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From: Peter Eardley [redacted]

Sent: Wednesday, 25 February 2009 10:38 AM

To: LCARC

Subject: Legal Constitutional and Administrative Review Committee - A Preamble for the Queensland Constitution

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

I refer to the February 2009 issues paper that has been released and I wish to make a submission to the Review Committee.

I do so in my personal capacity and in my professional capacity as a Solicitor. A review of the report of the previous Committee in 2004 will reveal that I had also made a submission to that Committee in opposition to the insertion of a preamble.

I am in the main content to rely upon the contents of my former submission as I believe the matters contained in that submission, and the conclusions of the previous Committee, are still relevant today.

There are significant, perhaps a more stronger adjective is required, problems with the notion of the legal effect of a preamble. Whilst the issues paper suggests that the Queensland Constitution Act can be amended by a simple resolution of the Parliament, I cannot see that that amendment to insert a preamble can be anything other than a display of tokenism unless it can be demonstrated that the insertion of the preamble has not only the support of the majority Parliamentary party at the time but also that it has wide public acceptance.

It is simply not good enough to speak about the presence of preambles in places such as the United States of America or France or South Africa. These documents form part of what were then monumental documents coming into then existence, not an afterthought.

The discussion paper makes much emphasis on the apology to Australia's Indigenous people. The motion of 13 February, 2008 of the Parliament of Australia was a very proper recognition of undoubted injustices and was an appropriate step, hopefully, for a true reconciliation process. The fact that that apology was supported by the Queensland Premier and the Leader of the Opposition in statements made to the Queensland Parliament on the same day demonstrates that the body politic of Queensland has adopted the very proper sentiments expressed in the Australian Parliament.

It is perhaps a cynical comment but recognition has to be given to the effect that placing similar sentiments in a preamble to the Queensland Constitution, regrettably, might not also have such overwhelming support. This is particularly the case when regard is had to the fact that the preamble is also to have aspirational statements made about human rights.

With the very greatest respect, there is already an inquiry being conducted at a national

level as to the desirability of a charter of rights on a federal level. I respectfully suggest that it is a task filled with danger if there be an attempt to have a charter of rights type document targeted to be completed within a 150 year celebration year when it may well be that the charter of rights argument becomes a nullity and, almost certainly, mired within a wide ranging debate within our national community as to what rights, if any, are to be enshrined.

I repeat my earlier objections that matters placed into a preamble raise those matters, irrespective of the success of the drafting exercise, to an impression that those matters are firm pillars of the law.

I oppose the proposal. There has been no change in the body politic or the development of argument that necessitates this matter being reviewed than was the decision of the predecessor Committee in 2004. There mere fact that the Committee has been charged, not with an investigation in to the desirability of a preamble, but that it actually must develop a preamble within a period of 5 weeks from the date of receipt of submissions suggests that the degree of consultation contemplated is tokenistic rather than a true public debate into the merits or otherwise of the proposal.

Yours faithfully
Peter Eardley

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