# CAN PARLIAMENT BE TRUSTED - THE ROLE OF A PARLIAMENT IN ESTABLISHING THE SOCIAL RULES OF A COMMUNITY IN THE 21ST CENTURY.

**Inquiry into a NSW Bill of Rights**
**By the Legislative Council**
**Standing Committee on**
**Law and Justice**

**Submission by**
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# CAN PARLIAMENT BE TRUSTED - THE ROLE OF A PARLIAMENT IN ESTABLISHING THE SOCIAL RULES OF A COMMUNITY IN THE 21ST CENTURY.

## 1. Introduction

1.1 The idea that the components of the Australian federation adopt a "Bill of Rights" has been debated in the abstract for a number of years.

1.2 The arguments pro and con are reasonably well known. It would be surplusage to repeat them at length in a submission to a Committee having amongst its membership a person who has written a book on the subject.[1]

1.3 I am happy to adopt the summary of arguments distilled by Williams in his book *A Bill of Rights for Australia*, at pp.35-36[2] and move to the gist of my submission.

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1 Peter Breen *Advance Australia Fair: Reforming the Legal System with a Rights and Responsibilities Code* Cape Byron Press, 1999

2 George Williams *A Bill of Rights for Australia* UNSW Press 1999

## 2. There is no Need to Change the Status Quo

2.1 The NSW Parliament has powers to make laws for the peace welfare and good government for the people of NSW.

2.2 This has been characterised as giving Parliament the widest possible capacity to make laws. It is plenary in quantity.[3]

2.3 Its quality is circumscribed by those powers yielded to the Commonwealth Parliament enumerated in the Federal *Constitution*.

2.4 The common law, as discovered and subsequently developed by the judiciary sets the rules of the community in those areas where statutory law is silent.

2.5 There is an identifiable common law of Australia[4]. It builds on the tradition of judge made law received from the United Kingdom. It slowly evolves as the courts of NSW and other Australian jurisdictions hear cases between parties, so the law moulds to suit the Australian condition.

2.6 On occasion, the body of law known as common law is silent in relation to a particular matter. To that extent, the terms of international treaties can assist.

2.7 The following extracts from *Teoh*[5] sum up the position:

> **The status of the Convention in Australian law**
>
> 25. It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute(4). This principle has its foundation in the proposition that in our constitutional system the making and ratification of treaties fall within the province of the Executive in the exercise of its prerogative power whereas the making and the alteration of the law fall within the province of Parliament, not the Executive(5). So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law. In this case, it is common ground that the provisions of the Convention have not been incorporated in this way. It is

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3 *Durham Holdings Pty.Ltd v. The State of New South Wales* [1999] NSWCA 324, del. 8 September 1999 per Spielgelman CJ, at para. 91

4 *Lange v. Australian Broadcasting Corporation* 189 CLR 520 at 563; *Winfield v. Queen; Lipohar v. Queen* [1999] HCA 65, del . 9 December 1999

5 *Minister for Immigration and Ethnic Affairs v. Teoh* 183 CLR 273. This construction of the law was generally upheld in *Northern Territory of Australia v. GPAO [1999] HCA 8,* 11 March 1999, para. 232

not suggested that the declaration made pursuant to s.47(1) of the Human Rights and Equal Opportunity Commission Act has this effect.

26. But the fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party(6), at least in those cases in which the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law.

27. It is accepted that a statute is to be interpreted and applied, as far as its language permits, so that it is in conformity and not in conflict with the established rules of international law(7). The form in which this principle has been expressed might be thought to lend support to the view that the proposition enunciated in the preceding paragraph should be stated so as to require the courts to favour a construction, as far as the language of the legislation permits, that is in conformity and not in conflict with Australia's international obligations. That indeed is how we would regard the proposition as stated in the preceding paragraph. In this context, there are strong reasons for rejecting a narrow conception of ambiguity. If the language of the legislation is susceptible of a construction which is consistent with the terms of the international instrument and the obligations which it imposes on Australia, then that construction should prevail. So expressed, the principle is no more than a canon of construction and does not import the terms of the treaty or convention into our municipal law as a source of individual rights and obligations(8).

28. Apart from influencing the construction of a statute or subordinate legislation, an international convention may play a part in the development by the courts of the common law. The provisions of an international convention to which Australia is a party, especially one which declares universal fundamental rights, may be used by the courts as a legitimate guide in developing the common law(9). But the courts should act in this fashion with due circumspection when the Parliament itself has not seen fit to incorporate the provisions of a convention into our domestic law. Judicial development of the common law must not be seen as a backdoor means of importing an unincorporated convention into Australian law. A cautious approach to the development of the common law by reference to international conventions would be consistent with the approach which the courts have hitherto adopted to the development of the common law by reference to statutory policy and statutory materials(10). Much will depend upon the nature of the relevant provision, the extent to which it has been accepted by the international community, the purpose which it is intended to serve and its relationship to the existing principles of our domestic law.

2.8 NSW hasn't enacted something like the Commonwealth's Administrative Decisions (Effect of International Instruments) Bill. *Teoh* therefore applies in its full force.

2.9 For NSW, all this appears to be a neat balance between:

- permitting the NSW community, through its Parliament, developing the social rules for the citizens of the State; whilst

- where appropriate (depending on the subject matter of the statute, or a lacuna in the general law), those treaties to which Australia subscribes can be used as an aid in coming to the appropriate legal conclusion.

2.10 I contend this is the best way for the rules governing the State of NSW to develop.

2.11 The Parliament is drawn from all elements of the NSW community. Indeed, of all the parliaments within the Australian federation, the NSW Parliament has a greater variety of representatives than any other.

2.12 This is a function of the way the Legislative Council is elected. No other chamber has the array of representatives - from Unity to One Nation: from Green to Christian Democrat.

2.13 Most community views have the opportunity to be heard. Although parliamentary executives and some newspapers may not think it, there is a real advantage in having a relatively large parliamentary chamber with a relatively low quotient needed for election. It increases the sorts of voices heard in the Parliament.

2.14 **I ask the question: what's wrong with what's there now?**

2.15 The basis of my submission is that I mightn't agree with every law passed by a Parliament.

2.16 Sometimes the laws might be (according to my value set) stupid. Other laws might be (according to my value set) discriminatory.

2.17 However, it has been passed by a Parliament containing the representative views of the NSW community, sitting in open session, with some degree of media coverage.

2.18 The increased use of committees by the Legislative Council further increases the opportunity of those interested in legislation to have their say. Opportunities exist to allow the interested to have their say.

2.19 That said, assume we really hate a law that's been passed.

2.20 We live in a community with high levels of literacy.

2.21 We live in a community with access to the views of others can gained through the mainstream media, and increasingly, the internet.

2.22 As illustrated by the current mandatory sentencing debate, if there is a feeling a law may breach Australia's international obligations, those interested in the issue will soon let the general community know.

2.23 If Parliament wishes advice as to whether a relevant set of treaty obligations may be infringed by proposed State legislation, that can be tended by a parliamentary committee with suitable terms of reference, such as that charged with the scrutiny of legislation.

2.24 If legislation is perceived to be so contrary to international norms it should be amended, community pressure will lead to the law changing.[6]

2.25 The power of electronic communication means that we all can share our views quite quickly, thereby bringing the views to the community into the open, allowing either an upper house to amend or defeat an ill-thought through provision, or put pressure on the executive to change what are perceived to be bad laws.

2.26 If the issue is big enough, judgment can be passed by the high court of public opinion in a general election.

2.27 The alternative is an undemocratic, expensive, relatively closed set of proceedings in the Supreme Court.

2.28 It follows my primary contention is there is no reason to change. A mere adoption of a "set of values", thinking this will magically improve "human rights", is nothing more than a change for change's sake.

2.29 There is no need for either a Bill of Rights, or an amendment to the *Interpretation Act 1987*. The onus lies fully on those who submit the cause for reform.

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[6] As the Joint Standing Committee on Treaties report on the United Nations Convention on the Rights of the Child has observed Australia has revealed itself to be sensitive to international pressure and criticism. - see p.66 of the Report.

2.30 For those who think this wrong have to answer the question:

**The current state of the law in NSW requires reform because……..**

2.31 In one sense, that concludes my submission.

2.32 However, there are secondary submissions I would like to make. They follow.

## 3. The Misuse of "Statements of Goals to be Achieved" as Justiciable Statements of Right

3.1 The terms of many "rights" contained in treaties are drafted in a vague manner. This makes ascertainments of rights and obligations difficult.

3.2 In *Project Blue Sky v. Australian Broadcasting Authority*[7], the High Court observed:

> Furthermore, while the obligations of Australia under some international conventions and agreements are relatively clear, many international conventions and agreements are expressed in indeterminate language as the result of compromises made between contracting State parties. Often their provisions are more aptly described as goals to be achieved, rather than rules to be obeyed…….

3.3 The Commonwealth Parliament's Joint Standing Committee on Treaties has, in equal terms, remarked the terms of the *United Nations Convention on the Rights of the Child* is cast in general terms often open to a number of interpretations.[8]

3.4 There is a great danger that notwithstanding how inspirational the language, and well intentioned the aim, a poorly focussed declaration of "right" - which is to prevail over "ordinary" legislation - can frankly be downright dangerous because:

- of the very unpredictability of how a court would construe the interraction of "right" and substantive provision; and
- the uncertainty the community suffers as the public interest advocate take instructions from those who "lose" politically to fight their case judicially in the Supreme Court

3.5 These sorts of considerations have been recognised in a recent Senate Occasional lecture given in favour of the concept of the Bill of Rights:

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7 *Project Sky Blue v. Australian Broadcasting Authority* [1998] HCA 28, del. 28 April 1998 at para.96

8 Joint Committee on Treaties Report on the *Convention on the Rights of the Child* at p.x. The Committee said "The articles of the terms of the Convention are couched in general terms which are open to a number of interpretations. While this allows State Parties a margin of appreciation in implementing the Convention in a manner compatible with their culture, this has led to continuing confusion and concern about its implementation."

> The rights listed in the Bill should be carefully and narrowly confined in their drafting and selection. It should not include rights where the ambit is unclear or contested, such as a right to life or a general guarantee of equality, The end result should be a statute recognising core rights, such as the right to vote and of association and a freedom from racial discrimination. Even these rights should be subject to repeal or amendment (and hence refinement and development) by Parliament. The Bill of Rights might also incorporate other basic economic rights and social justice objectives, such as an entitlement to basic services in rural and regional areas. It should reflect contemporary concerns.[9]

3.9 That said, any "right" expressed in the abstract can still give rise to dispute as to interpretation.

3.10 For instance, I note in Mr Breen's book Article 22 of the United Nations Declaration of Human Rights reads:

> Everyone, as a member of society, has the right to social security, and is entitled to realization……..of the economic, social and cultural rights indispensible for his dignity and the free development of his society.[10]

3.11 Stirring stuff. However, If this was a "selected right" in any (Federal, in this case) Bill of Rights, would this mean that the Commonwealth Parliament would be precluded from passing "work for the dole" legislation on the basis the concept of "mutual obligation" within a community contradicts a "right" to social security?

3.12 The answer is "arguably".

3.13 Freedom from "racial discrimination" is commonly described as a core right to be protected in any general declaration of right. And a right many would consider one easily postulated.

3.14 However, the mandatory sentencing laws of Western Australia and the Northern Territory have been said by some to be racially discriminatory because, statistically speaking, more aboriginal people have been sentenced under it than other races.

3.15 Do statistical outcomes of themselves make a law "discriminatory"? In one sense, yes, if they impact on one sector of the community far more than others.

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9 *Legislating for a Bill of Rights Now* Senate Occasional Lecture, Parliament House Canberra, 17 March 2000, George Williams, Senior Lecturer Australian National University at p.8

10 Breen *op.Cit* at p.111

3.16 On the other hand, no: in the case of mandatory sentencing, you do the crime, you do the time. The legislation is silent as to race.

3.17 All this requires value judgments to be made by the judiciary. This is discussed in the next Part.

## 4. Involvement of the Judiciary in the Political Process

4.1 I contend it is improper to place the judiciary in a position where they have to make decisions which renders completely out of bounds a particular subject matter from a Parliament.

4.2 As an example, I note page 37 of Mr Breen's book says:

> In a strange twist of fate, the forces between the anti-abortion lobby and the right-to-life movement - which have played such a prominent role in defeating previous attempts at securing a Bill of Rights for Australia - are today locked to a fight to the death with supporters of voluntary euthanasia laws, a fight that would have never arisen under a Bill of Rights regime. Every Bill of Rights introduced into a Commonwealth or State Parliament since federation has included a right to life provision that would have struck down euthenasia laws.[11]

4.3 I imagine a provision Mr Breen has in mind is something like Article 6.2 of the *International Covenant on Civil and Political Rights* which reads:

> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

4.4 In this context, much would turn on the construction of "arbitrary deprivation" of life.

4.5 Assume there was an NSW euthanasia law, that was challenged in the Supreme Court for breaching a "right" such as the above.

4.6 The 3rd edition of the *Macquarie Dictionary* defines "arbitrary" as meaning "discretionary".

4.7 In context, is it an "arbitrary deprivation of life" if a legally competent person voluntarily made a relevant instrument setting out medical grounds, the satisfaction of which would lead to the wish of the deponent to be carried out?

4.8 In one sense, this isn't arbitrary. Things do not proceed on a whim. An objective set of facts have to be satisfied. Once they are, the outcome follows.

4.9 In another sense it is. Someone has to decide whether the necessary conditions have been satisfied. Then, a positive act taken to terminate the life.

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[11] Breen *op.cit* at 37

4.10 A court could decide either way. But that's the point. Why should a court be put into this situation?

4.11 In one sense, the High Court does this all the time. When sitting as Australia's constitutional court, it strikes down State legislation that falls foul of s.109 of the *Constitution*, or Commonwealth legislation when it strays outside of the power vested in it by the federal compact. However, all that Court does is determine whether in the context of the *Constitution* which Parliament in a federation has the relevant responsibility to pass laws on behalf of the Australian community.

4.12 However, the proposed power has far greater ramifications. It would mean an entire subject matter (such as euthenasia) would be completely beyond the capacity of *any* NSW Parliament to pass rules on the matter. And, if this is seen as a "State" and not a "Federal" issue, the effect would be there could be no euthenasia laws in NSW at all.

4.13 It is said euthanasia has significant support within the Australian community generally. Placing a court in a position in which *it* implicitly prohibits the capacity for a Parliament to act at all places the judiciary in an invidious situation. Invariably, the losers feel disenfranchised, and lose overall respect for the political and judicial systems.

4.14 Problems also arise where rights are poorly drawn.

4.15 For instance, the *Sydney Morning Herald* reports one of the issues that could be considered in a Bill of Rights, is the right to a "clean and safe environment".[12]

4.16 It beggars the question: what evidence would be led in a court to establish what a "clean" or (even more nebulously) a "safe" environment is, and what evidence would be led to prove the proposed law infringes (or falls within) the term of the "right".

4.17 Without impugning the judiciary, why would a judge's view of what is a "safe environment" be any better than a Parliaments?

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[12] *From Dogs to Driving: We're in the Nanny State*, by Linda Doherty, *Sydney Morning Herald* 27 January 2000

4.18 It is a misnomer to call these sorts of things "rights". They are laudable goals, breach of which may lead to national and international criticism. However, they are hardly statements that should be regarded as something capable of conferring a "right".

4.19 Inevitably, they require value judgments to be made by the bench considering the matter. Where there is a genuine value judgment to be made, the better, and more democratic forum, is the Parliament.

4.20 For similar reasoning, it simply isn't proper for the judiciary to be involved in determining whether a particular proposition is "demonstrably justifiable in a free and democratic society". Demonstrable to whom? Jusifiable to whom?

4.21 Again, the argument is that it is for the Parliament to pass the rules for the people for NSW. It is for those who oppose the law to persuade public opinion that a law is bad - not a judge.

## 5. The Tendency for Bills of Rights to Freeze Ideas

5.1 Having rights contained in international covenants have a tendency to snap freeze what tends to be a good idea the time they are made.

5.2 A classic example would be a "right to bear arms", which may have made sense in immediate post-revolutionary US, but isn't such a good idea in the modern United States of America.

5.3 Another is the example provided earlier regarding a "right" to social security.

5.4 Would those who asserting the nature of that right think that right so important the legislature *should* be precluded from introducing a concept of "mutual obligation" as part of eligibility to receive social security?

5.5 Once, the mere provision of social security, without more, was seen to be necessary to preserve human dignity.

5.6 In latter days many see encouraging those on social security to participate actively in the community assists both the community and the recipient (by improving the recipients feeling of dignity and worth by increasing the beneficiary's interaction with society), whilst simultaneously encouraging those on social security to move off it.

5.7 However, the point is it would be disappointing if a new way of approaching the issue of how to improve the lot of those on welfare was stymied by the enforcement by the well meaning of an abstract right fashioned at a time where a different value set prevailed.

5.8 Taking a more relevant NSW example. Assume that it was decided that NSW legislation shouldn't infringe *any* convention Australia had entered into.

5.9 It would be a surprise to many that if the Kings Cross drug medical experiment worked, providing drug addicts the opportunity to use narcotics in controlled environments could be prevented according to a terms of a convention which, in its preamble:

> **RECOGNIZ(es)** that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind, and **CONSIDER(s)** that effective measures against abuse of narcotic drugs require coordinated and universal action.[13]

5.10 Because of the nature of the terms of the relevant convention, could mean it could be regarded as impossible for NSW to legislate in favour of "shooting galleries".

5.11 A declaration of rights can also prejudice the manner by which Parliament chooses to allocate scarce public resources.

5.12 For instance, some would argue that an accused must be legally represented when on trial. However laudable, the community must still find the resources to provide those "rights".

5.13 This has been recently recognised by the Chief Justice of Australia. Whilst speaking in favour of the general proposition that legal aid should be properly funded, Justice Gleeson said:

> Legal aid is a controversial subject, with its political implications, and it is not my intention to intrude into political debate. Resources are limited, and Governments must establish priorities between competing needs.[14]

5.14 Freezing some issues as a "right" in a document can prejudice the Parliament from dealing with issues the contemporary community considers important, simply because resources have to be employed servicing the "needs" of "old" rights.

5.15 I conclude by referring again to the passage earlier cited from a recent Senate Occasional lecture:

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[13] The *Single Convention on Narcotic Drugs 1961*. One supposes much would turn on the constuction of art. 4, which reads, as relevant, "The parties shall take such legislative and administrative measures as may be necessary to……..(c) subject to the provisions of this convention, to limit *exclusively to medical* and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs". The term emphasised was done so by me. It is to underline my presumption the argument relating to validity would turn on whether feeding a drug addict's habit, albeit in a controlled environment, such as a "shooting gallery" is, in the relative sense, a medical purpose. It can be gathered my preference is that if Parliament has formed the view that there should be a decriminalistion of drugs, it is for the Parliament of the State to make that determination. The Committee would know the International Narcotics Control Board of the UN considers the Sydney experiment "facilitates drug trafficking" - ABC News on line 24 February 2000

[14] Chief Justice Gleeson - *State of the Judiciary Address* 10 October 1999.

> The rights listed in the Bill should be carefully and narrowly confined in their drafting and selection. It should not include rights where the ambit is unclear or contested, such as a right to life or a general guarantee of equality, The end result should be a statute recognising core rights, such as the right to vote and of association and a freedom from racial discrimination. *Even these rights should be subject to repeal or amendment (and hence refinement and development) by Parliament*. The Bill of Rights might also incorporate other basic economic rights and social justice objectives*, such as an entitlement to basic services in rural and regional areas. It should reflect contemporary concerns*.

5.16 The ideas expressed here gets over the "freezing of rights" problem. However, I ask the Committee to note the terms italicised. Isn't repealing and amending rights so as to reflect contemporary concerns what Parliament does when it passes legislation *now*?

5.17 In that case, it seems a "Bill of Rights" is superfluous.

## 6. Using Judicial Procedure as a Backdoor Method of What Couldn't be Gained Using the Front Door

6.1 I understand the both the Law Society and the Bar Council support the concept of a Bill of Rights.

6.2 It is hardly surprising, given that, in particular, a Bill of Rights conferring enforceable rights would mean providing those involved in legal process, at the very least, a role in politics hitherto absent. Those who are interested would have a new found means to "achieve justice".

6.3 At worst, it will further build the current cottage industry that is "public interest advocacy" into a substantive legal product.[15]

6.4 *The Sydney Morning Herald* reported:

> The everyday lives of Australians are being over-regulated by a Government intent on creating "lifestyle laws" in response to pressure from community lobby groups.
>
> This is the view of the new President of the NSW Law Society, Mr John North.
>
> ……..
>
> He backed calls by the Attorney-General, Mr Shaw, and the Chief Justice, Justice James Spiegelman and the NSW Bar Association for a bill of rights to bring NSW's common law tradition into line with English legal developments.
>
> Mr North said a bill of rights would allow citizens to challenge "kneejerk reaction" laws legislated by the Carr Government, ranging from pet control measures to restrictions on people congregating in public places.
>
> "We are increasingly being regulated by lifestyle laws, he said. "One of the things we pride ourselves on as Australians is being a little bit carefree, but everything we do, from driving a motor car to drinking in the street, is more restricted" Mr North said.
>
> "With a bill of rights, effectively people will have a say. Government laws brought in as a kneejerk reaction to some perceived social ill would have to take into account basic human rights." [16]

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15 In his address *Access to Justice and Human Rights Treaties*, Speigelman CJ referred to the Lord Chancellor of England's Keynote Address to the English Bar Annual Conference given on 9 October 1999, in which Lord Irvine said adoption of the European Convention on Human Rights by the *Human Rights Act 1998* (UK) would "give birth to a new jurisprudence, born out of challenges brought by lawyers." It's my contention that this isn't a boon to freedom that many anticipate. I also note a letter in the *Australian Financial Review* of 24 March 200, in which the Head of the Business Law and Taxation Department of Monash University, said a leading commentator on Canada's Charter of Rights described it as a "dripping roast for lawyers": *Bill of Rights is a Bad Answer: Australian Financical Review* letters 24 March 2000 at p.48

16 *From Dogs to Driving: We're in the Nanny State*, by Linda Doherty, *Sydney Morning Herald* 27 January 2000

6.5 Is it really to be argued that abstract terms in international treaty or Bill of Rights are to used to challenge rules made on matters such as traffic and pet control?

6.6 One would assume that Bill of Rights actions would be run in the Supreme Court. Therefore, an action wouldn't be cheap.

6.7 One has the queasy feeling of unease that those entered into an argument using the front door of the democratic process of Parliament and lost will try to use the back door of the judicial process to gain a "win" and have a law declared invalid.

6.8 There are only two classes of person who would "win" under this system:

- the rich; and
- the zealots

6.9 The losers will be the community in general.

## 7. Keeping up with the Jones'.

7.1 The Chief Justice has raised concerns that Australia's common law faces "intellecutal isolation" as a result of Canada, New Zealand and the United Kingdom adopting statutory based human rights legislation.[17]

7.2 However, the response to that is that each common law jurisdiction has made the decision to codify certain rights in statute. As time progresses, yes, what is regarded as a "right" between jurisdictions will vary, as the rights jurisprudence arising from the adoption of the rights code establishes itself in those jurisdictions.

7.3 However, gone are the days of *Trimble v. Hill.* There is no longer a Privy Council unifying the common law of the Empire.

7.4 It may have been important once that:

> It is of utmost importance that in all parts of the empire where English law prevails, the interpretation of that law by the Courts should be as nearly as possible the same.[18]

7.5 However, different jurisdictions are dealing with the issue of "rights allocation" in different ways.

7.6 In the absence of a single document adopted by all jurisdictions, yes the way in which the common law countries have approached matters hitherto left to the common law will change. However, that is simply a function of nation states making or adopting rules to suit their current environment.[19]

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17 Spigelman CJ, *Access to Justice and Human Rights Treaties*, keynote address to the National Conference of the Australian Plantiff Lawyers Association 22 October 1999, reflected in paragraph (d) of the Committee's terms of reference

18 *Trimble v. Hill* 5 App Case 342 at 345

19 In the case of the UK, for example, adopting the European Convention on Human Rights as a function of becoming a member of the European Union.

## 8. It's all a matter of trust.

8.1 The burden of this submission is not that every law passed by the NSW Parliament will be a good one.

8.2 There will be some bad laws passed.

8.3 But the point is it is the Parliament, constituted as it is, that is best placed to establish the social rules for NSW.

8.4 It is not for Courts, moved by public interest advocates, to interpret terms that are of indefinite ambit, to decide whether an area is out of bounds for a State Parliament to make laws.

8.5 The concern is that having an enforceable Bill of Rights is something which can transfer to the articulate and the wealthy the opportunity to have laws that could not be overturned in the parliamentary process overturned using the judicial process.

8.6 As Greg Sheridan has observed in relation to mandatory sentencing debate, the idea of mandatory sentencing is wrong because it's wrong. However, having the matter referred to the United Nations is regarded as "ridiculous". As he says:

> It's offensive in principle because Australia is a democract and its parliaments sovereign, and it is almost custom-made to produce a know-nothing One Nation ultra-nationalist reaction. It's mere luck our extreme right-wing politicians have not been clever enough to exploit this.
>
> ……
>
> By degrading national sovereignty, we risk explosive nationalist backlash, growing opposition to internationalism and ultimately the possible destruction of the international system altogether.[20]

8.7 The same applies if one downgrades parliamentary sovereignty, where the rules passed by a Parliament are effectively subject to merit review by the judiciary.

8.8 If rules can't be passed by the representatives of the community, then the Parliamentary process, and its capacity to make rules honoured by the community as a whole will be weakened. People will simply withdraw from the political process. The community will be the loser.

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[20] *Self Determination is a Sovereign Privilege* Greg Sheridan *The Australian* 25 February 2000, at page 15

8.9 The Committee should decide the *status quo* remain.