

Billy Jait

No 7

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LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

1/10/02

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House, George Street
Brisbane Qld 4000

re: the "The Queensland Constitution: Entrenchment Proposals
for Comment (August 2002)" paper and the "Report No 36
August 2002" entitled "The Queensland Constitution: Specific
content issues".

To the Legal, Constitutional and Administrative Review Committee
I have made submissions to the Committee, in writing, with respect to
the committee's issues paper entitled "The Queensland Constitution: Specific
Content Issues", and that, are apparently also relevant to the matters
raised in the above mentioned paper relating to entrenchment, and
I refer the committee again to those written submissions and
the content thereof with respect to the entrenchment paper and
this table later submissions process.

It is imperative to have a review conducted - I say with all
due respect - by the Committee, with respect to the issue of a Bill of
Rights for Queensland citizens, in any meaningful, ^{comprehensive} process of the review
of constitutional provisions and changes proposed for such provisions
provisions.

With all due respect to the institution that is the Parliament of
Queensland and the Honourable Members holding office in the Legislative
Assembly of Queensland - from time to time, I submit as follows:

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time is vested with the sovereign power of the people and that can not be ^{fettered by a previous Parliament} used to attempt to fetter the power of some future Parliament.

Section 106 of the Commonwealth Constitution appears to use the power of the Commonwealth to ensure that a State's validly made constitution may provide for entrenchment of that constitution's provisions. As noted the key point is to define what the constitution of the State actually is.

It appears ^{somewhat} ~~absolutely~~ absurd to assert that provisions purportedly enacted to amend provisions of the various constitutional provisions "would not necessarily relate to the constitution, powers or procedure of Parliament".

It appears that section 146 of the Public Service Act is invalidated by operation of section 106 of the Commonwealth Constitution.

It seems that the prevailing provision is section 106 of the Commonwealth Constitution (note: section 6 of the Australia Acts only applies where a parliament 'may' make a law setting out certain requirements and has actually done so) and impliedly that provision would continue

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To have effect so as to enforce the provisions of a States validly altered constitution even after those were so altered. It seems then, that, the only way a provision of the Old constitution, other than ~~those~~ those already entrenched by a requirement for referendum at the time section 106 came into force, could be entrenched, would be to validly enact a provision of the Old constitution, that prohibited any provision of the Old constitution that has been confirmed by referendum, from being altered, without a subsequent referendum about the alteration to be made; and; then have that entrenching provision itself confirmed by a referendum, and thereby protect it from itself being later repealed by the will of the Parliament alone (and thereby, enable it to be enforced by the constitutional requirements of the said section 106).

The next step then would be to ^{validly} enact a provision in the Old constitution which provides, that, any provision thereof may be ^{made} altered, ^{or confirmed} by referendum and once that occurs can not

be further amended unless another referendum is held for that purpose; and; have that provision confirmed by referendum.

If such a process were to be followed and the corresponding referendums resolved in the affirmative we would then be able to submit matters of constitutional change to referendum and if adopted these would then be entrenched. I would suggest that a referendum should be defined as a $\frac{3}{4}$ majority of those entitled to vote thereat (any more would make it almost impossible to ever get an affirmative result and a simple majority might be open to abuse by manipulation with the use of media, etc.)

It seems though that the Parliament cannot easily, if at all, fetter itself, and, neither can it be fettered by any referendum except those which are already required by the Old constitution and in force ^{ways of} by section 106 of the latter. It does _{not} even appear to be the case that the entire State could simply reconstitute itself - eg. at a referendum to

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absolutely repeal the existing constitution and ^{and then apply to be re-admitted to the Commonwealth} form a totally new one ¹ because the old old constitution might remain in force under section 106

I suppose the Parliament could repeal everything it had power to repeal before any reconstitution was attempted but there might not be any power for a referendum to make new provisions apart from modification of existing ones and it might be that some residual provisions are left in force under section 106 anyway - eg. the power of the Parliament to make provision (obviously I write this with only very limited access to law - i.e. I don't even have a comprehensive set of the Old constitutional provisions to refer to).

Perhaps it would be more efficient at this time to engage the Commonwealth and the other States in a debate promoting a referendum to alter the Commonwealth constitution, so as to make a provision in that, which would allow a State to reconstitute itself absolutely by referendum, and, or, or, amend and thereby entrench parts of its own constitution by referendum, ^{VT} whilst remaining a part of the Commonwealth.

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With respect to paragraph 1 at page 7 of the Proposals for Comment paper, I suggest, with all due respect, that it seems to be a frivolous use - and therefore an abuse - of parliamentary processes to attempt to make law which is already in existence and entrenched by referendum requirements.

There is a great need for a substantive bill of rights to be enacted and I suggest that its proper place is as a preamble to the Old Constitution.

Referring to the recommendations in Report No 36 I submit as follows:

~~Recommendation~~

Recommendation 2 should explain clearly the independence of the Judiciary (re: the doctrine of the separation of powers).

In recommendation 3 I would not support the last dot point.

In recommendation 7 I am against any move to allow persons not already validly elected to the Legislative Assembly to act as Ministers and thereby usurp the will of the electors - even if that be only for a short time or 1 decision only.

In recommendation 8 I am not certain I would support the last dot point - i.e. surely any decision even to appoint a Premier must be reasonable, ^{and} impartially made without bias?

Why do we need to appoint a Lieutenant Governor?

Religious references should not be mandatorily required as part of any oath and none should be required mandatorily to take or make an oath or affirmation of allegiance to the Crown, however, there should be some mandatory requirement for all elected members of the Legislative Assembly to take an oath pledging to honourably serve the Sovereign State of Queensland and its constituents.

With respect to (a) recommendation 28 I would also suggest there should be a specific reference to the following of the doctrine of the Separation of Powers.

I strongly submit; that; recommendation 30 must be adopted; and; "appropriate community

'representatives' referred to therein must include members of the wider community who have by their actions - as have I - demonstrated that they are bona fide advocates for and representatives of the wider community and the public's interests generally. Of course I refer to my notorious political activities and by way of this submission apply to be ^{recommended as one who should be} provided with paid work as such a community representative when such a commission - as that proposed in recommendation 30 - is formed (please contact me at the above given address for interviews if necessary).

Recommendation 32 appears unnecessary.

What are the 'specific allegations' proposed to be required for referral in recommendation 33?

I apologize for the hand written and poorly researched nature of this submission but in light of my limited resources and the widespread abuses of my basic human rights (being engaged in by all and sundry including the QRS and the 'thing' which unlawfully goes under the protected name 'Centrelink') I have little other option.

Please send me a written acknowledgement of your receipt of this submission as soon as is practicable.

Thanks for that

Yours
Billy Tait

William "Billy" Peter Tait

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