



AUSTRALIAN
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Media release

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High Court Bikie Laws Decision Highlights Urgent Need for Human Rights Act, Lawyers.

The High Court's rejection of a challenge to the Queensland Bikie Laws highlights once again the dangerous lack of protection of the Australian people's basic human rights and the pressing need for a federal Charter of Rights.

Benedict Coyne, spokesperson for Australian Lawyers for Human Rights (ALHR) stated this morning: *"Australia is still the only liberal democracy that lacks a Charter of Rights. This decision of the High Court highlights again the urgent need for the government to protect the Australian people's basic human rights at law. Our lack of a federal human rights Charter has attracted the concern of the international community. As citizens in a liberal democracy Australians should expect their basic human rights to be protected."*

"The declared victory by the Queensland government in the wake of the High Court's ruling is premature and misleading" said Mr Coyne.

The special case of *Kuczborski v State of Queensland* [2014] HCA 46 saw a patched member of the Hells Angels, challenge the raft of draconian legislative reforms referred to as the Queensland Bikie Laws which essentially have four main aims:

- Provide the executive an unreviewable power to "declare" criminal organisations;
- Criminalise the association of 3 or more persons who are alleged to be members of proscribed organisations. Whilst purporting to solely target outlaw motorcycle gangs the legislation does not mention bikie gangs and the definition of "association" is extremely broad;
- Remove the presumption of innocence from people charged under the laws so that they become guilty until proven innocent;
- Criminalise wearing of clothing items that display the name of a declared criminal organisation on licensed premises.

While the criminalising of clothing was found to be valid, ultimately the High Court majority held that as Mr Kuczborski had not been charged under the impugned legislation, he lacked

standing to bring a challenge to the majority of the laws, leaving the question of their constitutional validity for another day. Importantly, Justice Hayne (in dissent) opined that:

- It was a confusing package of legislative reform whose manner of drafting “*is antithetical to the proper statement and administration of the criminal law*”;
- That the term “*vicious lawless associate*” is “*at least inapt...[and] misleading*”;
- The criminalising of association by 3 or more members of declared organisations is “*beyond the legislative power of the Queensland Parliament*” as it offends the separation of powers in the Australian Constitution.

Earlier this year, the majority of the High Court ruled that NSW criminal consorting laws offended the very narrow implied constitutional right of freedom of political communication. However, the High Court unanimously concluded that the provisions of international human rights treaties to which Australia is party, where not incorporated in Commonwealth legislation, impose no constraint upon the power of a State Parliament to enact contrary legislation. The High Court stated once again that there is no free standing constitutional right to freedom of association in Australia.

ALHR has previously criticised the anti-democratic Bokie laws for usurping the rule of law, infringing upon the democratic bedrock of the separation of powers and for breaching many of Australia’s international legal obligations including:

- ICCPR Article 22 – the right to freedom of association;
- ICCPR Article 14 – the right to equality before the law & presumption of innocence;
- ICCPR Article 19 – the right to freedom of expression.

Mr Coyne continued: “*How can Australia be the only liberal democracy who has no federal Charter of Rights? Australians lack proper protection for numerous fundamental rights enjoyed by neighbouring countries such as Nauru and PNG including; a right to vote; to equality before the law; to freedom of expression, assembly and association; and many more. Any basic human rights that do exist have had to be eked out of the common law or implied into the constitution by creative judicial minds. This is not in the best interests of the Australian people.*”

Mr Coyne concluded: “*The majority of Australians support the introduction of a federal Charter of Rights as demonstrated by legislative history in this area and the Brennan national human rights consultation. Introducing a federal Charter of Rights will:*

- *Catch us up with the rest of the Western world;*
- *Provide all people in Australia with a fair go by protecting fundamental democratic freedoms that Australians should expect are protected in a liberal democracy;*
- *Properly honour our legal responsibilities to the international community;*
- *Save vast amounts of taxpayers money by consolidating existing rights and freedoms and negating the need for high court challenges such as this.*”

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ALHR (Australian Lawyers for Human Rights) is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 2600 people, with active National, State and Territory committees.