organisations and individuals¹ wrote to the Premier and the Attorney-General encouraging the Queensland Government ‘to consider conducting a community consultation about the introduction of a charter of rights in Queensland.’²

The Queensland Labor Party has neither supported nor opposed the adoption of a Bill Rights/Charter of Rights but stated that it is ‘a matter for the parliamentary party to consider following the election’.³ However, prior to the state election the position of the Queensland Labor Party was that it opposed further public consultation on the matter.

Since the state election and pursuant to the Letters of Exchange re Government on Confidence Motions (Letters of Exchange) between Hon Peter Wellington MP and Premier Palaszczuk dated 5 February 2015,⁴ the Queensland Labor Party has committed to seeking advice from the Department of Justice and Attorney-General which will be published to allow for ‘public discussion’ on the matter.

The process for initiating broad community engagement on the issue of a Queensland Bill of Rights/Charter of Rights does not require individuals to finalise their views on the possible legislation and models which might be finally considered, adopted and implemented by the Queensland Parliament. The signatory organisations listed below (Annexure A) support the adoption of Bill of Rights/Charter of Rights in Queensland and seek a six month broad public consultation process to be concluded by the end of 2015 with a view to having a bill for before the Legislative Assembly by early 2016.

As we outlined in our correspondence to the Premier of 25 March 2015, we support:

‘A comprehensive community consultation process led by a suitably prominent and expert person or persons of standing in the community, [that] will give Queenslanders the opportunity to provide their views about how their rights should be protected. We believe that this process should be completed this year.’

¹ See Annexure A.

² Letter from Rights for Queenslanders Alliance to Hon Anastasia Palaszczuk MP, Premier of Queensland and Minister of the Arts (cc Hon Yvette D’Ath MP, Attorney General of Queensland, Minister for Justice and Minister for Training and Skills and Hon Peter Wellington MP, Speaker of the Legislative Assembly) dated 25 March 2015.

³ Letter from Hon Tim Mulherin MP (Deputy Leader of the Opposition) to Mr Michael Cope, President, Queensland Council for Civil Liberties dated 21 January 2015.

⁴ Letter from Hon Anastasia Palaszczuk MP to Hon Peter Wellington MP dated 5 February 2015.

Queensland Labor and rights

The Queensland Labor Party’s pre-election commitment on the adoption of a Qld Bill of Rights/ Charter of Rights was stated as follows:⁵

Questions:

‘7. Do you support the establishment of the consultation in Queensland along the lines of the Brennan National Consultation on Human Rights to determine rights and civil liberties and in particular whether Queensland needs a Human Rights Act?’

8. Do you support the introduction in Queensland of a Human Rights Act similar to that presently the law in the Australian Capital Territory?’

ALP response to both questions:

‘The question of whether Queensland adopts a Bill of Rights is a vexed question. There are strong views on either side of the argument from both sides of the political spectrum. Many Constitutional lawyers and academics come down on the side of adoption of such a bill, and many come down on the opposition side.

The Federal government undertook the Brennan National Consultation on Human Rights, and the results of that consultation have been published, widely considered and discussed on a national, state and local level. The Labor Opposition is not convinced that at this stage any further consultation is required.

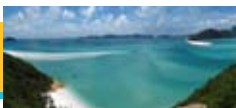
During the last parliamentary term, the Labor Opposition did not consider the question of the adoption or otherwise of a Bill of Rights in Queensland. It is a matter for the parliamentary party to consider following the election.’

The ALP position after the state election as articulated in the Letters of Exchange:

“Rights of Queenslanders

During the 54th Parliament, Labor did not consider the question of the possible adoption of a Bill of Rights in Queensland. This was a matter for the Labor MPs to consider during the 55th Parliament. Labor will seek advice from the Department of Justice and Attorney-General regarding the issues relating to a possible Bill of Rights in Queensland. This advice will be published to allow public discussion on the matter.”

⁵ Letter from Hon Tim Mulherin MP (Deputy Leader of the Opposition) to Mr Michael Cope, President, Queensland Council for Civil Liberties dated 21 January 2015.



25 March 2015

The Hon Anastacia Palaszczuk MP
Premier of Queensland and Minister for Arts
PO Box 15185
City East Q 4002
By email and post: thepremier@premiers.qld.gov.au

Dear Premier

A Proposed Process for the Introduction of a Charter of Rights in Queensland

We write on behalf of the undersigned organisations to ask you to consider conducting a community consultation about the introduction of a charter of rights in Queensland.

Recent events in Queensland have highlighted our unique exposure to the misuse of executive power that is argued by many to be the result of our unicameral system of parliament. It is our view that a charter of rights would improve the system of government accountability in Queensland.

The Australian Capital Territory and Victoria have had charters of rights since 2004 and 2006 respectively. Neither jurisdiction has experienced the loss of parliamentary sovereignty, floods of litigation or excessive costs that critics had been concerned about. Instead, a review of the Victorian charter reported that some of the benefits of the charter include improved government accountability, more responsive public services and better practical outcomes for vulnerable citizens including people with disability, people with mental illness and those experiencing homelessness.

Creating an enhanced culture of human rights awareness throughout Queensland will promote social harmony, cohesion and unity, which is the foundation of economic prosperity.

A comprehensive community consultation process led by a suitably prominent and expert person or persons of standing in the community, will give Queenslanders the opportunity to provide their views about how their rights should be protected. We believe that this process should be completed this year.

We would welcome an opportunity to discuss our proposal with you and/or the Attorney General. To arrange a meeting please contact Cristy Diekmann from the Queensland Association of Independent Legal Services on 0421 852 515.

We look forward to hearing from you shortly.

Yours faithfully



c.c. The Hon Yvette D'Ath MP
Attorney General and
Minister for Justice and Minister for Training and Skills
By email only: attorney@ministerial.qld.gov.au

The Hon Peter Wellington MP
Speaker of the Legislative Assembly
By email only: speaker@parliament.qld.gov.au

LETTER SIGNATORIES

Alex Scott, Secretary — Together Queensland
alex.scott@together.org.au

Michelle O'Flynn, Director — Queensland
Advocacy Incorporated *michelle@qaLorg.au*

Michael Cope, President — Queensland Council
for Civil Liberties *mjcope@optusnet.com.au*

Julie Jansen, Vice President — Queensland
Council for Civil Liberties
Julie.Jansen@live.com.au

Tamara Walsh (signed in personal capacity) —
Associate Professor in law, The University of
Queensland *t.walsh@uq.edu.au*

Siyavash Doostkhah, Director — Youth Affairs
Network of Queensland *director@yanq.org.au*

Hugh de Kretser, Executive Director — Human
Rights Law Centre *Hugh.dekretser@hrlc.org.au*

Scott McDougall, Director — Caxton Legal
Centre Inc
scott@caxton.org.au

Dan Rogers, Secretary
— Caxton Legal Centre Inc
dan@robertsonogorman.com.au

Cristy Diekmann, Policy worker — Queensland
Association of Independent Legal Services Inc
policy@qails.org.au

Kay McPadden, Pastoral Assistant & Project
Worker — Murri Ministry Aboriginal Catholic
Ministry *murriministry@bne.catholic.net.au*

Rod Hodgson, Queensland President —
Australian Lawyers Alliance
RHodgson@mauriceblackburn.com.au

Dr Melanie O'Brien (signed in personal capacity)
Post doctoral Research Fellow, TC Beirne School
of law, The University of Queensland
m.obrien@law.uq.edu.au

Aaron Finn, Director
— Townsville Community Legal Service
Director@tcls.org.au

Paul Toner, President — Queensland and
Northern NSW Branch — Amnesty International
Australia (On behalf of the Queensland
and Northern NSW Branch Committee)
qldbranchpresident@amnesty.org.au

Sam McLean, National Director — GetUp
sam@getup.org.au

Janet Wight, Director
— Youth Advocacy Centre Inc.
janet@yac.net.au

Jo Bragg, CEO, Solicitor — Environmental
Defenders Office (Qld) Inc.
jbragg@edoqld.org.au

Maree Klemm, (Qld-based) Vice-President
Growth — Women's International League
for Peace and Freedom — Australian Section,
Incorporated *vicepresidentgrowth@wilpf.org.au*

Aimee McVeigh, Director — McVeigh Law
aimee@mcveighlaw.com.au

Alex McKean, Barrister
mckean@scbar.com.au

Barbara Hocking
barbara.ann.hocking@gmail.com

Peter Billings (signed in personal capacity), Associate
Professor — TC Beirne School of Law — The
University of Queensland
p.billings@law.uq.edu.au

Sean Reidy, Barrister
seanreidy@qldbar.asn.au

Rebecca Ananian-Welsh, (signed in personal
capacity) Lecturer in Law — The University of
Queensland
rebecca.aw@law.uq.edu.au

Benedict Coyne Queensland Convenor/National
Committee Member-Australian Lawyers for
Human Rights
bra@albr.org.au

Wednesday
13 May 2015
6:30 for 7pm



Irish Club
175 Elizabeth
St, Brisbane

A NEW MAGNA CARTA

THE CASE FOR A QUEENSLAND HUMAN RIGHTS ACT

SPEAKER



MR ROB HULLS

The man responsible for Victoria's Charter of Rights

In 1215 Magna Carta first placed limits on the power of the state and granted citizens the right to due process. It is appropriate 800 years on that Peter Wellington has now put a Bill of Rights on the Agenda for Queensland.

As Victoria's Attorney General Mr Hulls championed the introduction of Victoria's Human Rights Act, the Charter of Rights and Responsibilities. Mr Hulls will speak on the charter's history, the case for a Human Rights Act and the benefits it has brought to Victoria and could bring to our State.

Cost

\$20 at the door, \$15 if paid by 14 April 2015
Ticket price includes canapes and there will be a cash bar

Early Bird Prize Draw

Buy your tickets before 14 April to go in the draw to win one of two copies of *Guardian of your Rights: the history of the Queensland Council of Civil Liberties*

How to purchase

\$16.50* through our website www.qccl.org.au - click on Events
Send a cheque to QCCL, PO Box 2281, Brisbane Qld 4000
Email QCCL Secretary Daemon Singer at daemon.singer@gmail.com
Phone QCCL President Michael Cope on 0432 847 154 in business hours

RSVP by

14 April 2015

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*includes booking fee



You can sign this petition online at:
<https://www.change.org/p/annastacia-palaszczuk-support-bill-of-rights>

We all have rights.

Rights that are worth protecting, enhancing and empowering through a bill of rights for Queensland.

Queenslanders have seen first hand what happens when a government uses its majority to attack the rights of individuals at the expense of our democracy.

This petition calls on Premier Palaszczuk and her government to lead that conversation and support a bill of rights for Queensland.



WORKING FOR
Queenslanders

AUTHORISED ALEX SCOTT WORKING FOR QUEENSLANDERS