

Paul Reynolds

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To: LCARC
Subject: A Preamble for the Queensland Constitution

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

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Mr Stephen Finimore,
Acting Research Director,
Legal, Constitutional, Administrative, Review Committee,
Queensland Parliament.

Dear Stephen,

Please find below my submission to LCARC on the above Issues Paper.

Yours faithfully,

Paul Reynolds.

A PREAMBLE FOR THE QUEENSLAND CONSTITUTION

*Submission from Dr Paul Reynolds, Honorary Research Fellow,
Queensland Parliament*

Issue #1 Aborigines and Torres Strait Islanders

In my view it is imperative that the original inhabitants of Australia be mentioned in any proposed Preamble. Their status as original owners and occupiers of the land and their continuing role as custodians of sacred sites need emphasis. Past wrongs and injustices must be acknowledged. Emphasis should be given to inclusiveness and full partnership in the present and future governance of Queensland.

Issue #2 Aspirational Statement

This section is at risk on two counts. One is that it may end up sounding banal and cliché ridden; the other is that it gets bogged down in detail as it tries to be all things to all people. Points ideally covered would include commitment to democracy, rule of law, fair and regular elections, openness and transparency in government and a commitment "to strive for a tolerant, peaceful society where freedom and liberty are guaranteed to all."

Issue #2.1 Origins/History of the Constitution

As this is a proposal for a Preamble for the *Constitution of Queensland Act 2001* any detailed reference to this Issue would be redundant. At this point then a general statement could be formulated covering the main features of the governmental system envisaged by the Constitution, such as the position of Governor, unicameral Parliament, system of Responsible Government.

Issue #2.2 Sovereignty of the People

This is a desirable feature but seems to have been hijacked by the republican debate. It is by no means certain that this referendum will be re-visited any time in the near future, let alone in what form and whether it would be any more successful than it was in 1999. In any case "sovereignty of the people" was a major premise of the republican debate, although the concept is equally a feature of the present system of a constitutional monarchy. Reference to "sovereignty of the people" therefore is durable and equally applicable to both systems.

Issue #2.3 God

At the federal Constitutional Convention there was strong lobbying (principally from George Pell and Peter Hollingworth) for God to be mentioned in the Preamble, which was duly done, however given the comprehensiveness of the defeat of the Preamble, it is unlikely that God played a part one way or the other. Census data suggests that over 80% of the population entertain some form of religious faith/belief system, but the separation of church and state is deeply ingrained in western democracies. Reference may be made to a *Supreme Being* or some such euphemism, but equally the issue could be addressed via #2.4.

Issue #2.4 Cultural Diversity

Both the QCRC formulation and that of the Northern Territory deserve serious consideration. If the former is utilised I strongly recommend the the words "sexual orientation" be inserted after "origin". If the latter, sub-clause © would be an appropriate way to dispose of any problems with #2.3.

Issue #2.5 Rule of Law

I can appreciate that this is a tricky concept to define and while the definition provided by the QCRC via M. Allars (1997) is appropriate for legal purposes, it would sit oddly in a Preamble as it legalistic, detailed and negative in that it twice uses the concept of limiting state power and government action. I would suggest that the phrase be used in a stand alone capacity in a list of aspirational aims.

Issue #2.6 Equality

This would seem to be a desirable inclusion in any constitutional preamble and the QCRC wording seems adequate but, again, "sexual orientation" should be inserted after "origin".

Issue #2.7 System of Government

I have nothing further to add on this matter to the suggestions made with respect to #2.1.

Issue #2.8 Environment

The QCRC formulation is concise and definitive to which I would add, "conscious of our responsibilities of stewardship for future generations."

Issue #2.9 Other Elements

I have incorporated several of these elsewhere in this submission.

Issue #3 Statutory Interpretation

Not being legally qualified I cannot competently discuss this issue. However if the object is to avoid statutory interpretation then generality would seem to be the hallmark of the exercise. This may not eliminate the question entirely but providing detail in the Preamble would seem to increase the likelihood of attempts to utilise it for this purpose. On the other hand I do not see why it should not be so utilised.

Issue #4 Implementation etc

I think, on balance, that it is desirable to have a Preamble, particularly if it is largely couched in aspirational terms and acknowledges basic concepts and themes. We are a largely pragmatic society not over given to philosophical theorising or rhetorical flourishes. As a Constitution, by definition, sets out our most basic political, governmental and judicial structures, it is surely not out of place to set in context the major concepts which underlie the construction of these various elements.

I think the community should be further consulted and given the widest opportunity to make their collective input. To this end I would suggest the model and tactics adopted by EARC when investigating the electoral system. They called for submissions, published these electronically and posted in public libraries, they travelled to all major centres and held public meetings. It was certainly time consuming and probably costly but the outcome was worth it as they thoroughly overhauled the system and gave us electoral democracy for the first time in 40 years. Once consultation of this variety occurs, it has a tendency to feed on itself, generate its own momentum and produce hitherto unrealised outcomes. It took EARC two years from beginning the process to the production of the relevant legislation, so a similar time frame could be envisaged for this exercise.

If the Preamble is inserted by Act of Parliament, this effectively curtails public consultation. However if the matter goes to referendum, it risks being defeated, unless a host of other issues come into play, including bipartisan support, arguments over a bill of rights, extremist groups trying to derail the process for their own agendas etc. Given the almost inevitable complaints over the cost of a referendum, especially at the expense of the issue itself, it would seem to be desirable to hold it in conjunction with a state election, but this then runs the risk that it will be corrupted by whatever political outcome that election produces.

The appropriate time for adopting the Preamble would be immediately after it was passed by referendum. Of course if it is lost it becomes a non issue for the public.

*Parliament House
February 2009.*