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# Civil Liberties, Bjelke-Petersen & A Bill of Rights: Lessons for Queensland

## **Abstract**

Statutory bills of rights have been introduced in the Australian Capital Territory and Victoria. If similar legislation was placed before the Queensland parliament, the Bligh government would need to convince the public that it would serve a practical purpose. The public may be persuaded that a statutory bill of rights is necessary if it could be demonstrated that persistent infringements of civil liberties have occurred in Queensland's past. The government of Sir Joh Bjelke-Petersen, which lasted from 1968 to 1987, was often criticised for its record on civil liberties. However, a closer inspection of that record reveals that most of the important decisions affecting civil and political rights were inherently contestable and not susceptible to a right or wrong answer. Even if a statutory bill of rights had been in place during the Bjelke-Petersen era, it is unlikely to have altered any of the decisions taken by his government and may have resulted in an erosion of respect for the judiciary. Importantly, the absence of a statutory bill of rights had a major benefit for the state: it forced Queenslanders to consider the civil liberties implications of the decisions taken by the Bjelke-Petersen government

## **Keywords**

civil liberties, bill of rights, charter of rights, Bjelke-Petersen, Queensland, politics, state of emergency, peaceful assembly, freedom of speech, freedom of expression, freedom of association, right to vote, electoral system, censorship, parliamentary sovereignty, declaration of incompatibility

## CIVIL LIBERTIES, BJELKE-PETERSEN & A BILL OF RIGHTS: LESSONS FOR QUEENSLAND

CHRISTOPHER CRAWFORD\*

### Introduction

On 25 June 2008, the *Gold Coast Bulletin* newspaper reported that a local teenager had been arrested and charged with public nuisance for wearing a T-shirt promoting the extreme metal band Cradle of Filth. The front of the shirt depicted a nun masturbating and, on the back, it proclaimed in large letters: 'Jesus is a c\*\*t'.<sup>1</sup> The newspaper article went on to report as follows:

Gold Coast lawyer Bill Potts said the arrest highlighted Australia's need for a Bill of Rights.

"One of the great problems with our country is that we talk about rights such as privacy and freedom of speech and the like but they are not enshrined or protected in any way as they are in America," he said.

"While there are always limits on freedom of speech, you can't incite violence or anything like that, it seems to be now more than ever that our rights to freedom of speech and freedom of expression should be protected.

"A Bill of Rights which enshrines that protection is long overdue in this country."

Mr Potts said charging the teen was "ludicrous" and brought the law into disrepute.<sup>2</sup>

It seems unlikely that many *Gold Coast Bulletin* readers would have made a connection between the T-shirt and a bill of rights, as Mr Potts did. One suspects that several would have concurred with the sentiments of the arresting officer, who told the newspaper: 'I'm not religious but that [the T-shirt] is just offensive'. However, the

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<sup>1</sup> The middle two letters of the offending word have been deleted by this author for the sake of propriety.

<sup>2</sup> B Dillaway, 'Band T-Shirt draws charge' *The Gold Coast Bulletin*, 25 June 2008 <[http://www.goldcoast.com.au/article/2008/06/25/12892\\_gold-coast-top-story.html](http://www.goldcoast.com.au/article/2008/06/25/12892_gold-coast-top-story.html)> at 12 November 2008.

issues raised by Mr Potts, about protecting fundamental liberties, may have sounded vaguely familiar to those older Gold Coast residents who lived through past attempts by various federal governments to introduce a national bill of rights.

For example, some of them may have recalled that in 1973, the then Labor federal Attorney-General, Lionel Murphy, introduced a bill of rights in the Senate. Others may have recollected that similar efforts to bring about a bill of rights were made by Attorneys-General Gareth Evans and Lionel Bowen during the Hawke government's time in power. Some may have even remembered voting in the 1988 referendum, where it was proposed to alter the Commonwealth Constitution to extend the right to trial by jury, to extend freedom of religion, and to ensure fair terms for persons whose property was acquired by the government.

Queenslanders who can remember back to those times would probably also recall that every single attempt to introduce a national bill of rights was comprehensively defeated. The attitude of the general public to a bill of rights was so hostile that Murphy's bill lapsed, Bowen's was withdrawn and Evan's did not even make it into parliament. The 1988 referendum proposals referred to above suffered the most unfavourable result since federation, winning only 31% national approval. The public rejection was so complete that Professor Brian Galligan commented in 1989 that the referendum result had 'ensured categorically that there will be no Australian bill of rights.'<sup>3</sup>

The reason for the rejection was simple: making a positive case for a bill of rights was difficult in a society in which most Australians did not feel that their rights were under threat. As the President of the Australian Civil Liberties Union commented in 1985, '[a bill of rights] will not benefit the great majority of Australians whose rights are already well protected by the Common Law, our parliaments, and the independent judiciary'.<sup>4</sup>

Most Queenslanders then would be surprised to learn that the debate surrounding bills of rights did not die in 1988. It was kept alive in the newspaper opinion pieces and by the various Councils for Civil Liberties.<sup>5</sup> In the political arena, bills of rights continued to be championed by members of the Australian Labor Party.

From the late 1990s onwards, the Labor Party began to dominate state and territory politics. With continued electoral success came an increasing confidence, so much so

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<sup>3</sup> B Galligan, 'No Bill of Rights for Australia' (Paper presented at the Third Senate Seminar on Parliamentary Law and Practice, Parliament House, 8 May 1989).

<sup>4</sup> P Kildea, 'The Bill of Rights debate in Australian political culture' [2003] *AJHR* 7 at page 13.

<sup>5</sup> *Ibid.*

that the idea of a bill of rights, which was scorned by the Australian public not so long ago, became a realistic possibility.

Another important factor was the enactment of a statutory bill of rights in the United Kingdom. The *Human Rights Act 1998* differed from a constitutional bill of rights in that the judiciary were not permitted to invalidate legislation. The wording of legislation could be changed by being rendered 'rights consistent' but the Act's override clause ostensibly allowed Parliament to overrule any unwelcome judicial decisions.

In 2004, the ACT Labor government enacted Australia's first ever statutory bill of rights.<sup>6</sup> In 2006, the Victorian Labor government followed suit with the *Charter of Human Rights and Responsibilities Act*. In 2007, bodies consulted by the Tasmanian and Western Australian Labor governments both recommended that statutory bills of rights be introduced in those states.<sup>7</sup>

In the federal sphere, the Labor Party went to the 2007 election with a policy to 'initiate a public inquiry about how best to recognise and protect the human rights and freedoms enjoyed by all Australians'.<sup>8</sup> Following their success at that election, the new Labor federal Attorney-General, Robert McClelland, confirmed that the Rudd government was committed to a process of public consultation on the question of whether a statutory bill of rights should be introduced nationally.<sup>9</sup> On 10 December 2008, Mr McClelland announced the appointment of a four-member committee to carry out the process called, somewhat grandly, the National Human Rights Consultation.<sup>10</sup>

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<sup>6</sup> *Human Rights Act 2004* (ACT).

<sup>7</sup> See Western Australia, Consultation Committee for a Proposed Human Rights Act, A WA Human Rights Act - Final Report, November 2007, <[http://www.justice.wa.gov.au/\\_files/Human\\_Rights\\_Final\\_Report.pdf](http://www.justice.wa.gov.au/_files/Human_Rights_Final_Report.pdf)> at 2 November 2008. See further Tasmanian Law Reform Institute, A Charter of Rights for Tasmania, Report No. 10, Hobart, October 2007.

<sup>8</sup> Australian Labor Party, ALP National Platform and Constitution (2007) <[http://www.alp.org.au/platform/chapter\\_13.php#13\\_human\\_rights\\_and\\_responsibilities](http://www.alp.org.au/platform/chapter_13.php#13_human_rights_and_responsibilities)> Chapter 13, paragraphs 7-9 at 15 February 2008.

<sup>9</sup> See Attorney General for the Commonwealth of Australia, *Transcript of Interview with Fran Kelly, Radio National 5 December 2007*, (2007) <[http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Transcripts\\_2007\\_FourthQuarter\\_5December2007-TranscriptofInterviewwithFranKelly,RadioNational](http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Transcripts_2007_FourthQuarter_5December2007-TranscriptofInterviewwithFranKelly,RadioNational)> at 18 February 2008.

<sup>10</sup> See 'McClelland names human rights consultation panel' ABC News, 10 December 2008 <<http://www.abc.net.au/news/stories/2008/12/10/2442405.htm>> at 11 December 2008. See

In Queensland, there has been no indication that the introduction of a statutory bill of rights is on the agenda of either of the major political parties. In fact, as recently as June 2006, the then Labor Premier, Peter Beattie, rejected a call from the President of the Queensland Law Society to bring in a bill of rights for Queensland.<sup>11</sup> However, the current Labor Premier, Anna Bligh, may not share Mr Beattie's reservations.

Premier Bligh is on the left wing of her party,<sup>12</sup> which has traditionally been the home of Labor's most avowed bill of rights supporters. More importantly, the fact that other states have introduced or are introducing bills of rights may indicate that Australians do feel that their rights are under threat. Professor George Williams was chairman of the committee that ultimately recommended a statutory bill of rights to the Victorian government. The committee conducted public hearings and received submissions from across the community. From this experience, Professor Williams gained the impression that Victorians wanted to see their human rights better protected in order to shield themselves and their families from the political misuse of government power. It may be that the anti-terrorism legislation introduced by the Howard federal government has resulted in a deeper concern for rights within the community.<sup>13</sup> In the current political climate, Premier Bligh might take the view that, for the first time in a long time, Queenslanders would be receptive, and not hostile, to a bill of rights.

If a statutory bill of rights is placed before the Queensland Parliament then the challenge for Premier Bligh and her executive will not be to convince the legislature of its merits. There is no pesky upper house that can delay or block the passage of legislation in Queensland. Rather, the government's main test (from its own point of view) will be to persuade the voting public that a bill of rights would, in broad terms, result in a demonstrably happier, safer and more prosperous society.

When electing their representatives, Queenslanders look to persons of practical ability.<sup>14</sup> In Queensland politics, it is the perceived capacity to solve practical, not theoretical, problems that matters. Accordingly, any Queensland government introducing a statutory bill of rights would need to demonstrate that, not only would the legislation provide the right solutions, but that some real-life problem actually exists, as opposed to a purely academic or intellectual concern.

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further The National Human Rights Consultation, About Human Rights in Australia, <<http://www.humanrightsconsultation.gov.au/>> at 8 December 2008.

<sup>11</sup> R Davis, 'Government rejects rights consultation proposal' (2006) 26(5) *Proctor* 3.

<sup>12</sup> She is a member of the Labor Left faction.

<sup>13</sup> G Williams, 'The Victorian Charter of Human Rights and Responsibilities: Origins and Scope' (2006) 30 *MULR* 880.

<sup>14</sup> P Smith, 'Queensland's Political Culture' in A Patience (ed.), *The Bjelke-Petersen Premiership 1968-1983 Issues in Public Policy*, Longman Cheshire, Melbourne, 1985 at 26.

Do bills of rights have a practical purpose? Advocates of bills of rights say that they are necessary to protect citizens from 'inequality and inhumanity'.<sup>15</sup> As noted above, in the current political climate, the Australian public as a whole may be inclined to look favourably upon any measure designed 'to protect human rights'. However, in Queensland, no government could hide behind an abstract discussion of human rights. Perhaps more so than in any other state, the introduction of a statutory bill of rights in Queensland would have to be justified by reference to real-life cases of rights infringement.

It may be possible to find examples of inequality and inhumanity in action in Queensland today. But would any Queensland government want to draw attention to those examples in order to support its position on a statutory bill of rights? Many Queenslanders would query whether they live in an unjust community and some may take offence at that suggestion. More importantly, by drawing attention to instances of present-day injustices in Queensland, the government may send unintended messages to the electorate. The voters may get the impression that the government is directly responsible for those injustices. They may believe that those injustices could and should have been prevented if the government had acted diligently. The voters may conclude that a bill of rights was only being forced upon them in order to cover up for the government's mistakes; to shift responsibility to the courts. Any of those messages would obviously be undesirable from the government's point of view. Therefore, in searching for real-life instances of inequality or inhumanity, any Queensland government wanting to introduce a statutory bill of rights is unlikely to highlight present-day examples because to do so would only be self-defeating.

Presidents of the Queensland Law Society<sup>16</sup> and of the Queensland Council for Civil Liberties<sup>17</sup> and even senior members of the Queensland judiciary<sup>18</sup> have all called for the introduction of a statutory bill of rights in the state. Despite the clamour, there has been little effort to look to the pages of the state's history for some justification that Queensland is a place where inequality and inhumanity happen. Examples of past injustices might convince the voters that a bill of rights really is necessary.

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<sup>15</sup> M R Einfeld, 'A Bill of Rights for the Australian People' (Paper presented at the National Conference of Community Legal Centres, Fremantle, 4 September 2001) at 12.

<sup>16</sup> R Davis, 'A Bill – or Charter – of Rights for Queensland?' (2006) 26(4) *Proctor* 2 at 2.

<sup>17</sup> M Cope, 'The State of Human Rights in Australia' (Speech delivered at the Human Rights Community Engagement Forum, Brisbane, 7 May 2005).

<sup>18</sup> R G Atkinson, 'The Constitutional Conversation between the Courts and Parliament' (2000) 21(1) *UQLJ* 1.

If a government desiring to bring in a statutory bill of rights can show that persistent episodes of abuse of civil and political rights have occurred in Queensland's past then it may be able to persuade the public that a bill of rights is a crucial, precautionary measure that can prevent injustices from occurring again in the future. By drawing on and highlighting past, real-life examples of rights infringements, a Queensland government would not only be demonstrating a need for a statutory bill of rights, it would also be engaging in pragmatic politics.

There is a recent Queensland Premier who was execrated for his government's record on civil liberties. Indeed, there have been few more controversial figures in Australian, let alone Queensland, politics than Sir Johannes Bjelke-Petersen. The following article, published shortly after his death in 2005, indicates that his legacy is still to be defined:

Queensland's longest serving premier has become perhaps the most posthumously criticised figure in Australian political history.

Sir Joh Bjelke-Petersen died last weekend aged 94 after suffering a debilitating illness during the final years of his life.

While there has been plenty of sympathy for Sir Joh and his family, the former premier's detractors have come out in full force since his death. Newspaper letters to the editor pages nationwide have been full of vitriol towards Sir Joh...

Australian Civil Liberties Council President Terry O'Gorman said Sir Joh was the "most appalling premier Queensland has ever had in terms of civil liberties and human rights".

Federal Treasurer Peter Costello has been one of the most generous political figures in his praise of Sir Joh, saying he was Queensland's most outstanding premier and responsible for much of the state's economic prosperity...

Political analyst Dr Paul Williams said the hostile reaction to Sir Joh since his death was unprecedented in Australia...Dr Williams said Sir Joh during his 19 years as premier between 1968 and 1987 offended many groups, particularly unionists, indigenous Australians, civil libertarians, electoral reformers, artists and intellectuals...

Dr Williams said attacks on Sir Joh's legacy should ease up following his state funeral next week in Kingaroy, which could attract around 10,000 people...



“It will settle down. Twenty years from now he may even be in fact seen as a loveable rogue.”<sup>19</sup>

It is for others to determine whether Bjelke-Petersen’s Premiership was, on the whole, beneficial for Queensland. The aim of the following discussion is not to pass judgment on his overall performance but, rather, to analyse some of the major civil liberties issues that arose during his time in power. If the record reveals that his government regularly and incontestably restricted individual liberties in a way that cannot be justified then one might argue that a statutory bill of rights is necessary to prevent similar rights violations by future governments.

### **The Bjelke-Petersen government and civil liberties**

Bjelke-Petersen was Premier of Queensland from 1968 to 1987. His first few years in power were undistinguished. He only narrowly survived a leadership challenge in 1970.

In 1971, the South African rugby union football team, the Springboks, arrived in Australia to play a series of matches. It was the era of apartheid and the team’s presence provoked protests throughout the country. The games in Melbourne and Sydney were interrupted with smoke bombs, hundreds of referee-type whistles and demonstrators running onto the field.<sup>20</sup>

Rugby games in Brisbane were, in those days, usually played at Ballymore Oval. The police informed Bjelke-Petersen that there was one ground where they might have a chance of controlling a crowd of demonstrators – the Exhibition Ground.<sup>21</sup> The owners of the Exhibition Ground, the Royal National Association, refused to allow the game to be played there, fearing union reprisals.<sup>22</sup> The government responded by declaring a state of emergency and commandeering the ground. Unlike the matches in the southern states, the game in Brisbane was played without disruption.

Bjelke-Petersen was criticised for declaring a state of emergency throughout Queensland in order to stage football games, starting ten days before the first game and ending fourteen days after the last. Although the chosen method was unusual, it is hard to see why the Queensland government should not have taken prompt action

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<sup>19</sup> ‘Qld: Everybody’s kicking Sir Joh’. AAP General News Wire 29 April 2005 <<http://www.proquest.com.ezp02.library.qut.edu.au>> at 1 September 2008.

<sup>20</sup> H Lunn, *Joh: the Life and Political Adventures of Sir Johannes Bjelke-Petersen*, University of Queensland Press, Brisbane, 1987 at 87-88.

<sup>21</sup> J Bjelke-Petersen, *Don’t you worry about that! The Joh Bjelke-Petersen memoirs*, Angus & Robertson, Sydney, 1990.

<sup>22</sup> R Fitzgerald, *From 1915 to the Early 1980’s – A History of Queensland*, University of Queensland Press, St Lucia, 1984 at 565.

to ensure the matches proceeded unhindered, once the federal government had made the decision to allow the Springboks to tour Australia. The public certainly saw the issue in those terms, with the government easily winning two by-elections on the day of the Springboks's game in Brisbane.<sup>23</sup>

By his own admission, Bjelke-Petersen's response to the anti-Springbok protestors put him on the political map.<sup>24</sup> Professor Ross Fitzgerald suggests that another important consequence of the Springboks tour was that the Queensland police began to support the Bjelke-Petersen government.<sup>25</sup> This conclusion was drawn by Bjelke-Petersen himself:

I think it was a fact, too, that because of my support for them [during the Springboks tour] the police came to trust me. They knew from then on that I would back them and that I would stand by them.<sup>26</sup>

Bjelke-Petersen did stand by them. In 1976, a policeman was captured on film striking a female protest marcher on the head with a baton. Moves to hold an inquiry were quickly quashed by the Premier. Shortly thereafter, twelve people were arrested at a 'hippie' commune at Cedar Bay near Cooktown. The hippies claimed that the police burned their food, personal property and dwellings. A television crew produced footage of burned-out huts. Bjelke-Petersen told the press that the allegations made by the hippies were part of a campaign to legalise marijuana and denigrate the police. He stated that some of the evidence was manufactured after the police had left the scene.<sup>27</sup> It turned out that the police had, in fact, torched the homes of the hippies. Charges were laid against three policemen but the prosecutions were unsuccessful.

On 5 September 1977, Bjelke-Petersen declared that, 'The day of the political street march is over...Don't bother to apply for a permit. You won't get one. That's government policy now'.<sup>28</sup> At that time, if a march permit was refused by police, there was a avenue of appeal to the courts under the *Traffic Act*. Two weeks after Bjelke-Petersen's declaration, that avenue was removed and replaced with a right to appeal to the Police Commissioner.<sup>29</sup> So began a two year conflict between the

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<sup>23</sup> R Wear, *Johannes Bjelke-Petersen: The Lord's Premier*, University of Queensland Press, Brisbane, 2002 at 138.

<sup>24</sup> Bjelke-Petersen, note 21 at 101.

<sup>25</sup> Fitzgerald, note 22 at 568.

<sup>26</sup> Bjelke-Petersen, note 21 at 101.

<sup>27</sup> Lunn, note 20 at 242-243.

<sup>28</sup> P Applegarth, 'Civil Liberties' in A Patience (ed.), *The Bjelke-Petersen Premiership 1968-1983 Issues in Public Policy*, Longman Cheshire, Melbourne, 1985 at 151-152

<sup>29</sup> Section 3 of the Traffic Act Amendment Act 1977. Applegarth, note 28 at 151-152.

government and what has been called the 'Right to March movement', during which over a thousand people were arrested in the course of many separate protests.<sup>30</sup>

Strictly speaking, the Bjelke-Petersen government never abolished the right to march in Queensland, which is a point that Liberal minister Charles Porter was at pains to make:

The fact, repeated over and over again but ignored by Press, television and radio, was that street marches as such were never outlawed. The joint government parties had decided, as a policy for noting by the Police Commissioner, that it preferred that permits should not be given for those marches which it could reasonably be expected would lead to confrontation and violence...The essential fact was that during the peak of the street march controversy on 1977 and through 1978, over ninety percent of all permits sought were granted.<sup>31</sup>

One difficulty with Porter's argument is that Bjelke-Petersen himself took the view that his government was 'banning' people marching through the streets without permission.<sup>32</sup> He was unwilling to allow weekend marches. He certainly appears to have wanted to retain absolute control of who could march and when.<sup>33</sup> Of course, the trouble with that approach is that the right to peaceful assembly is usually exercised in order to protest against the government of the day.

Another problem with Porter's line of reasoning is that the person with ultimate say as to who would receive a march permit, Police Commissioner Terence Lewis, was someone who, in fact, supported Bjelke-Petersen.<sup>34</sup> Eventually convicted of corruption in 1991 and sentenced to fourteen years imprisonment, Lewis had been promoted from Inspector to Assistant Commissioner with unprecedented haste.<sup>35</sup> His elevation to Commissioner in November 1976 came after the resignation of Ray Whitrod, who complained of 'increasing interference' with his responsibilities.<sup>36</sup> In

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<sup>30</sup> Professor Fitzgerald says that over 2,000 people were arrested and locked up and that 4,500 charges were laid by police: note 22 at 573. Liberal minister Charles Porter says that, by the end of October 1978, 1,437 people had been arrested on 2,366 charges: C Porter, *The Gut Feeling*, 1st ed, Boolarong Publications, Ascot, 1981, at 124. The *Fitzgerald Report* mentions 1,028 arrests: Queensland, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *The Fitzgerald Report*, 1989 at 50-51.

<sup>31</sup> C Porter, *The Gut Feeling*, 1st ed, Boolarong Publications, Ascot, 1981.

<sup>32</sup> Bjelke-Petersen, note 21 at 166-167.

<sup>33</sup> *Ibid* at 167.

<sup>34</sup> *The Fitzgerald Report*, note 30 at 50.

<sup>35</sup> Proctor, 'The Police' in A Patience (ed.), *The Bjelke-Petersen Premiership 1968-1983 Issues in Public Policy*, Longman Cheshire, Melbourne, 1985 at 173.

<sup>36</sup> *Ibid*.

light of the circumstances of Whitrod's downfall and of the otherwise strong relationship between the government and the police, it is likely that a substantial section of the community correctly perceived Lewis as a person who would assist Bjelke-Petersen to retain absolute control over street marches.<sup>37</sup>

Bjelke-Petersen maintained that demonstrations in Brisbane could be held in the Roma Street forum or in King George Square and there was no need to use the streets.<sup>38</sup> The government would have had to weigh up the competing considerations of keeping the roads clear for commuters so that they could go about their daily business and ensuring that protests could be seen and heard by the general public. In his memoirs, Bjelke-Petersen recalled that he rejected suggestions by the President of the National Party, Robert Sparkes, to allow demonstrators to march on Saturdays, Sundays or on weekdays between two and four o'clock in the afternoon.<sup>39</sup> Although protests in King George Square could be observed unobstructed by all (especially if televised), it does seem unreasonable to prevent protest marches on weekends.<sup>40</sup> Indeed, in recent times and under new laws, marches have been held in Brisbane on weekdays with relatively little disruption to, or objection from, the community.<sup>41</sup>

The 'Right to March' issue died off towards the end of 1979, although it was revived briefly with the enactment of the *Commonwealth Games Act 1982*. This Act effectively prevented protest marches near Games venues. On 4 October 1982, ninety-nine people were arrested, mostly under the Act, during a protest close to the Queen Elizabeth II stadium.<sup>42</sup>

In February 1985, long-standing antipathy between the government and the Electrical Trades Union (ETU) finally came to a head. Strikes had caused numerous power blackouts in Queensland since 1978. In 1984, there were further blackouts when the South-East Queensland Electricity Board (SEQEB) began using contract labour. On 7

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<sup>37</sup> See P Charlton, *State of Mind: Why Queensland is Different*, 1st ed, Methuen Haynes, North Ryde, 1983 at 168.

<sup>38</sup> Lunn, note 20 at 264.

<sup>39</sup> Bjelke-Petersen, note 21 at 167.

<sup>40</sup> Bjelke-Petersen's former press secretary, Allan Callaghan, has claimed that protestors were offered permits to march on weekends but refused: see P Morley, 'John Bjelke-Peterson a law unto himself' *The Courier Mail* 1 January 2008 <<http://www.news.com.au/couriermail/story/0,23739,22991454-3102,00.html>> at 23 September 2008.

<sup>41</sup> For example, the march organised by the Australian Council of Trade Unions on 15 November 2005: 'Unions claim anti-IR law rallies a success' *ABC News Online*, 15 November 2005 <<http://www.abc.net.au/news/newsitems/200511/s1506947.htm>> at 26 September 2008.

<sup>42</sup> See Fitzgerald, note 22 at page 587.

February 1985, around 1,000 ETU employees went on strike. Each side claimed that the strike was the result of the other's intransigence and repudiation of Industrial Commission directions.<sup>43</sup>

The government responded immediately by declaring a state of emergency and issuing Orders in Council requiring the strikers to return to work or be dismissed, and prohibiting any act calculated to harass, annoy or cause harm or distress to any contract workers carrying out duties associated with the supply of electricity.

The strikers failed to return to work and, so, were dismissed. The power station operators reduced output by 50% in support of the strikers and so an Order for Rationing of Electricity was issued by the Government, which effectively shut down industry. Hundreds of thousands of homes were without electricity and at least half a million workers had to be stood down. The government served writs on the operators requiring them to return to work or face fines. The ETU backed down and full power was restored by 22 February.

On 6 March 1985, the *Electricity (Continuity of Supply) Act* came into effect. Sections 3 & 4 of the Act authorised the Electricity Commissioner to direct any person in the industry to carry out work under pain of summary dismissal and a fine of \$1,000. Section 5 prohibited any act calculated to harass, annoy or cause harm or distress to any industry worker carrying out duties associated with the supply of electricity. Section 7 provided that any contract entered between SEQEB and a worker would be deemed to contain a no strike clause. The Queensland Council for Civil Liberties alleged that the Act breached the rights to freedom of expression and association.<sup>44</sup> It was said that, if persons were arrested for shouting 'scab' at non-striking workers, that would constitute an improper curtailment of freedom of speech.<sup>45</sup> It was argued that freedom of association included the right to join a trade union and, as striking was an important method of protecting the interests of union members, s 7 unduly restricted that freedom.<sup>46</sup> The Act's critics also claimed that ss 3 and 4 breached the right to freedom from forced work because nowhere was the Commissioner required

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<sup>43</sup> R Evans, *A History of Queensland*, 1st ed, Cambridge University Press, New York, 2007; W Gilbert *Arbitration in Contempt – The Queensland Power Dispute* (1986) <<http://www.hmicholls.com.au/archives/vol1/vol1-2.php>> at 1 December 2008.

<sup>44</sup> Queensland, Queensland Council of Civil Liberties, *Annual General Meeting 26 November 1985. President's Report for 1984-1985*, <[http://www.qccl.org.au/documents/AGM\\_President\\_Rpt\\_1984\\_85\\_MF\\_%2026Nov85.pdf](http://www.qccl.org.au/documents/AGM_President_Rpt_1984_85_MF_%2026Nov85.pdf)> at 19 August 2008.

<sup>45</sup> N O'Neill, 'Queensland's Industrial Legislation and its impact on Australia's human rights obligation to the international community' [1985] *Australian International Law News* 613 at 631.

<sup>46</sup> *Ibid* at 633.

to pay or compensate the person directed to do the work and, indeed, the person directed might not, in fact, be a qualified electrician.<sup>47</sup>

By contrast, the general manager of SEQEB, Wayne Gilbert, claimed that the power of direction was necessary because his employees wanted protection from the ETU by being told to work. Mr Gilbert alleged that his workers were subjected to extreme intimidation and that the anti-harassment provisions were essential in order combat this. In his view, by the end of the dispute, the people of Queensland had come to expect that essential services, such as the provision of electricity, should be free of strikes.<sup>48</sup>

Although the clashes with the 'Right to March movement' and the ETU are two of the more widely known events of the Bjelke-Petersen era, there were other important civil liberties issues. For example, it was often alleged that Bjelke-Petersen was guilty of gerrymandering, that is, manipulating the electoral boundaries for political advantage. It was said that the Labor Party had no real hope of winning government under the zonal electoral system in place at the time.<sup>49</sup> In other words, while the right to vote existed, the allegation was that Queensland elections did not really express the will of the electorate. It was well documented that the Bjelke-Petersen's National Party never received more than forty per cent of the primary vote.

In fact, Queensland's electoral scheme was a lot fairer than the government's opponents maintained. Indeed, Bjelke-Petersen inherited the zonal system. It was introduced in 1949 by Ned Hanlon's Labor government in the interests of political expediency. At the time, the Labor Party enjoyed strong support in the country. The new system was designed to increase the value of country votes.<sup>50</sup> It is highly debatable whether the zonal system was biased. In 1983, Malcolm Mackerras and Dr Colin Hughes found that the Queensland boundaries did not treat the Labor Party unjustly and that they were fairer than those of the Commonwealth, Victoria and New South Wales. The fact was that the Labor Party had not polled the numbers under any system to win government in its own right in Queensland since 1957.<sup>51</sup>

The success of the National Party had little to do with the electoral scheme and more to do with 'the creation of a virtual political vacuum in Queensland by the opposition

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<sup>47</sup> Ibid at 626.

<sup>48</sup> Gilbert, note 43.

<sup>49</sup> D Jaensch, 'The "Bjelke-lander"' in A Patience (ed.), *The Bjelke-Petersen Premiership 1968-1983 Issues in Public Policy*, Longman Cheshire, Melbourne, 1985 at 245.

<sup>50</sup> P Coaldrake, *Working the System: Government in Queensland*, 1<sup>st</sup> ed, University of Queensland Press, Brisbane, 1989 at 30.

<sup>51</sup> A Metcalfe, *In their own right: the rise to power of Joh's Nationals*, 1<sup>st</sup> ed, University of Queensland Press, Brisbane, 1984 at 122-123.

Labor Party' as noted by the former President of the Queensland Labor Party, Denis Murphy, in 1978.<sup>52</sup> Of course, the Labor Party under Wayne Goss was eventually able to fill that vacuum and take government in 1989 with the zonal system in place.

The right to freedom of expression was as contentious during the Bjelke-Petersen era as it is today on the Gold Coast. The Bjelke-Petersen government inherited a system of literary censorship. The Queensland Literature Board of Review had the power to ban any 'objectionable' publication that:

- unduly emphasized matters of sex, horror, crime, cruelty or violence;
- was blasphemous, indecent, obscene, or likely to be injurious to morality;
- was likely to encourage depravity, public disorder, or any indictable offence;
- was otherwise calculated to injure the citizens of Queensland.<sup>53</sup>

A person aggrieved by an order of the Board could appeal by way of review on the merits to the Magistrates Court.<sup>54</sup>

The Bjelke-Petersen government established the Films Board of Review in 1974. The Films Board had similar powers to the Literature Board and, again, a person aggrieved could appeal by way of review on the merits.<sup>55</sup>

Both Boards performed roles that duplicated the functions of the national censor. In other words, books and films that had been passed by the national censor could be, and, in fact, some were, banned by the state censor. For example, the 1978 movie *Pretty Baby* starring Susan Sarandon and Brooke Shields was given an 'M' rating by the national censor but was prohibited in Queensland by the Films Board.<sup>56</sup> Similarly, the United States' versions of the magazines *Playboy* and *Penthouse* were originally banned in Queensland by the Literature Board. When Australian versions were eventually produced, the copies distributed in Queensland were much 'tamer' than in the other states.<sup>57</sup> Consequently, the Bjelke-Petersen government was condemned for unduly restricting the right to freedom of expression.

There is little doubt that the Bjelke-Petersen government exercised tight controls over what Queenslanders could read and see and that, in practice, that control was tighter

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<sup>52</sup> Charlton, note 37 at 3.

<sup>53</sup> Section 10 of the *Objectionable Literature Acts, 1954 to 1967* (Qld).

<sup>54</sup> Section 11 of the *Objectionable Literature Acts, 1954 to 1967* (Qld).

<sup>55</sup> Sections 10 and 11 of the *Films Review Act 1974* (Qld).

<sup>56</sup> Fitzgerald, note 22 at 595.

<sup>57</sup> Fitzgerald, note 22 at 593.

than in other states.<sup>58</sup> However, under our federal compact, the fact that a state's policy is different to that of other states or of the Commonwealth cannot, of itself, be any real criticism. One of the strongest arguments for federalism is that decisions should be made by local politicians implementing the will of the local people, rather than by civil servants based in Canberra.<sup>59</sup> Inevitably, this may result in a particular state being 'out-of-step' with the rest of the country.

Seen from a modern vantage point, a decision to ban a magazine like *Playboy* appears ridiculous. The contemporary Queensland adult now has access to far more extreme publications. However, some would maintain that this does not necessarily mean that 'progress' has been for the best. For example, it is not only arguable that exposure to non-violent pornography causes actual harm to men, women and children but it may also cause cultural damage.<sup>60</sup>

It cannot be any criticism of a government that it does engage in censorship. Child pornography is illegal. Inciting serious contempt or severe ridicule of a person on the grounds of race is also illegal.<sup>61</sup> Free speech has limits. The real issue for a society is whether there are appropriate limits and whether the mechanisms set up to enforce those limits are the right ones. As former federal Attorney-General Daryl Williams Q.C. has stated, 'The issue of censorship is one about which everybody in the community has definite views; very often they don't coincide with each other or with other vocal and influential groups within the community'.<sup>62</sup> In those circumstances, it would be surprising to find that the Bjelke-Petersen government had not been criticised, either for being too lenient or too strict, on what it permitted the community to view.

### **Would a bill of rights serve a practical purpose?**

It is not possible in an article of this length to consider every decision affecting civil and political liberties during the nineteen-year rule of the Bjelke-Petersen government. However, a snapshot of some of the major issues has revealed what many would suspect: that Queensland governments are capable of limiting

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<sup>58</sup> W D Duncan, 'Legislative and Judicial Attitudes to Censorship in Queensland' (1976) 4 *Qd L* 31 at 50.

<sup>59</sup> J Wheeldon, 'Federalism : One of Democracy's Best Friends' (Speech presented at the 8<sup>th</sup> Conference of The Samuel Griffith Society, University House, Canberra, 7-9 March 1997).

<sup>60</sup> J L Caldwell, 'Pornography – An Argument for Censorship' (1992) 5 *Cant LR* 171 at 183-191.

<sup>61</sup> Section 124A of the *Anti-Discrimination Act 1991* (Qld).

<sup>62</sup> D Williams Q.C., 'From censorship to classification' (Speech presented to Murdoch University, Perth, 31 October 1997)

<<http://www.google.com/search?q=murdoch+university&sourceid=ie7&rls=com.microsoft:en-US&ie=utf8&oe=utf8>> at 1 October 2008.



individual rights in a way that cannot reasonably be justified. The street march 'ban' by the Bjelke-Petersen government provides such an example. It does seem perverse to allow a government employee such as the Police Commissioner to have the final say as to whether a protest march against the government can go ahead. It also appears irrational to prevent people from protest marching on a weekend when there are very few cars on the streets. If one concludes that, on any objective view, the 'ban' was unreasonable then one may surmise that civil rights violations can occur in Queensland.

However, the snapshot also reveals that concerns regarding liberties are, more often than not, inherently contestable. That Bjelke-Petersen 'rigged' the electoral system is the stuff of legend. However, it is open to question whether there was, in fact, a gerrymander in Queensland. Respected political scientist Malcolm Mackerras thought that Queensland's electoral system was not unfair. Similarly, whilst it is beyond doubt that Queenslanders had less freedom to view films or literature than did other Australians, it is debatable whether the censorship policies of the Bjelke-Petersen government were unwarranted and extreme. Censorship is a topic of contradiction: although most people do not want their government to prevent *them* from seeing something, they support censorship to prevent *others* from being affected by 'undesirable' messages.<sup>63</sup>

The *Commonwealth Games Act 1982* was criticised for equating protest with terror.<sup>64</sup> However, the passing of special legislation in order to control security tightly at a major sporting event is not an unknown phenomenon in this country. For example, the Carr Labor government in New South Wales introduced new laws for the Olympics Games in Sydney in 2000, which were also disparaged for being too strict.<sup>65</sup> It may be impossible to achieve a consensus about security legislation of this kind.

Those familiar with Queensland history will realise that the Bjelke-Petersen government's handling of the ETU strike was similar to the way in which strikes have been dealt with by other Queensland governments. For example, in order to end the 1948 Railway Strike, the Hanlon government pushed the *Industrial Law Amendment Act* through Parliament. The Act made illegal all activities designed to prolong the strike. Any argument or advice in favour of the strike or the physical

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<sup>63</sup> See Caldwell, note 60 at 172; also C Hoffner et al, 'Support for Censorship of Television Violence: The Role of the Third-Person Effect and News Exposure' (1999) 26 *Communication Research* 726 at 726-742;

<sup>64</sup> Evans, note 43 at 236.

<sup>65</sup> Chris Cunneen, 'Public Order and the Sydney Olympics: Forget About the Right to Protest' [2000] 5(1) *ILB* 8; 'Legislation comment: the other incredible effort – public order regulation during the Sydney Olympics' (2001) 25(2) *Crim LJ* 91.

presence of people in any location which the police believed could in any way assist the continuation of the strike were outlawed by the Act. The police were given the power to arrest without warrant, to issue instructions to any person to prevent a breach of the Act, and, in the case of officers of the rank of sergeant or above, the right of forcible entry to any place. The *Courier-Mail* newspaper observed at the time:

These powers, it was stated in political circles last night, are the most far-reaching ever given to the police in any State in Australia.<sup>66</sup>

The 1948 Railway Strike arose out of wage demands made at a time when net railway revenue in Queensland was less than it had been in 1938-39. The decline in the government's railways revenues placed an increasing burden on its capacity to manage its budget at a time when post-war demands could not be ignored and in a harsh economic climate. The Industrial Court had, in fact, ordered the strikers back to work. By the time the Act was passed, 23,000 men were still on strike in Queensland in contravention of those orders.

The Hanlon government argued that its *Industrial Law Amendment Act* was necessary because the Railway Strike was costing the state a fortune. Likewise, the Bjelke-Petersen government justified its stand against the ETU on the grounds that the state could not afford blackouts to continue. The truth of the matter is that, where an industrial umpire proves to be ineffective and the financial wellbeing of the state is put in jeopardy, Queensland governments have and will no doubt continue to take strong action to end strikes.

Modern statutory bills of rights say that rights are improperly infringed if they are unreasonably limited in a way that cannot be demonstrably justified in a free and democratic society.<sup>67</sup> In the absence of a full and complete account of every decision that has affected civil liberties in the state, it may not be possible to come to any definite conclusions about whether Queensland governments have a track record of unreasonably limiting rights in a way that cannot be justified. However, in light of events discussed above, one could form the tentative view that, although there have been rights violations in this state, on many occasions the response of Queensland governments to social problems are intrinsically contentious when it comes to individual liberties. In other words, opinions will naturally differ amongst reasonable folk as to what constitutes an unnecessary limitation of individual rights. One's views about the Bjelke-Petersen government's actions may very well be determined by one's own set of values and beliefs.

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<sup>66</sup> See Fitzgerald, note 22 at 131.

<sup>67</sup> See s 7(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

If that tentative view is correct then it may be hard for a modern-day politician to point to indisputable, clear-cut, civil rights infringements in Queensland's past. As noted in the Introduction, it is the capacity to solve real, not theoretical, problems that matters in Queensland politics. If a government wishing to introduce a statutory bill of rights cannot provide multiple examples of undeniable rights abuse in Queensland then it may have a real problem demonstrating that a bill of rights would serve a practical purpose.

### **Detriments of a statutory bill of rights**

Of course, even if Queensland has not historically been a place where state governments have habitually and unfairly curtailed civil liberties that is no guarantee of what might happen in the future. Justice C.W. Pincus, formerly of the Queensland Court of Appeal, framed the issue in the following terms:

We have never had what one could, having regard to world standards, call a tyrannical Queensland government; but one may come and the question is whether precaution should be taken against that possibility.<sup>68</sup>

Is a statutory bill of rights an appropriate precaution? It is important to recognise that the introduction of a bill of rights in Queensland would involve a transfer of power from the legislature to the judiciary. The current system is based upon the principle of parliamentary sovereignty, that is, the concept that the Queensland Parliament has the power to make or unmake any law it chooses. Under a statutory bill of rights, judges would no longer be required to search for the true meaning of legislation but would be empowered to do all that is 'possible' to construe legislation in order to avoid an incompatibility with defined 'rights'.<sup>69</sup> By this empowerment, judges would be given wide and significant authority over the ultimate meaning of legislative words. In the view of bills of rights critics, this gives judges the ability to rewrite legislation so that it says what they think it should say. It would certainly result in a weakening of traditional notions of parliamentary sovereignty.<sup>70</sup>

The right to participate in social decision-making has been described as a 'right of rights'.<sup>71</sup> Queenslanders exercise this right by voting for a political party that will implement the policies they want. The public are, of course, unable to elect or remove

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<sup>68</sup> Electoral and Administrative Review Commission (EARC), *Individuals' Rights and Freedoms*, Queensland Government Printer, Brisbane, 1993 at 9.

<sup>69</sup> See, for example, G Marshall, 'The Lynchpin of Parliamentary Intention: Lost, Stolen or Strained' [2003] *Public Law* 236-248.

<sup>70</sup> J Debeljak, 'The Human Rights Act 1998 (UK): the preservation of parliamentary supremacy in the context of rights protection' [2003] *AJHR* 10.

<sup>71</sup> J Allan, 'Jeremy Waldron and the Philosopher's Stone' (2008) 45 *San D LR* 133.

judges from office. They cannot influence the decisions that judges make. If, under a bill of rights, judges are given the ability to change the meaning of legislative words, they will thereby acquire the power to make social policy choices. Queenslanders will be unable to express their approval or otherwise of those choices. They will be unable to participate in this process of social decision-making. This may result in a weakening of their right of rights.

What would have been the result if a statutory bill of rights had been in place in Queensland in 1977? A Supreme Court judge may have found that, consistent with the right to have one's rights decided by an impartial court or tribunal,<sup>72</sup> it was 'possible' to construe the *Traffic Act* so that appeals against a refusal to issue a march permit should lie to the Court, not the Police Commissioner. A decision of this kind (and, indeed, any subsequent Court decision to issue a march permit), would have drawn strong condemnation of the Court from the government. Bjelke-Petersen's biographer describes him as authoritarian, intolerant of opposition and someone who thrived on confrontation<sup>73</sup> – there is no question that he would have poured scorn on the Court. As the public supported the government on the issue, they would have also no doubt endorsed the denigration of the Court. The government would have passed amending legislation in order to override the judicial decision or, perhaps more likely, simply repealed the bill of rights. Bjelke-Petersen may have suffered political opprobrium for such an act but 'Jackboots Joh' was already being described as 'a fascist, a dictator, a stooge for the multi-nationals and a mug' by his enemies.<sup>74</sup> How much worse could it have got? The more probable outcome would have been support from the public for taking strong action.

If it was not 'possible' to construe the *Traffic Act* in a rights-consistent way, the Supreme Court would issue a declaration of incompatibility. A declaration of this kind is simply a statement from the Court that the relevant legislation is inconsistent with human rights. It has no legal force. As a result, such declarations are extremely rare.<sup>75</sup> They are designed, however, to influence the political debate.<sup>76</sup> Getting involved in the political debate in 1977 would have meant subjecting the Court to condemnation from the government. Again, as Queenslanders by and large backed the government, they would have joined in the vilification of the judiciary. And for what benefit? By the own admission of the Queensland Council for Civil Liberties,

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<sup>72</sup> See, for example, s 21 of the *Human Rights Act 2004* (ACT).

<sup>73</sup> Wear, note 23 at xii and xiii.

<sup>74</sup> Lunn, note 24 at 261.

<sup>75</sup> R Carswell, 'Rights or wrongs? The Human Rights Act in the Courts' (2005) 79 *ALJ* 36 at 38.

<sup>76</sup> D Nicol, 'Law and Politics after the Human Rights Act' [2006] *Public Law* 722 at 747.

the street march issue was already making newspaper headlines in this state.<sup>77</sup> The public was well aware of the competing arguments.

If a statutory bill of rights had been in place in 1977, Queenslanders would have learned nothing new about the importance of civil liberties but would have acquired an increasing disrespect for the judiciary, thereby diminishing the authority of the law. This is not a trivial consideration. The general acceptance of judicial decisions, which is essential for the peace, welfare and good government of the community, rests, not upon coercion, but upon public confidence in judiciary.<sup>78</sup> Without it, the judiciary would lose its capacity to protect any kind of rights, let alone civil and political liberties.

### **Benefits of the absence of a bill of rights**

In 1989, the *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (better known as the Fitzgerald Report) exposed endemic corruption within the Queensland Police Force. Commissioner Fitzgerald QC found that the relationship between Bjelke-Petersen and Police Commissioner Lewis resulted in a decade during which a police culture of contempt for the criminal justice system and disdain for the law was encouraged and the attitudes and practices of ordinary police degenerated. Commissioner Fitzgerald QC also found that, probably through ignorance, the police culture was officially tolerated for political advantage, including police support in controversial political issues.<sup>79</sup>

The Report also covered matters outside police corruption. Commissioner Fitzgerald QC noted that the fairness of the electoral laws was widely questioned in Queensland. The Report observed that people of differing opinions have the right to express those opinions and engage in peaceful criticism and dissent. The Report queried whether the government or the police should have any role in regulating such expression, including the holding of street marches and demonstrations.<sup>80</sup>

The Report recommended that an Electoral and Administrative Review Commission (EARC) be appointed, reporting directly to a Parliamentary Select Committee, to review a number of matters including electoral boundaries and the laws relating to

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<sup>77</sup> Queensland, Queensland Council of Civil Liberties, *The Essential Services Act - A Civil Liberties Perspective*, (1979)  
[http://www.qccl.org.au/documents/Speech\\_PA\\_Oct79\\_Essential%20Services%20Act.pdf](http://www.qccl.org.au/documents/Speech_PA_Oct79_Essential%20Services%20Act.pdf)  
at 19 August 2008.

<sup>78</sup> M Gleeson, 'Public Confidence in the Judiciary' (Speech delivered at the Judicial Conference of Australia, Launceston, 27 April 2002).

<sup>79</sup> *Fitzgerald Report*, note 30 at 201.

<sup>80</sup> *Fitzgerald Report*, note 30 at 359.

public assembly.<sup>81</sup> EARC was established by the Goss Labor government and its reports led to the enactment of *Electoral Act 1992*, the *Peaceful Assembly Act 1992* and the *Legislative Standards Act 1992*.

The zonal electoral system was abolished, although the *Electoral Act* does maintain a weighting for many country votes.<sup>82</sup> Under the *Peaceful Assembly Act*, the police no longer have the power to prevent a public assembly. If they are concerned about some aspect of a proposed march, they can apply to the Magistrates Court for an order refusing the holding of the assembly.<sup>83</sup> The *Legislative Standards Act* obliges the Office of the Parliamentary Counsel to advise the government on the application of 'fundamental legislative principles' to proposed legislation.<sup>84</sup> These principles include requiring that legislation has sufficient regard to rights and liberties of individuals.<sup>85</sup>

The Goss government also abolished the Literature and Films Boards. Instead, the Commonwealth Classification Board now classifies publications, films and computer games and the Queensland government enforces those classification decisions. The *Industrial Relations Act 1990* swept away the industrial statutes of the Bjelke-Petersen government including the *Electricity (Continuity of Supply) Act 1985*.<sup>86</sup>

These changes were not brought about by a bill of rights or by judges. Indeed, it was magistrates and judges who had been the ultimate arbiters of what Queenslanders could see and read under the Bjelke-Petersen censorship regime – they were the ones

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<sup>81</sup> *Fitzgerald Report*, note 30 at 360.

<sup>82</sup> Electoral districts have to meet a number of criteria, including containing an equal number of electors, which can be within 10% for the 'average' electorate. The formula provides that, for an electoral district with an area of 100,000 km<sup>2</sup> or more, a figure equal to 2 per cent of the total area of the electorate is added to the actual number of electors enrolled in that district. Consequently, an electoral district of 200,000 km<sup>2</sup> in area would have 4000 (that is, 2% of 200,000 km<sup>2</sup>) 'notional' electors added to its actual number of electors. This combined total of electors is used to determine if the electoral district falls within the 10% allowed.

<sup>83</sup> Section 12 of the *Peaceful Assembly Act 1992* (Qld).

<sup>84</sup> Section 7 of the *Legislative Standards Act 1992* (Qld).

<sup>85</sup> Section 4 of the *Legislative Standards Act 1992* (Qld).

<sup>86</sup> Interestingly, there was one reform recommended by EARC but not implemented by the Labor Party in Queensland: a bill of rights. In 1998, after an extensive inquiry and careful consideration, a Parliamentary Committee comprised of members from the Labor, Liberal, National and One Nation parties unanimously agreed that a bill of rights would not achieve a real difference in the protection of the rights and liberties of Queenslanders. Moreover, the Committee found that substantial economic and social costs were likely to result from any such move. The fact that, after years of suffering through the 'blatant civil and political outrages' of their political enemies, a bill of rights was a change that the Labor Party could not sensibly bring itself to make is curious and, perhaps, quite telling.

who preserved 'a narrow kind of morality'.<sup>87</sup> Rather, the changes were ultimately brought about by political action. They were changes that the community could take ownership of and responsibility for because they had implemented by the people's representatives.

Instead of being dictated to about individual rights by an unelected judiciary, the Queensland public went through a much more natural learning process. By the time of the publication of the Fitzgerald Report, Queenslanders believed that they may not have been right to support policies such as the street march 'ban'. They consented to the Goss government's reforms, which reflected a growing public comprehension of the worth of civil and political liberties.

In his book, *A History of Queensland*, Raymond Evans confirmed the existence and significance of this learning process:

[Bjelke-Petersen's time in power] was a period when democratic principles were trammelled to privilege the interests of a select and powerful minority; the electorate was further malapportioned and manipulated;...the state's enforcement arm perilously compromised into direct political accord with executive demands; freedom of expression sacrificed to oppressive censorship; minority rights branded a risible intrusion and civil liberties the dangerous ploy of extremists. Viewed from another perspective, it was also a time when many Queenslanders began gradually to learn, by bitter experience, what democratic principles, such as the separation of powers, majority rule,...an uncorrupted police or judiciary, and respect for freedom of speech, minority justice and basic civil rights really meant. Indeed, this slow, painful learning curve, inattentively travelled and never entirely mastered, was the real historical innovation of this era....Crucial elements of democratic function were eventually etched into public consciousness by the poverty of their absence.<sup>88</sup>

Whether one accepts Evans's contention that 'democratic principles were trammelled' during the Bjelke-Petersen era, the fact is that, in the absence of a bill of rights, the people of Queensland were forced to confront the repercussions of decisions made on *their* behalf by *their* political representatives. This led, as Evans verifies, to a better public understanding and appreciation of the importance of preserving civil liberties.

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<sup>87</sup> Applegarth P, 'The Essential Services Act – A Civil Liberties Perspective' (Speech delivered at the Queensland Council for Civil Liberties conference, Brisbane, October 1979) at 150.

<sup>88</sup> Evans, note 43 at 221-222.

## Conclusion

The political wheels are well and truly in motion for the introduction of a federal statutory bill of rights. However, the recommendation of the National Human Rights Consultation committee may not be persuasive enough for Queenslanders. If the average Queensland voter truly is a direct person who expects politicians to put their case bluntly,<sup>89</sup> any state government wishing to enact a statutory bill of rights will need to establish an actual, concrete need for such a measure as opposed to an abstract or speculative one, in order to garner public support.

A brief snapshot of a part of Queensland's history reveals that rights issues are rarely straightforward. The idea of rights may have the appearance of simplicity. The reality, however, is that rights are the subject of intense philosophical controversy. The proper balance between individual rights and other social considerations is but one matter over which there is disagreement.<sup>90</sup> Given the nature of rights-disagreements, one can cautiously deduce that it may be challenging for any Queensland government wanting to introduce a statutory bill of rights to provide numerous, indisputable, real-life examples of rights violations in this state.

The Cradle of Filth fan charged with public nuisance on the Gold Coast provides yet another illustration of how, when talking about rights, there is rarely a right or wrong answer. The lawyer interviewed by the *Gold Coast Bulletin* argued that the charge against the T-shirt-wearing teenager was 'ludicrous' and that a bill of rights was needed to protect the right to freedom of speech. However, others would maintain that the T-shirt should be banned because it damages the community-at-large by conveying messages that Christians should be vilified for their religious beliefs, and that women cannot stop themselves engaging in sexual activity.<sup>91</sup>

Assume for the moment that Queensland had a statutory bill of rights and that a court decided the teenager had a right to wear the T-shirt: what would be the result? It is likely that public would be outraged. Our elected representatives would queue up to attack the court. The notion that Queensland politicians would enter into some sort of 'democratic dialogue' with the court about the teenager's rights is utterly

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<sup>89</sup> See Charlton, note 37 at 10.

<sup>90</sup> A Stone, 'Review Essay: Disagreement and an Australian Bill of Rights' (2002) 26 *MULR* 480 at 481.

<sup>91</sup> The T-shirt was, in fact, banned in New Zealand for those reasons: Society for the Promotion of Community Standards Inc. 'Censor's Ban on "Cradle of Filth" T-shirt', Scoop, 1 July 2008 <<http://www.scoop.co.nz/stories/PO0807/S00009.htm>> at 15 November 2008. See also Office of Film and Literature Classification, New Zealand Censorship Database (2008) <<http://www.censorship.govt.nz/oflcdd/Home.asp#top>> at 12 November 2008.



naïve.<sup>92</sup> Public confidence, the bedrock of our justice system, would be damaged in order to achieve a questionable outcome that could, in any event, be accomplished through political effort.

We would all hope to live in a society that is tolerant and rational. If our community has these qualities then there is no need for a bill of rights. The Bjelke-Petersen era and its aftermath demonstrate that, when rights have been restricted, Queenslanders have, with the passage of time, faced up to the consequences of government policies that they have supported. By admitting their perceived mistakes and making appropriate adjustments, Queenslanders have arguably learned more about tolerance than they ever would by having change imposed upon them by judges under a bill of rights. It is only through this enduring learning that Queensland can progress to be the kind of place we all want to live in.

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<sup>92</sup> See, for example, R Clayton, 'Judicial deference and "democratic dialogue": The legitimacy of judicial intervention under the Human Rights Act 1998' [2004] *Public Law* 33.