

**SUBMISSION TO *BILL OF RIGHTS ACT CONSULTATIVE COMMITTEE*  
BY THE NSW COUNCIL OF CHURCHES**

The Council believes that there are valid arguments both in favour of and against a Bill of Rights. The Council acknowledges that advocates of both positions generally share a concern to ensure the effective protection of human rights.

The Council acknowledges that there have been many examples where human rights of individuals or of minority groups have been neglected.

The Council acknowledges that there is an important role for increased community education on human rights, and that the common law may not be sufficient.

Nevertheless, the Council strongly submits that it would be against the public interest to introduce a Bill of Rights in the ACT, even in statutory form.

While a statutory Bill could lead to some improvement in human rights protections in some areas, the cost of this uncertain marginal improvement would be a fundamental change in the relationship between representative, through the elected Assembly, and the Judiciary. In the Council's submission, it would be against the public interest for the Assembly to hand over the protection of human rights to an unelected Judiciary who were not directly accountable to the community for the consequences of their decisions.

A Bill of Rights would, in the Council's submission, inevitably result in the increased politicization of the Judiciary. This would occur at two levels. The first would be the judicial appointment process, where the Executive government would, to a greater extent than at present, be likely to make appointments based upon judges 'political views' rather than their legal skills. The second would be the great increase in unprecedented, if unwarranted, criticism of the Judiciary as a Bill of Rights increased the scope of judicial decision-making into an area of broadly defined rights. There would, in the Council's submission, not only be a transfer of criticism from the Executive government and the Assembly to the Judiciary, but greater public scrutiny of and public pressure upon individual judges, thereby undermining the independence and quality of the judiciary.

Judges make decisions based upon the facts and situations in individual circumstances of the cases before them. At times these decisions have policy implications, but the judicial role is not suited to making decisions on the allocation of limited resources among competing needs. Judicial decision-making and political decision-making are different, and need to remain separate. The legitimacy of both institutions suffers if the roles converge.

The Council also points out that it would be difficult to arrive at a list of specific rights in a Bill of Rights, and to avoid the problem of reconciling different specific rights each with the other, the temptation being for the Judiciary, depending on the member of the bench's philosophy, to read down one set of specific rights as the expense of another or other sets of specific rights.

Suppose, for example that such a Bill included provisions similar to the New Zealand Bill of Rights Act 1990, namely, the right to manifest a person's religion in worship, observance, practice and teaching, either individually or in community, either in public or private (s.15) and a right to freedom of expression, thought, conscience and belief, including the right to adopt and to hold opinions without interference (ss.13 & 14). Such rights appear, on their face, absolute. Suppose, however, that such a bill also contained a provision designed to protect gay, lesbian and de facto rights (which it could well do), and a provision against "vilification", which according to The Chambers Dictionary, New Edition, p. 1856 means, among other things "disparaging" or "defaming".

In trying to "balance" such bundles of specific rights, other provisions of such a Bill of the type mentioned above might well be interpreted so as to cut down the Christian right (and indeed that of Judaism and Islam) to uphold, as part of their teaching, that there should be no sex before or outside of marriage, and that marriage is the only relationship within which a sexual relationship should take place.

Similarly, it is part of Christian teaching that Christ is the only way of salvation, and that no one can be saved except through him. Similarly, Islam maintains, as part of its teaching, that there is no God but Allah, and that Muhammad is his prophet. As part of their respective exercises of freedom of expression and their respective teachings, they would feel the legitimate need to point out from time to time the inadequacies of a religion, or religions, other than their own, without the fear of being accused of "vilifying" that other religion or religions.

For all these reasons, the Council submits that it is not in the public interest for there to be a Bill of Rights in the ACT.