

SUBMISSION TO:

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

No 8

April 25 2002

:FROM Peter D Glover ANZIM

To Karen Struthers MP
Chairperson.

Dear Madam and Others,

I have on my desk:

"Constitution of Queensland 2001..Act No 80 of 2001"

:that comes into effect on Queensland Day 2002.

From that, it appears that prior to that date or dates, Queensland did NOT have a constitution, but alike Britain and New Zealand simply relied upon Constitutional Law/Lore held in place by the device of "usage and custom".

Let us look at that last quote. When Stephen Langdon wrote 'Magna Carta' in 1215 AD as Dean of Westminster he sought the "recognition of the ancient rights and customs and their restoration..by the device of obtaining the written consent of King John"..It maybe noted that 'Magna Carta' was the third attempt. At Runnymede on that June day it was a 'close run thing'. Assembled at either end of an area about the size of a football field were the Dukes, Earls, Barons, Knights and staff in full armour and mounted. At the other end the 'King's lot' similiary fitted out. As almost all assembled did not have the ability to read or write a Herald read out the document..and after a quick count, the King signed his assent as John R.

We have no need to bring into account "wapentakes" or even 'hundreds' Almost all of Magna Carta has been repealed and all that is left is .."12 men of a peer nature for a jury" and one other clause which I cannot at the moment, find.

But, as a constitutional document, for that is what it was, it is mentioned for its clear purpose of:

"Limiting the power of the Executive"

:an activity that a society which does not exercise it, does so at its peril. "Executive structures" running amok are damned dangerous!

This is not a recent observation. The Greek civilisation, from about 600BC to 200BC developed by trial and error the system of government which we now know as 'democracy'..which Sir Winstone Churchill was given to describe:

"As the most difficult system of government yet invented except for all theothers!"

He of course, had a long experience in the matter..but let us turn back to some omissions, enjoyed by the earlier Greeks, that can be with benefit, installed in 'constitutional matters' at the present time.

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27 MAY 2002

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

I refer to two items.

The first, "Citizens Initiated Referendum" whereby, on a "petition of sufficient substance" the Parliament (State) will direct that a referendum be held on the particular issue.

(The reason the Greeks adopted this measure, and the following one, was that they recognised "the frailties in human nature" which often were exposed by the actions of politicians...bear that in mind.)

The "petition qualifications" will, correctly engender some debate. The administration who does not want any such provision for any question of their "absolute power" will seek to 'noble it' by demanding a very high level of signatures for the petition. Citizens will, in the sense of 'I want a bit of that' seek say, no more than 2,000 signatures. Where the result is found is left to, debate..but such debate should be open. That approach requires political skill and competence to be present before it is accepted.

The second item, also used by the Greeks at their earlier time was: "The Right of Recall". In contemporary terms they went a bit overboard in the use of this in that, if after 'recall' the Senator did not satisfy the requirements of his audiences questions, was to be be-headed, publically. In our society, whilst some might have the same idea, it is a 'bit messy'.

So again, by singular-to-electorate method of petition, if 'recall' is to be made the Electoral Commissioner will be authorised to conduct a by-election after due recall process is used. Again debate as to 'number of signature' but as a guide, and no more than that, as a State Electorate has about 22,000 electors, if 1,000 (near 5%) are sufficiently aggrieved, then that be the basis of recall.

You will find further details in your History Studies, but for the reasons, then and now, the 'constant likelihood of the frailties in human nature' manifesting the dual constitutional remedies of:

"Citizens Initiated Referendum" and "Rights of Recall"

: should form a place in the Queensland (or any other) Constitution.

Before we leave the notes of reference to the arrival of the use of the word "democracy" mention should be made of Solon..again in Greece about 500BC. He started life as a poet, then a philosopher, then from peer group selection, they made him "A Dracon" (Law giver.) in that capacity, in brief he did two remarkable things. The first was.. "he went up unto Attica (a farming province quite near Athens) and there he up-lifted the mortgage stones"..a moratorium in effect. As interest rates were at 41% and the moneylenders, to increase their controls had caused a credit squeeze, the economy of Attica was ruined. After action of Solon prosperity returned to Attica. Then, also in the capacity of a Dracon he wrote 10 laws. (As the society was without reading and writing skills except for the numerous priestly castes) they were promulgated by heralds. When asked by his fellow Senators.. "Why so few laws?"..he replied: "Because they could not remember any more". (See "Plutach's Lives for further details.)

Such economy of legislative activity is commended to you!

Now is the appropriate point to have a 'look' at the Queensland Constitution and some of its antecedents.

As you know, Queensland, as a 'crown Colony, commenced in 1859 by the Granting of Letters Patent by Her Majesty, Queen Victoria.

From that authority, whose status was quite clear, the various Queensland Parliaments saw fit to pass various laws all aiming at the provision of "peace order and good government" in the Colony of Queensland" ..quite uninterrupted by any aspects of 'Commonwealth Laws' which, manifestly, did not exist.

That situation and its clear status, lasted until 1901 when upon the demise of Her Majesty Queen Victoria, the Letters Patent, it is said, also expired as a Constitutional reference. It appears, that from that date and event, that Queensland has seen fit to, in a pragmatic way, adopt the 'benefits' said to exist in constitutional law, but not, the Law of the Constitution..which as we have noted does not come into effect until the 6th of June this year.

In the notes attached to the Act No 80 of 2001 reference is made to parts of say, The Constitutional Act of 1867 and others. But, it is considered, that such legislation, however beneficial do, from their status under Letters Patent, do not enure beyond 1901. This is an observation which may be challenged by others more skilful than this writer..but it appears to be correct.

Of the document itself, subject to the "as if" aspects of which there are many, it is a workable document. One can amend it, improve upon it ad infinitum. And I minded of the arrival after 35 years of quite intense preparation of the Mexican Constitution which is a document of excellence..and since being promulgated has been ignored!

Let it be regarded as a 'living document'..subject to reasonable changes as the society of the future sees fit.

One inclusion, for the benefit of the People of Queensland would be: along these lines:

"In the State of Queensland, the practice of usury shall not be allowed unless the Governor with the Executive Council gives written assent for some periodic application, which not be longer than three months duration."

Whilst this is in appearance, a commercial consideration that may conflict with say, Commonwealth rulings in terms of Sections 36 and 50 of the Banking Act 1959 (as amended) it is a 'protect' device for these our people at this their time.

You may recall that only a few years ago the "Commonwealth?" using those powers put interest rates on loan capital used in farming up to 27%. This was said to be.."to control imports". Exactly how a farmer paying 27% on loan capital from a source of income that seldom earns more than 3% on total capital, was to effect.." a control over imports in Sydney and Melbourne" is to be found only in answer that has the most odd approach to the use of verity. Sufficine to say, the "legislative authority" that was used at that time is still extant, and insofar as a State Constitution can go, some precaution is needed to prevent a further recourse to such abuse of prosperity that simply finished up in the banking system.

The introduction of this matter of "usury" could, at this moment be given the benefit of some notes of background.

In the Torah, (which is also the first five books of the Bible), the Bible itself there are no less than 11 injunctions against the practice of usury. In Koran, of which Islam is the third Abrahamic religion the practice of usury is banned.

So in recognition of the published beliefs of others, who are quite numerous, the sought recognition of the treatment of 'usury' is based. For the moment we will set aside the exemptions negotiated at Nicea in 329 AD.

That the Australian Banker's Association via its Public Relations firms would seek to make all kinds of comment is considered most likely. That aspect with its singular identified result could be met with say... "A Truth in Lending Bill"... that could disclose that the substance of a loan is \$1.16¢ per \$100... from the Bank of International Settlements 'capital adequacy Requirements' April 2001.

We do not wish to use these notes for the purpose of some 'strife' from the ABA, but only to indicate that constitutional structure of our State, can permit the arrival of some control for our people.

We have, in part, made mention of the 'powers' vested in the Commonwealth via the Constitution of 1901 and as they, by seniority when in conflict with States laws, take precedence some comments on that document are seen as necessary.

Always bear in mind that the Constitution for the Commonwealth of Australia is an Act of the British Parliament. It was, is, and remains so. It is a constitution FOR, not OF.

Well in 1919 King George gave 'Regal Permission' for 'Australia' as a 'sovereign independent nation' to sign the Treaty of Versailles.

'Regal Permission' did not, of itself, confer 'sovereignty..it was a 'permission'. But in 1920 on the 10th of January there was passed in the Commonwealth Parliament legislation giving recognition to Australia signing the Charter of the League of Nations. A Charter to which the United Kingdom was also a signatory.

In clause 4 of that document it states:

"No Nation shall be subject to the laws of another Nation"

:that quite sensible provision to which there is no argument, however, in application, as you will readily see, set aside the function of "the continuity of recognition within Australia of a British Act of Parliament...in this instance the Constitution Act".

A once sceptical retired High Court Judge, in a four page opinion, remarked, in summary:

..from the historical evidence I have come to the conclusion that current administrative systems at present in use in the Commonwealth, States and Territories have no valid basis in law".

From web site viewing at least three million people have seen those words and of course, the preable to them.

In some correspondence with the Office of the Attorney-General making careful enquiry, they refused to give answer to the current status in their opinion, of the Commonwealth Constitution of 1901.

May 20 2002

Constitutional matters lend themselves to much erudite writings...
but they do not pay thereat!

New Zealand, as a "Dominion" does not have a written constitution
but that does not set aside 'constitutional law' which is often
resorted to for the purpose of deciding what a government can do
and what a citizen ought to do..those comments pretty well sum up
what one needs to find in a document.

By its very nature, "a document" is dated. The Queensland Constitution
has not been subject to referendum of endorsement and in fact, its
very existence is hardly known. It is a document of administration
without philosophy and as one reads, it the things called a 'political
party' is not mentioned..which does not infer their non-existence.

I can write more which is sufficient reason for not doing so and I
commend these notes to your committee for due consideration.



Peter D Glover May 20 2002



**Legal, Constitutional and
Administrative Review Committee
Call for Submissions**

***The Queensland Constitution:
Specific content issues***

The Legal, Constitutional and Administrative Review Committee is a multi-party committee of the Queensland Parliament with responsibilities that include constitutional reform. The committee is currently conducting a review of certain issues of constitutional reform, including various issues raised by the Queensland Constitutional Review Commission in its February 2000 report.

At this stage, the committee is essentially considering whether provision should be made for certain matters in the Queensland Constitution. The committee is considering all issues relating to entrenchment of provisions of the Constitution in a subsequent stage of its review.

The subject matter of the issues currently under review include: incorporation of constitutional principles, conventions and practices; a Lieutenant-Governor for the State; the members' oath or affirmation of allegiance to the Crown; indicative plebiscites; the establishment of a petitions committee; summoning Parliament; waste lands of the Crown; the number of parliamentary secretaries; non-compliance with certain requirements; restoration of a local government after suspension; statutory office holders; and the judiciary.

The committee is now calling for public submissions to its review. To assist potential submitters, the committee has prepared an issues paper regarding its review. A copy of the issues paper can be obtained from the committee's secretariat or from the committee's Website (under 'current inquiries') at <www.parliament.qld.gov.au/committees/legalrev.htm>.

Submissions close on Friday, 31 May 2002. Submissions should be forwarded to:

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All submissions become the property of the committee and the usual committee procedure is to authorise the publication of submissions prior to reporting on a matter. All requests for confidentiality should be clearly marked.

For further information, contact the committee's secretariat on (07) 3406 7307.

Karen Struthers MP
Chair