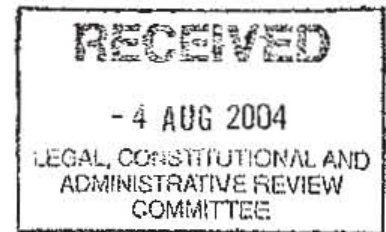


CENTRE FOR SOCIAL JUSTICE

A Centre for Advocacy Research & Education in Social Policy and Social Ethics

3rd August 2004

Dr Lesley Clark MP
Chair
Legislative Constitutional and Administrative Review Committee
Parliament House
George St
Brisbane 4000



Dear Dr Clark *Lesley*

I am pleased to accept your invitation to make a submission on the question of a preamble to the Queensland Constitution, being considered by the Legal, Constitutional and Administrative Review.

I consider the task before you a significant one in the context of strengthening of democracy in Queensland. My comments are offered both as a citizen but also in my capacity as a public sector ethicist.

Along with a brief background statement, I have taken the opportunity to use the feedback form.

Yours sincerely

Dr Noel Preston
Director

Attachments:
Submission
Feedback form

SUBMISSION TO LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW COMMITTEE

A Preamble for the Queensland Constitution?

Dr Noel Preston AM
Director, *UnitingCare* Centre for Social Justice

Background Comments

1) I am supportive of the idea of including a Preamble to the Queensland Constitution to emphasise the constitutional regime and to affirm “certain widely-held values”. However, in saying this, I would propose a somewhat minimalist and limited approach.

2) The minimalist approach is recognition that mixing ethical affirmations with what is essentially a legal document may be problematic; nonetheless, this concern can be overstated, especially as the constitutional nature of this statute clearly depends on a normative view of the kind of state and society to be constituted. At the same time, it is my belief that the ethical discussion which such views provoke can and must be pursued in contexts other than those which define and interpret legislation.

3) In Queensland the adoption of the kind of preamble which I propose is clearly a matter for the Parliament in its representative and democratic function. It should not, therefore, be a legislative creation of the government of the day and its adoption must be conditional on broad support across the spectrum of political groupings in the Parliament, including support from the Opposition of the day.

4) I favour adoption of the QCRC preamble (as detailed in Section I of the Issues Paper) with the following amendments:

- ❖ An additional sentence at the beginning of the Preamble which names the historical beginnings of Queensland as a colony in 1859.
- ❖ An additional sentence to follow the words “democratic processes contained in this Constitution” ie. “We affirm that these processes are designed to express the sovereignty of the people of Queensland and to serve their common good”.
- ❖ Replacing the reference to our Aboriginal and Torres Strait Islander heritage with the words proposed by the Council of Reconciliation ie. “We value the unique status of Aboriginal and Torres Strait Islander people as the original owners and custodians of traditional lands and waters”.
- ❖ An amendment to the final clause as proposed: ie “We declare that we respect the land and the environment which sustain the life we all share”.



LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE
REVIEW COMMITTEE

**A PREAMBLE FOR THE QUEENSLAND
CONSTITUTION?**

Feedback form

This feedback form can be used to make a submission. Submissions may also be made in another form such as a letter. If additional space is required for responding to issues, please insert supplementary pages with reference to the issue being addressed.

The release of the issues paper, with the committee's call for submissions, is the first stage in the committee's review of the recommendations of the Queensland Constitutional Review Commission regarding a preamble for the Queensland Constitution.

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

Fax: (07) 3406 7070

Email: lcarc@parliament.qld.gov.au

ISSUE 1 (refer page 6)

Should the Queensland Constitution contain a preamble?

Yes -

And its adoption should not be constrained by the cumbersome difficulties in the Federal Constitutional debate (especially about a Republic)

ISSUE 2 (refer page 7)

Should the Queensland Constitutional Review Commission draft preamble be adopted in Queensland?

Yes with amendment as I propose in (4) of the Background Comments

ISSUE 3 (refer page 9)

What purpose should a preamble to the Queensland Constitution serve?

It is a recognition that our common ~~life~~ public life is grounded in certain foundational precepts which fundamentally unite and inspire. Indirectly such a statement should enhance the ~~existing~~ ^{commercial} ~~community~~ understanding of the bond of our community as Queenslanders.

ISSUE 4 (refer page 9)

What type of language should the preamble use?

Straightforward and generally avoiding abstractions which have the potential to be divisive and misunderstood.

ISSUE 5 (refer page 9)

How extensive should the preamble be?

Not too extensive

ISSUE 6 (refer page 9)

Should the Queensland Constitution specifically state that the preamble cannot be used to interpret other provisions of the Constitution?

No - I believe this is unnecessary and would, in effect, diminish the preamble. The courts and the parliament must be trusted to monitor this question. Of course, it goes without saying that the wording of the preamble should not be inconsistent with the rest of the Queensland Constitution.

ISSUE 7 (refer page 10)

Should there be a reference to the origins or history of the Constitution in the preamble?

Yes - briefly (my first amendment)

ISSUE 8 (refer page 10)

Should the preamble refer to the sovereignty of the people and, if so, how?

Yes - in the manner of my amendment as in (4) of my Background Comments

ISSUE 9 (refer page 11)

Should the preamble refer to God and, if so, how?

No - Our liberal Democracy is a secular state which protects the rights of a multiplicity of religious views. While the state should protect the right to belief in a God, our constitutional documents should not infer that such beliefs are mandatory or that the state has theocratic pretensions.

ISSUE 10 (refer page 12)

Should the preamble recognise Aboriginal and Torres Strait Islander people and, if so, how?

Yes - as I have suggested in (4) Background comments in a manner that is not open to the charge of paternalism, but which is respectful of the wishes of a body which can reasonably claim representativeness of indigenous views.

ISSUE 11 (refer page 12)

Should the preamble recognise cultural diversity and, if so, how?

Not necessarily - the idea is subsumed in the clause on "equality"

ISSUE 12 (refer page 13)

Should the preamble recognise the rule of law and, if so, how?

Yes - as proposed by QCRC

ISSUE 13 (refer page 14)

Should the preamble refer to 'equality' and, if so, how?

Yes - as proposed by QCRC - though
equality. This is a concept which may be misused -
"equality under the law" is the appropriate
reference in this constitutional context.

ISSUE 14 (refer page 14)

Should the preamble refer to gender equality and, if so, how?

Yes - as proposed by QCRC

ISSUE 15 (refer page 14)

Should the preamble recognise the status of the Constitution and, if so, how?

Not in any way differing from the
QCRC proposal

ISSUE 16 (refer page 15)

Should the preamble recognise the system of government the Constitution establishes and, if so, how and to what extent?

Yes - the reference to "democratic
processes" etc is essential and
not controversial.

ISSUE 17 (refer page 15)

Should the preamble refer to the environment and, if so, how?

Yes - as I have amended with the additional suggestion that we respect the life sustained by the environment

ISSUE 18 (refer page 15)

Should the preamble contain other elements and, if so, what should they be?

See (4) my Background comments

ISSUE 19 (refer page 17)

How might text be developed around the identified elements of a preamble?

I do not favour strategies such as "a public competition" or the Premier selecting his favourite wordsmith; ^{perhaps an} ad hoc Council, appointed by the Governor on recommendations from the Premier and leader of the Opposition might progress the refinement of a

ISSUE 20 (refer page 17)

How should the community be consulted in this process?

Not taking account of the Parliamentary Committee's Report. Membership of the Council should not be too large ~~and~~ and reflect broadly sectors of the ^{philosophical} community while taking account of the need for expertise in constitutional and ethical matters. Its proposed preamble should be publicly advertised seeking public comment. The chair of the Council should report to Parliament where the matter would be finally resolved.

ISSUE 21 (refer page 17)

Who should be consulted?

see my comments above.
It is worth noting that the QCRC and the Gladstone Constitutional Conventions as well as the Parliamentary C'tee have already considered public opinion.

ISSUE 22 (refer page 18)

Should a referendum be held to insert a preamble into the Queensland Constitution?

No - the preamble should be the work of Parliament in the end as is the whole Constitution. I ~~do not~~ believe the recent Federal referendum regarding a Preamble to the Australian Constitution is irrelevant in this case. It's negative majority cannot be regarded as a prediction for a Queensland preamble as proposed.

ISSUE 23 (refer page 18)

Should an 'interim' preamble to the Queensland Constitution be inserted by way of an Act of Parliament prior to a final version being confirmed by way of a referendum?

No - I do not believe this is necessary. There are other Acts of Parliament with preambles which set out applicable values, principles and background elements, though I grant that in this case there are additional symbolic & emotional factors.

ISSUE 24 (refer page 18)

When is an appropriate time to consider a referendum on the issue of a preamble for the Queensland Constitution?

N/A in terms of the above