

PART 4: CIVIL AND POLITICAL RIGHTS

The concept of civil and political rights has been enshrined in English law for the past 800 years since the MAGNA CARTA LIBERTATUM (The Great Charter of Liberties) of KING HENRY THE THIRD, was granted February 11th AD. 1224/25.

“Know ye, that in the presence of God, and for the salvation of our own soul, and of the souls of our ancestors, and of our successors, to the exaltation of the Holy Church, and the amendment of our kingdom, that we spontaneously and of our own free will, do give and grant to the archbishops, bishops, abbots, priors, earls, barons, and all of our kingdom, these under-written liberties to be held in our realm of England for ever.

(1) In the first place we grant unto God, and by this our present Charter we have confirmed for us, and for our heirs for ever, that the English Church shall be free, and shall have her whole rights and her liberties inviolable.

We have also granted to all the free-men of our kingdom, for us and for our heirs for ever, all the under-written liberties to be had and held by them and by their heirs, of us and of our heirs.”

(29) No free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.

To none will we sell, to none will we deny, to none will we delay right or justice.

Note: That declaration was made only 800 years ago so it is unreasonable for the City to have caught up to that concept yet. Patience is a virtue !!

UK Bill of Rights [1688]

“An Act declareing the Rights and Liberties of the Subject and Settleing the Succession of the Crowne

The said Lords Spirituall and Temporall and Commons assembled at Westminster doe Resolve That William and Mary Prince and Princesse of Orange be and be declared King and Queene of England France and Ireland and the Dominions thereunto belonging to hold the Crowne and Royall Dignity of the said Kingdomes and Dominions to them the said Prince and Princesse dureing their Lives and the Life of the Survivour of them

That all and singular the Rights and Liberties asserted and claimed in the said Declaration are the true auntient and indubitable Rights and Liberties of the People of this Kingdome and soe shall be esteemed allowed adjudged deemed and taken to be and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said Declaration And all Officers and Ministers whatsoever shall serve their Majestyes and their Successors according to the same in all times to come.”

Notes:

HM The Queen of Australia is a “successor” to King Henry III and King William

Although an Australian national, I was born a “British subject” under the kingdom of England.

Until 1986, Australia was subject to the English Parliament and Crown.

The Bill of Rights was not extended to the dominions

Australia’s acceptance and endorsement of the United Nations Universal Declaration of Human Rights

(UDHR) supersedes the practical intent of the English Bill of Rights within Australia

The United States Declaration of Independence 1776

The unanimous Declaration of the thirteen united States of America in congress 4 July 1776.

Extract:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.

The French Declaration of the Rights of Man and of the Citizen 1789

approved by the National Assembly of France on August 26th 1789.

Preamble:

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Articles:

1. Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.
2. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.
3. The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.

6. Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.

7. No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.

8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.

9. As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.

10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

12. The security of the rights of man and of the citizen requires public military forces. These forces are, therefore, established for the good of all and not for the personal advantage of those to whom they shall be intrusted.

13. A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.

14. All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.

15. Society has the right to require of every public agent an account of his administration.

16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.

17. Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.

United States of America Bill of Rights - December 15, 1791

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The United Nations Universal Declaration of Human Rights (UDHR)

(adopted 10 December 1948) prescribes at Article 2:

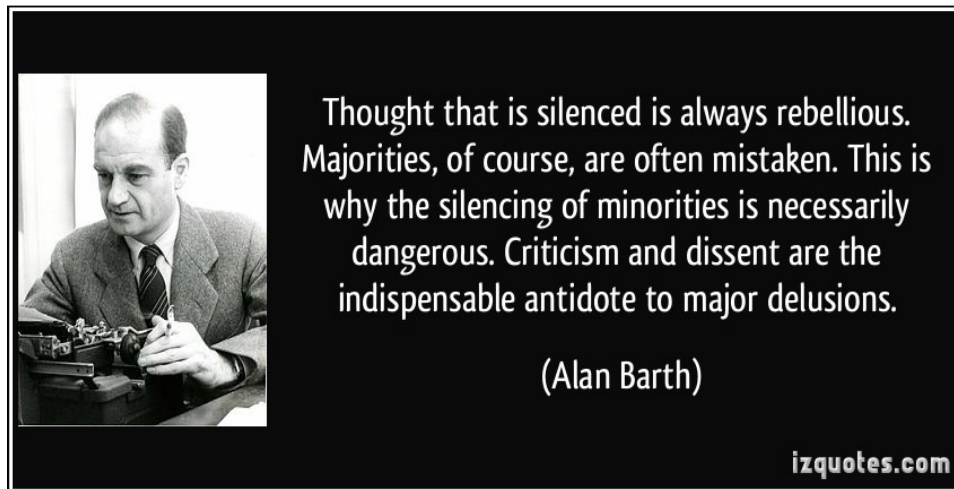
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Source:

<http://www.un.org/en/universal-declaration-human-rights/>

https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights

For the relevant articles see UNHR



"Justice is itself the great standing policy of civil society; and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all."

Edmund Burke (1729 – 1797)

The Western Australia Equal Opportunity Act 1984 gives effect to the above UN charter at Section 53:

53. Discrimination on ground of religious or *political conviction*

(1) For the purposes of this Act, a person (in this subsection referred to as the discriminator) discriminates against another person (in this subsection referred to as the aggrieved person) on the ground of religious or political conviction if, on the ground of —

- (a) the religious or political conviction of the aggrieved person; or*
- (b) a characteristic that appertains generally to persons of the religious or political conviction of the aggrieved person; or*
- (c) a characteristic that is generally imputed to persons of the religious or political conviction of the aggrieved person,*

the discriminator treats the aggrieved person less favourably than in the same circumstances or in circumstances that are not materially different, the discriminator treats or would treat a person of a different religious or political conviction."

In the case of this ban, pursuant to the Local Government Act 1995 and Interpretation Act

1984, a characteristic that is attributable to persons of the political conviction of the aggrieved person is that he belongs to a prescribed class of person being an "Elector" of a local government, together with all rights and remedies available to that class as set down in statute and common law. Electors have a political duty to interact with their local government, to ensure transparency and accountability and to ensure democratic process.

The aggrieved person belongs to that class of politically convicted persons who are actually interested in promoting "transparency, openness and accountability" in local government - values and attributes publically proclaimed by the local government industry and, in particular, the City of Armadale's policies and statutory Code of Conduct.

Rights and remedies available to that class include a statutory right to ask questions at a Council or Committee meeting and to receive a response to each of those questions.

Similarly, pursuant to the Local Government Act 1995 and Interpretation Act 1984, he belongs to a prescribed class of person being "a resident". Residents have a vested self-interest in seeing their community evolve and progress.

Similarly, pursuant to the Local Government Act 1995 and Interpretation Act 1984, he belongs to a prescribed class of person being "a ratepayer". Ratepayers have a vested self-interest in seeing their community evolve and progress. Ratepayers have a civic duty to ensure the rates they pay are applied efficiently and effectively to "better government".

Similarly, pursuant to the Local Government Act 1995 and Interpretation Act 1984, he belongs to a prescribed class of person being "the public", together with all rights and remedies available to that class as set down in statute and common law.

The High Court of Australia says:

"3. The fact that governmental "services" are expressly included amongst those to which Parliament has extended the application of the Act sufficiently indicates the legislative purpose of providing protection against unlawful discrimination in the provision of services of that nature. It suggests recognition of the particular dangers of discrimination which might, in any case, invalidate the relevant governmental decisions because of the inclusion of a ground or reason irrelevant to the lawful exercise of the power. Case reports and common experience suggest that local government activities can be a means of discrimination precisely because of the way in which councillors (as in this case) reflect the stereotyping prejudices of the community by whom they are elected. It must be inferred from the express extension of the Act to "services of the kind provided by ... a local government body" that Parliament set its face against such discrimination.

There are strong reasons of principle why a higher, and not a lesser, standard should be expected of such bodies in the performance of functions that may be characterised as the provision of governmental "services".

IW v City of Perth [1997] HCA 30; 191 CLR 1; (1997) 94 LGERA 224; (1997) 146 ALR 696; (1997) 71 ALJR 943 (31 July 1997)

Notwithstanding that obvious and clearly defined legal framework that renders this

ban unlawful, the Department of Local Government and Communities has ruled that the smooth progress of meetings (under the mantle of "efficiency and effectiveness") is more important than an enquiring public - seen as a nuisance - and the Person Presiding may discretionally impose all or any of the bans described above to dismiss and dispose of dissent among the governed.

That argument is without foundation because the public documented minuted record shows the Council of the City of Armadale routinely processes up to 250 pages of business in 15 minutes - the same time as the maximum allowed for public questions from a pool of 40,000 Electors. This is *lip-service* deliberation, consideration and debate with mega-lips !!

The standard schedule for Council meetings is that a meal is served at 6 pm, then Council meets at 7 pm, then off to supper - a truly arduous and demanding programme. Since Council meetings rarely last more than 30 to 60 minutes, this schedule represents a tough night's work in paid service to the public – not to be disrupted by questions from those governed.



PARLIAMENT OF WESTERN AUSTRALIA JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Terms of Reference:

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament;*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

Source:

[http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/783AB65DEB9BC334482578320034D824/\\$file/slguide1.pdf](http://www.parliament.wa.gov.au/parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/783AB65DEB9BC334482578320034D824/$file/slguide1.pdf)

Article the third... Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

US Bill of Rights 1789

European Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

“The Governments signatory hereto, being members of the Council of Europe, Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

The Member states of The Council of Europe, signatory hereto, having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

ARTICLE 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those

mentioned in paragraph 1.

PART II - THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

- 29 October 2004

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

Article II-101

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
 2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
 4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.
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The Commonwealth Crimes Act 1914

No. 12, 1914

Part II—Offences against the Government

24F Certain acts done in good faith not unlawful

- (1) Nothing in the preceding provisions of this Part makes it unlawful for a person:
 - (a) to endeavour in good faith to show that the Sovereign, the Governor-General, the Governor of a State, the Administrator of a Territory, or the advisers of any of them, or the persons responsible for the government of another country, has or have been, or is or are, mistaken in any of his, her or their counsels, policies or actions;
 - (b) to point out in good faith errors or defects in the government, the constitution, the legislation or the administration of justice of or in the Commonwealth, a State, a Territory or another country, with a view to the reformation of those errors or defects;
 - (c) to excite in good faith another person to attempt to procure by lawful means the alteration of any matter established by law in the Commonwealth, a State, a Territory or another country;
 - (d) to point out in good faith, in order to bring about their removal, any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different classes of persons; or
 - (e) to do anything in good faith in connection with an industrial dispute or an industrial matter.

In other words, the Commonwealth Parliament - with Royal assent - WANTS its citizens to draw attention to its shortcomings, so it may take appropriate corrective action to build better government to serve a better society.

It is well demonstrated that inwardly focused monopolies are self-destructive, rapidly falling behind their competitors to ultimately fail.

The Commonwealth recognises this reality to ensure Australia remains socially and

economically competitive in a global environment.

The Western Australia Criminal Code 1913 prescribes:

45. Acts excepted from s. 44

" It is lawful for any person —

- (a) To endeavour in good faith to show that the Sovereign has been mistaken in any of Her counsels; or
- (b) To point out in good faith errors or defects in the Government or Constitution of the United Kingdom, or of the Commonwealth of Australia, or of Western Australia as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or
- (c) To excite in good faith Her Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the State as by law established; or
- (d) To point out in good faith in order to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of Her Majesty's subjects".

Then:

Chapter X — Offences against political liberty

75. Interfering with political liberty

Any person who by violence, or by threats or intimidation of any kind, hinders or interferes with the free exercise of any political right by another person, is guilty of a crime, and is liable to imprisonment for 3 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

[Section 75 amended by No. 70 of 1988 s. 15; No. 51 of 1992 s. 16(2); No. 70 of 2004 s. 34(1) and 35(1).]

The "political right" in this case is the statutory right to ask a lawful question.

Having regard to the unlawful exercising of powers that the City of Armadale Local Government and its public officers - specifically the Mayor, CEO and individual Councillors - do not possess (in particular the Western Australia Equal Opportunity Act 1984) in relation to the BAN – S177 of the Western Australia Criminal Code 1913 prescribes:

177. Disobeying statute law

"Any person who, without lawful excuse, the proof of which lies on him, does any act which he is, by the provisions of any public statute in force in Western Australia, forbidden to do or omits to do any act which he is, by the provisions of any such statute, required to do, is guilty of a crime, unless some mode of proceeding against him for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

The offender is liable to imprisonment for one year."

But who will prosecute ?

The local government industry in Western Australia is not only a monopoly but fiercely defends that status in society.

It is relevant the most significant project undertaken by the City of Armadale Local Government in the last 40 years has been to construct itself a five story showpiece building in the CBD – "Orchard House" - where currently existing buildings are mostly single story with just a few at two stories – unrivalled by any other local government south of the City of Perth.

<https://www.armadale.wa.gov.au/media-releases/armadales-orchard-house-wins-top-honour-ngaa-awards>

A reasonable uninformed person might perceive this as chest-thumping vanity displayed through extravagant grandiose architecture.