



Queensland
Council
for Civil
Liberties

MEDIA RELEASE

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BY TERRY O’GORMAN, VICE PRESIDENT, QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

The Queensland Government is poised to legislate in the near future to rob Queenslanders charged with a wide range of criminal offences of their centuries old right of trial by jury.

Civil Liberties Council Vice President Terry O’Gorman said a Consultation Draft Bill taking away the right of an accused person to choose trial by jury in a number of serious offences was tabled in the Queensland Parliament in December last year and tomorrow is the deadline for submissions to be sent to the Attorney-General, Cameron Dick.

“The significant restrictions on jury trials contained in the Draft Bill arise from a report handed to the Attorney-General in December 2008 by retired Supreme Court Judge Martin Moynihan AO QC who takes up his new appointment as CMC Chair tomorrow” Mr O’Gorman said.

Mr O’Gorman said that even though the jury changes are based on a report of an ex Supreme Court Judge the history behind the long standing right of an accused person to choose trial by jury is barely touched on in the Moynihan Report.

Mr O’Gorman said that while Mr Moynihan recognises that there is “a widely and justifiably held view that trial by jury should not be lightly dispensed with given the serious consequences which may follow conviction of a criminal offence ...”¹, nevertheless the Bill currently before Parliament proposes that very serious offences such as sedition, affray, disclosure of official secrets, bribery, supplying drugs or instruments to procure abortion and criminal defamation must be heard

¹ See page 134 Moynihan Report

by a Magistrate and therefore a person accused of these offences can no longer choose to have trial by jury unless a Magistrate decides there are exceptional circumstances justifying trial by jury.

“Most of these offences by their very nature are controversial and should be heard by a jury if an accused person so chooses rather than by a Magistrate who is a State appointed Judicial Officer” Mr O’Gorman said.

Mr O’Gorman said that this is particularly so when the Moynihan Report notes that the acquittal rate by juries is 50% with the not guilty rate by Magistrates being less than 10%².

“Whether a person is guilty of offences such as sedition and disclosure of official secrets should be decided by an accused’s peers, that is by a jury, rather than by a Magistrate who may have become case hardened from years on the Bench” Mr O’Gorman said.

Mr O’Gorman said that the so-called safeguard of a Magistrate permitting these sorts of charges to be dealt with by a jury if exceptional circumstances can be shown is, on close examination of the Draft Bill no protection in reality.

“The Bill proposes that exceptional circumstances could include that the charge is especially complex or will involve the giving of a significant amount of expert technical evidence” Mr O’Gorman said.

Mr O’Gorman said that this test in practice will require a defence lawyer to say to a Magistrate “This case is too complex for you as a trained lawyer to hear, please send it before a legally untrained jury to hear it”.

“Imagine the hilarity with which such a submission will be greeted by most Magistrates” Mr O’Gorman said.

Mr O’Gorman said it is vital in a robust democracy that charges such as sedition or official secrets that pit the might of the State against an individual should be heard by an accused’s peers.

“History is full of cases where juries will not countenance the oppression by the State against individuals in cases such as the disclosure of official secrets. Juries over the ages have frequently refused to convict even when urged to do so by the Presiding Judge” Mr O’Gorman said.

² See page 139 Moynihan Report

Mr O’Gorman said that in an emotive case alleging complicity in procuring an abortion where community opinions are polarized it is much better that an accused person’s guilt or innocence be able to be determined by one’s peers than by a sole Judicial Officer.

“We are urging the Attorney-General to restore to an accused the right to choose trial by jury in the draft Bill as is currently the law and has been the law for decades” Mr O’Gorman said.

Mr O’Gorman said that bureaucrats in the Police Department and the Attorney-General’s Department have for years grabbed at any opportunity to constantly restrict trial by jury because they do not like jury acquittal rates (50% compared with Magistrates less than 10%). Efforts to significantly restrict trial by jury during the Bjelke-Petersen era were successfully resisted. Similar moves being promoted by the current State Labor Government must also be resisted.

Terry O’Gorman can be contacted today on 0418 787 182.