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Chair and Members
Legal Constitutional and Administrative Review Committee
Parliament House
Brisbane Q 4000

Interim Submission on your Issues Paper on a Preamble for the Queensland Constitution – suggesting an Interim Solution that the Committee Could Propose

Honourable Members,

I will not answer the questions in the order in which you have asked them, because, with respect, the order is *backwards*. When (or if) we ever have a referendum to create a “proper constitution”, ie, a fully entrenched document which, subject to the Commonwealth Constitution, is the supreme law of the State, we should certainly consider the drafting of *some* sort of preamble to introduce it, and I will answer your questions about its content below.

However, since the government has accepted the recommendation in your Report No 41, that no referendum to move the currently entrenched provisions of the various *Constitution Acts* into the *Constitution of Queensland 2001* should be taken until we are doing something further about a republic (and has equivocated about the general entrenchment of the *Constitution of Queensland*), nothing that you recommend about a preamble to a “proper” constitution is going to be acted on for some time. Which leads me to consider your question for the shorter-term future:

Issue 23: Should an ‘interim’ preamble to the Queensland Constitution be inserted by way of an Act of Parliament...

My answer to this is “No”. This does not mean that I am positively opposed to the idea; it is just all rather pointless. The current “Constitution” is an ordinary Act of Parliament and the provisions that really matter are in the Acts of 1867, 1890 and 1934 – to put ringing declarations of fundamental principles at the beginning of the “Clayton’s” Constitution would do nothing very much.

Perhaps what it *does* need is an improved introductory note. There *is* currently a note to section 3 which explains that there certain other constitutional provisions have not been consolidated, but for better comprehension by laypersons there ought to be a statement, in a preamble or an early section (perhaps simply a redrafted s 3), that explains more clearly that –

(i) the State Constitution is subject to the Commonwealth Constitution (the New South Wales *Constitution Act 1902* has said that, in s 2, ever since 1902), and that

(ii) the full "Constitution" of Queensland really consists of this Act *plus* the remaining sections of the Acts of 1867, 1890 and 1934, which are reproduced for convenience of reading in the Attachments.

Since the government has already indicated its acceptance of some of your recommendations in reports 36 and 41, and I understand is waiting for your report on this matter before tabling a Bill to implement those recommendations, I suggest that you should quickly produce an interim report on this issue in which you do nothing but adopt my submission above. Then the government and Parliament could, at last, proceed with the final stage of the general consolidation process that began in early 1993, and you, at greater leisure, could produce a report in which you could discuss the sorts of things that could go into a proper preamble of a proper Constitution once the republic issue is settled.

Since this recommendation stands by itself, I submit this as an interim submission for your early consideration. I will also make a fuller submission addressing most or all of the matters in your Issues Paper by the deadline, or maybe the Monday after – but, really, none of those matters will become pressing for at least another year and maybe five or six. Let us all concentrate on getting the recommendations of your earlier Reports, and an improved s 3 if you agree that that is necessary, enacted into law, and then the deeper consideration of the Perfect State Constitution can be done when circumstances are more appropriate.

With best regards.

John R Pyke