

In reply please quote: 2003/08368

Your reference: 6218

Mr N Laurie
Clerk of the Parliament
Parliament House
CDE M29
BRISBANE

Dear Mr Laurie

Thank you for your letter of 10 October 2003 forwarding a copy of a petition, tabled paper number 6218, seeking the removal of the right to silence in Queensland criminal cases.

The “right to silence” is in fact a group of rights, privileges and immunities held by every citizen. These rights include the right to refuse to answer questions that might incriminate you, a right to refuse to answer questions posed by the police, and the right of an accused person to choose whether or not to give evidence in his or her defence, or to disclose in advance of the trial, the nature of his or her defence.

These rights stem from a very important tenet of our criminal justice system – the presumption of innocence, that is, an accused person is presumed to be innocent until proved guilty. It is also a fundamental principle that the prosecution bears the onus of proof of the alleged crime and that, generally, no person is required to prove his or her innocence or to provide evidence against him or herself.

These principles are well recognised in Australia as fundamental to our system of justice and are also recognised in Article 14.3(g) of the International Covenant on Civil and Political Rights. However, these rights can be limited or removed by statute.

Various Law Reform Commissions have investigated the various rights, privileges and immunities that make up the right to silence.

I have also asked the Queensland Law Reform Commission to conduct a review of the various Queensland statutory provisions abrogating the privilege against self-incrimination, that is, the privilege that permits a witness to refuse to give evidence or to supply information that would tend to prove the witness’s own guilt.

The Commission's terms of reference require the Commission to examine the privilege against self-incrimination, to examine the bases for abrogating the privilege and to recommend whether there is ever justification for the abrogation of the privilege.

The petition refers to a different right, the right of an accused person to decline to give or call evidence at his or her trial in his or her defence. It is important to remember that a criminal trial is about whether the prosecution can prove its case against the accused, not about whether an accused person has a defence – this is what is meant by the onus of proof.

In Australia and other common law jurisdictions where the right to silence at trial has been reviewed, it has never been suggested that an accused person should be compelled to give evidence. Compelling the accused to give evidence is inconsistent with the basic principle that the prosecution must prove its case.

I am satisfied that the right of an accused person to choose whether or not he or she will give evidence is a fundamental and important safeguard.

Thank you for referring this petition to me.

Yours sincerely

Rod Welford MP