

What to do?

What, ultimately, can be done with this mixed blessing of a section? Its repeal, on its own, would simply expose more people to punishment under the Code. Yet if this section were to prosper in practice, it could become the blueprint for similar provisions, turning the courts into inquisitorial tools for police. This sort of legislative provision should attract the wrath of not just those sympathetic to sex workers, but even conservative lawyers concerned with the integrity of judicial process.

References

1. For a useful critique: Vann, Megan, 'Prostitution: the Goss Position' (1993) 18 *Alternative Law Journal* 38.

L etters

Queensland needs a Bill of Rights

Dear Editor,

If Queensland's *Legislative Standards Act 1992*, is, as Spencer Zifcak described it, *the new exemplar of democracy* which amounts to a *mini bill of rights*, then Queensland law reform is in for a lean time indeed.

Mr Zifcak's article, published in Volume 18, No. 6, December 1993 of this Journal, will be handed around the hallowed halls of Queensland parliamentary power with much back-slapping. It will reinforce the claims made by some Goss Government ministers that their Government has been a veritable Vesuvius of human rights initiatives. It will also give credibility to Premier Goss' public contention that the need for a Bill of Rights appears questionable now that Queensland has legislative standards legislation. It will therefore assist in undermining the recommendations made by Queensland's Electoral and Administrative Reform Commission (EARC) in September last year, that Queensland would benefit from the enactment of a Bill of Rights.

There are a host of reasons why a Bill of Rights is preferable to the *Legislative Standards Act 1992*. This letter addresses only two.

First the *Legislative Standards Act* contains a limited array of vague and unenforceable human rights provisions. By contrast, EARC's preferred Bill of Rights for Queensland is modelled on the two international covenants that are a primary source of human rights instruments in the modern world: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. There is nothing vague or limited about these rights. This is meaty stuff with which few could object. The covenants condemn racism; sexism; cruel and unusual punishments; unnecessary interference by state officials with individual privacy; and arbitrary decision-making by bureaucrats and courts. They promote the rights of an individual to an adequate standard of living; to gainful employment with reasonable pay; to freedom of speech and religious choice; to hold and express opinions; to peacefully demonstrate; to vote; and to equal access to and protection of the law.

Second, the standards in the *Legislative Standards Act* are completely unenforceable. Nothing happens if Bills, Acts, amendments or subordinate legislation infringe the so-called fundamental legislative principles listed in the Act. If passed by Parliament, offensive legislation will nevertheless become law.

2. In over 140 pages of Hansard, the only (irrelevant) discussion is Denver Beanland's concern that the section might provide an easy out for those involved in child prostitution! On the other hand, the Women's Legal Service in its submission to Parliament of 24 November 1992 noted that the section 'is completely without precedent and likely to prove highly problematical'.
3. *Bankruptcy Act 1966* (Cth) s.81; *Corporations Law 1989* (Cth) s.597.
4. See *Bankruptcy Act* ss.81 (11AA), (17) and *Corporations Law* ss.597 (12), (12A) about self-incrimination and use of evidence respectively.
5. Report of a *Commission of Inquiry Pursuant to Orders in Council* ('Fitzgerald Report') para 1.4.3. Ironically, it was Fitzgerald's inquiry which led to the revamping of prostitution law; although we cannot blame him for the substance of the new law, or the process which created it.
6. SQWISI as it is endearingly called, stands for 'Self-health for Queensland Workers in the Sex Industry'. It is a community-based, government-funded organisation to provide STD education and prevention, and welfare and support to sex workers, their partners and clients.

As a consequence, Queensland Parliament has already passed legislation which does not comply with the Act's so-called fundamental legislative standards. (For example, compare s.4(3)(e) *Legislative Standards Act 1992* with s.107 *Art Union and Public Amusements Act 1992*. The latter section allows inspectors monitoring premises, calcutta sweeps, bingo operations and public amusement machines conducted for profit to enter, search and seize without first obtaining a warrant. The former section challenges legislation which gives state officials power to enter premises and to search and seize property without first obtaining a warrant.)

By contrast, a Bill of Rights can be enforced. EARC has recommended that Queensland citizens should be asked in a referendum whether or not they would support the entrenchment of a Bill of Rights in the Queensland Constitution. Once entrenched, government and bureaucrats can be ordered by the courts to act in accordance with an impressive list of civil and political rights. The Bill would also override State-made legislation and regulations that conflict with the civil, political, social, economic and cultural rights that EARC has endorsed for inclusion in the Bill. The rights themselves could only be removed by the people – through another referendum.

Until the election of the Goss Government, the Special Branch was secretly supplying government departments with information about individuals; peaceful street marches were effectively banned; and the value of a council election vote cast in one ward could be worth between 3 and 27.3 times a vote in another ward in 66 local authority regions. Prisoners in Townsville's Stuart Creek gaol sweltered in unsewered, cramped cells, without water, in penal conditions reminiscent of previous centuries. Homosexual activity could land you in gaol. A number of laws passed, and policies made, by the Goss Government reverse these human rights violations. This is laudable. However, the fact remains that the extent to which Queensland law-makers, government officers, bureaucrats and judges are bound to observe those international human rights covenants to which Australia is a signatory, is at present totally reliant upon the goodwill of the government of the day. When comparing the *Legislative Standards Act* to a Bill of Rights, ask yourself which you'd prefer to see on the statute books when a National Party is re-elected in Queensland.

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