

## QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

### ANNUAL REPORT OF THE PRESIDENT, TERRY O'GORMAN

#### ANNUAL GENERAL MEETING FOR 1981

1981 was a hectic year for the Q.C.C.L. Faced with the perennial problem of limited personnel and financial resources, the ever-increasing list of civil liberties abuses in this State makes the task of defending civil liberties an arduous one.

In this report, I shall list the numerous areas in which the Council has been active, so that full appreciation of the Council's activities can be gained.

I would like to record my thanks for the assistance constantly rendered throughout the year by members of the Executive.

I particularly thank Roger Byrom and Peter Applegarth for their endeavours while I was overseas between October 1980 and March 1981. It was pleasing to go to the Australian Embassy in London and flick through the pages of the Courier-Mail to see the reaction to the 'Police Malpractice – A Judicial Response' Report and Roger Byrom's letter to the editor concerning citizens' access to their police files. More on that presently.

I would like members to realize the significant amount of work put in by Executive members. Because, as President, public comment on civil liberty matters falls to me, I should not like it to be thought that the media comments are all my own work.

Lew Wyvill continues to offer wise counsel on a wide range of matters and his willingness to make his Chambers available for Executive meetings is appreciated. Lew's telephone numbers is also the Telephone Directory number for the Council. His willingness to monitor calls for the Council is valuable.

Lew's secretary, Maureen is responsible for a considerable amount of QCCL typing. I thank her for her patience and efforts in this regard.

Eugene O'Sullivan and, more recently, Elizabeth Cottee have been responsible for the compilation and distribution of Executive minutes. Eugene has done this under considerable work restrictions. Elizabeth has recently joined the Executive as secretarial assistant. Our thanks to her and to her 'boss' Janet Irwin, for making her services available.

The considerable work of Peter Applegarth should not go unmentioned. Whilst working in town, Peter has had to exercise some limits to his QCCL activities. Notwithstanding this, he has been heavily involved in drafting submissions and other writings. The Council's ongoing correspondence with the Police Minister on the December 1980, 'Police Malpractice – A Judicial Response' has been attended to by Peter. As well he has drafted the Council's main responses to the proposed Summary Offences Act and the Native Plants Protection Bill (see below).

The combined efforts of Janet Irwin and Carolyn Mason have been valuable, especially in the area of Status of Women. Since joining the Executive, Carolyn has performed a multitude of

tasks. She, Janet and Madelaine McPherson have attended to a number of matters which have contributed to the smooth operation of the Executive.

Steven Keim and Paul Hocking have also contributed to the working of the Executive.

I would also like to thank my friend, Jenny Felton, who puts up well with the time demands the position of the Presidency places on us both.

### **Overview of the Council's Work**

As will be seen from the following list of matters attended to by the Council this year, the demands made on the Council are growing. In my opinion this is due mainly to the arbitrariness of certain Cabinet Ministers in Queensland. Some Ministers have their departments display an attitude close to contempt in their dealings with the Council. Other Ministers are indifferent. Only a small number of Ministers could be described as approachable, so far as the Council is concerned.

I consider the Council has a duty to highlight the civil liberties implications of legislation **before** it is passed into law. If this means we must be in constant conflict with certain Ministers, then the fault is not ours.

I think this view is reflected in increasing public support of the Council's stand on various issues and the media's serious treatment of our public statements.

From an organisational standpoint, we have reached the stage where we desperately need full-time secretarial assistance. The demands of full-time jobs often mean that matters are not attended to as quickly as they ought.

A Council supporter has recently promised us an immediate gift of \$5,000 which we hope to use to employ a part-time secretary so that membership lists can be updated and a concentrated membership and subscription drive undertaken.

### **Australian Council for Civil Liberties**

The Queensland Council for Civil Liberties has affiliated with the recently formed Australian Council for Civil Liberties (ACCL). The ACCL hopes to respond to civil liberties issues of a national character.

The Constitution of the ACCL specifically provides for the independence of the respective state branches in matters pertaining to the state.

Matters that the federal body have commented on include privacy aspects of certain pieces of federal legislation. Recently the Australian body has entered into an arrangement with Senators on both sides of the House whereby the ACCL will undertake active monitoring of federal legislation.

All States, except Tasmania where there is no Civil Liberties Council, have now joined the ACCL.

## **Aboriginal Affairs**

Lilla Watson has kindly consented to chair the Black Rights Committee of the Council. With Council sponsorship, she organised a highly successful seminar on the implications of the abolition of the Aborigines Act, in October. Susan Ryan, Federal Labor Shadow Spokesperson on Aboriginal Affairs and Pat O'Shane, Australia's first aboriginal barrister and now head of the New South Wales advisory body on aboriginal affairs, both delivered compelling addresses. We thank Lilla for her efforts in organising the seminar and hope for a greater involvement in aboriginal affairs by the Council.

I made a press statement on Lang Hancock's comments calling for the 'mass sterilisation of half caste aborigines' (Australian, 5 October 1981).

We also wrote to the Federal Minister for Aboriginal Affairs and the Queensland Premier on the proposed abolition of the Queensland Aborigines Act. A reasoned reply was received from the Federal Minister. The Premier's Secretary acknowledged receipt of our letter but no substantive reply was received from the Premier.

## **Bail Act**

Various problems are being experienced with the Bail Act which became law in July 1980.

The Council took up the case of two political protesters who had been denied overnight watchhouse bail in Brisbane. They were arrested for the offence of wilful destruction, alleged pouring of red dye substance over police. This occurred when a peaceful protest in King George Square in the aftermath of Bobby Sand's death was interrupted by police in May.

The watchhouse keeper's refusal of bail was without precedent for charge of this nature. However, a detailed four-page letter of complaint both to the Police Minister and the Minister for Justice (as the Minister having overall responsibility for the administration of the Bail Act 1980) elicited a reasoned response from the minister for Justice but only a brief pro-forma acknowledgement letter from the Police Minister.

Both persons charged with the offences were acquitted. The watchhouse keeper refused bail on the ludicrous ground that, if released, the persons would 'commit other offences'. The wide discretion granted to watchhouse keepers for overnight and weekend bail is dangerous and, as the above case shows, capable of being abused.

In the federal sphere, it is interesting to observe that the Criminal Investigation Bill introduced into the Senate in November 1981 specifically provides for a telephone appeal to a Magistrate in respect of refusal of watchhouse bail for federal offences. Such a provision is badly needed in Queensland.

## **Child Welfare**

Steven Keim and myself have prepared a paper for submission to Queensland's Welfare Services Minister, Terry White on the proposed family welfare legislation.

It is useful to note at this stage that the Welfare portfolio and, for that matter, the Justice portfolio are clearly distinguished in practice from the Police portfolio. Both the Welfare and Justice Ministers are prepared to call for submissions on changes to the law long before Bills are drafted, unlike the Police Minister.

Further input is expected in the area of family welfare legislation soon, especially in relation to the Children's Services Act amendment which is lying on the table. It would allow police to lock up children found glue sniffing for a period up to 48 hours, without any Court approval being involved.

While the Council recognises that glue sniffing is a problem, it questions if this is the best way of dealing with the problem. Also, we are concerned at the possibilities for abuse of police power, especially in relation to 'street kids'.

Members' thoughts on this would be appreciated.

### **Commonwealth Games**

The Commonwealth Games Bill 1981 represents a considerable victory for the Council.

The first indication of the intent and extent of the proposed laws appeared in the National Times in mid-September 1981. As a result of a valuable leak obtained from sources close to the Police Department, National Times journalist Mark Plunkett wrote of the plans by the Police Department for the Games. As a result of the justified public outcry, the Police Minister was forced by Cabinet to redraft his proposals a number of times before they were acceptable (Sydney Morning Herald, and Courier-Mail, 22 September, 1981).

Hinze's mooted intention to have the Commonwealth Games legislation fully operational has, fortunately, been frustrated. The Police portfolio has in the last couple of years elevated to an art form the introduction of legislation without any possibility of informed community debate.

Now that the Police Minister has been forced by public opinion to have the Bill lie on the table of the House for a time, there must be maximum effort to educate the public as to the political dissent provisions in the Bill. Despite Hinze's protestations to the contrary, there is clear provision in the Bill for the banning of placards or political leaflets in or near Games sites, no matter how peacefully or non-disruptively these placards or leaflets may be distributed.

### **Cedar Bay**

Moves are afoot to use the laws relating to national parks to break up a small alternate lifestyle community in Cedar Bay.

Members will recall the \$65,000 police raid conducted on the Cedar Bay commune in August

1976 with a resultant eight vagrancy charges and one minor charge of cultivation of marijuana. The widespread condemnation that greeted this activity has led the Government to use conservation-related laws to try to achieve what the criminal law could not, namely the removal of the Cedar Bay commune.

In November a Notice of Resumption of Lease was served on Bill Yale Evans, an 88 year old hermit otherwise known as Cedar Bay Bill. This document shows that the National Parks Minister is intending to resume Bill's 50 year old lease, supposedly for conservation purposes. But no park management plan for the new Cedar Bay National Park (declared a National Park in 1977) has been published yet. And the supposed conservation motivation of the Evans lease resumption sits poorly with the logging of Windsor Tableland that is going on in an adjacent area, contrary to the wishes of conservationists.

## **Federal Police**

Policing reforms in the Federal arena in the last twelve months show that the same reforms can easily be introduced into the Queensland Police Force and that the reason for inaction in this area is due to what the 1977 Queensland Criminal Law Enquiry referred to as 'unreasoned opposition to change'.

In the last twelve months, the Federal Police Commissioner agreed to the introduction of an independent element into the investigation of complaints against federal police.

The area of operational influence of the federal police is just as vast and demanding as that of the Queensland police. During the last twelve months, independent investigation of complaints against police has also been introduced in New South Wales, Australia's largest police force, and is in the process of being introduced in Victoria. The significance of these moves on Queensland policing will be considered later in this report.

Another policing reform introduced into the federal arena has been the introduction of the Criminal Investigation Bill which, among other things, provides for the tape recording of interviews between police and suspects. This report has the support of the Australian Federal Police Commissioner, Sir Colin Woods who has described it as 'workable' (Sydney Morning Herald, 19 November, 1981).

## **Freezing of Funds**

In August this year, Justice Minister Sam Doumany floated a proposal for the freezing of bank accounts of people charged with serious criminal offences such as drug trafficking or armed robbery. The Minister's justification for this proposal was that drug traffickers and armed robbers were using their ill-gotten gains to 'fund lavish defences'.

The Council was asked for a comment and our reaction was that we saw this as an attack on the jury system as a person's innocence or guilt would be decided via the machinery that would be set up to administer the freezing of bank accounts.

The matter has been referred to the Queensland Law Reform Commission and the Minister is to be commended for this. Notwithstanding our most serious reservations about this

proposal, it is a welcome sign to see that the Justice portfolio is being conducted with an openness and a willingness to undergo public scrutiny of proposals in the criminal law. As noted above, this stands in marked contrast to the way in which the Police portfolio is 'managed',

Assistance is required from members, especially law students or practitioners, for the preparation of a submission to the Queensland Law Reform Commission on this matter.

## **Juries**

A less satisfactory aspect of the Justice portfolio was the response to the proved allegations in June that potential jurors were being 'vetted' by police as to whether their views on various political issues made them suitable to serve on a Queensland jury.

The allegations of jury stacking first arose in the Sunday Sun, 31 May 1981, when Tom Burns, Queensland Labor Party front bencher for Lytton, revealed that people in his electorate had complained to him that police had approached them with a request for information on the political views of neighbours who had been called up for jury service.

While the Justice Minister announced that he had tightened procedures for police checks on jurors (Courier-Mail, 2 June 1981), no indication was forthcoming as to what guidelines (if any) had issued from his department to the Police Department in relation to checks on jurors.

The Council took the view (and was supported by Des Sturgess and the Queensland Law Society) that it was unobjectionable for police to check on whether a potential juror had serious criminal convictions, but it was quite another matter for police enquiries to go beyond this fact.

The Council sees no need whatsoever for police 'in the Field' to make enquiries about jurors. The Police Department's recently installed computer and its high programming budget for the current financial year makes it quite easy for a search of police records to indicate whether a potential juror has a serious criminal conviction.

Under Section 69C amendment to the Police Act passed last year, the Police Department is empowered to pass any information in its files (not necessarily information relating to a person's criminal history) to any State or Federal Government department or body.

The Council is concerned that this power in conjunction with the extensive information gathering facilities of the Police Department can result in juries being selected on Police Department criteria.

I understand that some prosecution jury lists, especially in the District Court, are marked with the letters SB, Special Branch.

The strength of the jury system lies in its randomness. As more and more 'political' cases come to be decided by the superior Courts, it is important that the selection of juries not be carried out on a basis designed to ensure that jurors are more inclined to favour the prosecution than the defence.

The Council calls on the Justice Minister to publish the guidelines that relate to the police vetting of jurors so that their content and the possibility of abuse can be fully understood by the community at large.

### **Native Plants Protection Bill**

This Bill again shows how the process of giving extremely wide powers to public officials without any system of checks and balances to protect against abuse is becoming the norm rather than the exception in Queensland.

The more objectionable features of the Bill allow for a \$5000 maximum fine for insulting a National Parks official and allows a person's vehicle to be seized for up to twelve months without any charge being laid.

As if this isn't bad enough, the Bill provides immunity from Court action to any official who goes beyond these already wide powers. The Bill contains a reverse onus of proof provision, the need for which has not been argued by the Minister.

A well-argued submission as to the reasons for the Council's objection to these proposals was written by Peter Applegarth and delivered to the Minister on 20 October. As a result of circulating that letter to politicians on both sides of the House and also of media comment by the Council, this Bill has been put off until March.

That these provisions can appear in a Bill dealing with plants and not raise a single objection from either side of the House shows the state of civil liberties in Queensland.

The Council supports the intention of the Bill, to prevent the stealing of rare plants, but objects to these unnecessarily wide powers unless their need is fully demonstrated and a proper system of checks and balances against their abuse is incorporated into the Bill.

Council members are again asked to assist in the publicity and research tasks ahead of us in relation to this Bill.

### **Parliament**

Paul Hocking, the Parliamentary Affairs Committee convenor for the Council, produced a detailed submission to the Standing Orders Committee of the Queensland Legislative Assembly proposing measures to make the Parliament more responsive to the community and more democratic.

The main recommendation of the submission was the establishment of a Public Accounts Committee to oversee the expenditure of public monies in Queensland. This submission was presented just after the 'Hinze plane' affair when a \$3/4 million plane, regarded by many police as unsuitable for police work, was bought by the police Minister. The Auditor-General's report released some two months later revealed that the Queensland Police force had overspent by over \$1/2 million.

The Police Minister denied any connection between the two matters but such an assurance

coming from an all parties public accounts committee would be more reassuring.

Thanks to Paul for his efforts in preparing that submission.

## **Queensland Police**

The Council continues to receive numerous complaints about incidents of police malpractice in Queensland, both from members of the public and from lawyers/members who are constantly working in criminal courts.

While it is accepted that the majority of police do not abuse their powers, we are convinced that a significant minority do, and do so with impunity.

We note that the recommendations of the 1977 Lucas Criminal Law Enquiry concerning the tape recording of police station interviews gathers dust in the archives. While the Police Commissioner and his public spokespeople continue to say that tape recording cannot work, it is pertinent to observe that in the federal arena the proposal to tape record police interviews has recently been described as ‘workable’ (see above).

The Police Commissioner should be asked why such proposals are workable with the Australian federal police and unworkable with the Queensland police. It is to be noted that certain Queensland police squads regularly use tape recorders, for example, the Fraud Squad and the Crime Intelligence Unit. Challenges to these tape recorded interviews are rare. To quote from the Queensland Criminal Law Enquiry:

“We wonder if we were told the real reasons for police opposition to tape recorders”.

Tape recorders must be introduced into the Queensland police force. Until they are, the majority of honest police will not be believed by juries because of the persistent malpractices of a significant minority.

One other reason why police abuse of power continues in this State is the complete lack of sanction faced by a police officer who abuses his powers. While there is some evidence that police involved in criminal activities, for instance, stolen car rackets, are being prosecuted, there is no evidence at all that the Police Commissioner or his top advisers are the slightest bit interested in stopping police fabrication of evidence.

The last year has seen a refinement of the police response to demonstrated abuse of police power. The tactic is simple. Assure the press that the matter will be investigated by internal investigation officers and then rely on the press’s shortcomings about following up the matter and hope the whole thing will be forgotten.

This tactic is increasingly used to good effect in Queensland in those cases that come to the notice of the press. In relation to the vast number of cases that never get ventilated in the press, the policeman tempted to abuse his power sees a case being thrown out of Court, if he is found out, as a small price to pay.

Notwithstanding Assistant Police Commissioner Duffy’s apology for the system of Queensland police investigating Queensland police contained in Sunday Mail article, ‘Top

Officer Defends the Police Force' (6 December 1981), Duffy and other police administrators in Queensland are going to have to face up to reality and accept that growing community cynicism over police investigating police (and of the drastic effect this has on police public relations) can only be stemmed by following the Australian federal police, the New South Wales and Victorian police recent reforms – and have a system of independent investigation against police.

Lewis, Duffy and other top police cannot hold back the tide forever.

### **Public Service Screening**

August saw the joint comment by the Premier and the Deputy Premier that all applicants for Queensland public service positions would be subject to 'character tests' conducted by the Queensland police. This was in response to a number of controversial Government policy decisions being leaked to the press.

The Civil Liberties Council briefed a number of unions on the seriousness of such a proposal and 'assurances' were given that only criminal convictions would be enquired into. The operation of Section 69C (described above) and the strong terms in which the initial comments about screening were made, gives little credit to these assurances.

### **School Children's Rights**

The 1981 Education Act Amendment Bill, put off until March, contains a number of proposals which are objectionable. The proposal to fine parents who abuse teachers in the presence or hearing of a pupil shows a remarkable lack of sensitivity to the teacher/student/parent dynamics. These proposals deserve the closest attention and Council members who are teachers are requested to assist in drafting a submission to oppose such measures.

### **State of Emergency**

A State of Emergency under the Transport Act introduced on 24 July to deal with the effects of a national transport strike continued for a month and a half after the strike which prompted the emergency had finished. I cannot do better than quote from the Australian, 19 September 1981 as to the political and civil liberties implication of such a move:

'... the stage has been reached where political excesses have numbed people into equally excessive apathy.

'Mr Hinze is probably laughing himself to sleep every night. The Government now has a working political philosophy that it can do almost anything it likes, ride out the public reaction if there is any and then, when things die down, continue on as normal. It is disturbing to say the least.' [Joe Begley]

## Summary Offences Act

It became clear in August/September that the Queensland Police Department had been drafting in secret a proposal to re-write the 50 year old Vagrants, Gaming and Other Offences Act, the new Act to be called the Summary Offences Act. Notwithstanding constant requests from the Law Society, the Bar Association and the Civil Liberties Council, the Police Commissioner refuses to allow any input into this Bill other than from top police administrators until the Bill reaches Parliament.

We must renew our opposition to this course of action this year. If input into a Bill is denied until the Bill has been drafted and presented in the House, the political momentum that the Bill gathers is almost impossible to stop.

Members' assistance in finishing the preparation of a kit, compiling and distributing it, is urgently required.

## Conclusion

As the quote from Joe Begley indicates, a state of affairs has been reached in Queensland where there is a constant but piecemeal attack on civil liberties by the Government. The attack is piecemeal in the hope that the community generally will not appreciate the overall significance of it.

I have outlined in some detail the matters that the Council has been involved in last year to bring home to members, the important point that 'the price of liberty is eternal vigilance' (with apologies to the Returned Servicemen's League).

In conclusion, I would reply to the critics of the Council (mainly persons in high places) with the following quote from the New Yorker:

“...to suggest that the Civil Liberties Union is a group constantly opposed to law enforcement ... is to suggest a profound misunderstanding in the administration of what liberty is ... In actuality, rights ... are to be enjoyed by society as a whole and an organisation that, like the American Civil Liberties Union, fights to uphold them is a lobby ... for all citizens.”

TERRY O'GORMAN, PRESIDENT

Brisbane, February 1982