

PO Box 1022
MARYBOROUGH Q 4650

Ph: 07 4122 2277
Fax: 07 4122 1980
Mobile: 0407 575 263

Email: maryborough@parliament.qld.gov.au
Website: www.johnkingston.com

Comet Place
133 Lennox St



DR JOHN KINGSTON MP
INDEPENDENT

Maryborough - the Multiskilled Electorate

Submissions 19 AND 23

13/6/02.

RECEIVED

13 JUN 2002

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

FAX TO KERRY N NEWTON: 3406 7070:

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE:

Dear Kerry,

This fax further serves to confirm that the two submissions submitted to you by Tony Pitt on my behalf are to be regarded as submissions from me, for consideration by the committee.

It is my opinion that no review of the constitution can be undertaken without giving due cognizance to the fundamental bases upon which western governments have agreed to act - that is, without taking into account the accepted fundamental great charters.

Thus my submission in two parts contains the 6 great charters which are the building blocks which have underpinned the high standard of responsible government, which the countries of the western world (and some others) strive to achieve and maintain. I strongly maintain that the charters should remain as part of the submission to remind the committee of the basic building blocks, upon which they are trying to build a better constitution for all Queenslanders.

I therefore argue that the two submissions co-authored by Tony Pitt and I, be regarded as my submission, and that they be accepted verbatim for consideration by the committee, so that all Queenslanders can make well informed decisions concerning the future constitutional rights they and their children will enjoy or endure.

I wish the committee well with their deliberations, and look forward to an outcome which will improve government and the rights of the individual.

Thanks and Regards,

Dr. John Kingston,
Independent Member for Maryborough.

People Before Politics - Equality For All

Do not follow where the path may lead, Go instead where there is no path and leave a Trail.

No 19

RECEIVED
31 MAY 2002
LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

DR JOHN KINGSTON MP

Tania Jackman
From: tonypitt [tonypitt@bigpond.com]
Sent: Friday, 31 May 2002 13:03
To: lcarc@parliament.qld.gov.au
Subject: Submission - Issues of Constitutional Reform

SPEC 42-1

SUBMISSION TO LEGAL CONSTITUTIONAL AND ADMINISTRATIVE
REVIEW COMMITTEE

LEGISLATIVE ASSEMBLY OF QUEENSLAND

ATTN:
Karen Struthers MP
Chair

-----Original Message-----

From: tonypitt [mailto:tonypitt@bigpond.com]
Sent: Friday, 31 May 2002 9:38 AM
To: John Kingston
Subject: URGENT - Qld Constitution submissions close today

TO:
Karen Struthers – Chair
Legal, Constitutional and Administrative Review Committee
Legislative Assembly of Queensland
Parliament House
George Street
Brisbane Qld 4000

REFERENCE: ISSUES OF CONSTITUTIONAL REFORM (Your letter
18/4/02)

Dear Ms Struthers

In reviewing the Queensland Constitution we must take care that we in no way breach the requirements of the Australian Constitution.

I have received information that certainly indicates that we have problems following the 1988 Federal Referendum where the proposed constitutional amendment was rejected by the people.

As an initial submission I include information supplied to me by the editor of National Interest Newspaper who resides in the Maryborough electorate. Before we make any suggestions I ask that the Committee gets legal advice from an authoritative source willing to put their name to an opinion on the following information supplied to me in my electorate.

CONSTITUTIONAL CONSIDERATIONS – Queensland – Local Government

Since 1972 all major parties have been moving to bypass the states and create a republic. The plan was to starve the states out of existence by pushing funds directly to local government. The CONGRESS OF LOCAL GOVERNMENT HAS BEEN MEETING IN CANBERRA FOR ABOUT TWENTY YEARS without the knowledge or consent of the Australian people.

A republic wouldn't worry me if it had Citizen Initiated referendum and Voter Veto to replace the checks and balances of the monarchy. The ALP/Dem/Lib/Nat/Green plan has no such safeguards. In 1988 a referendum question was phrased to transfer power over local government to the Commonwealth Government. The question was poorly phrased and the people sensed a trap and voted NO. All local government has been constitutionally illegal since then.

It was suggested that the Federal Government needed to legislate to constitutionally recognise local government. They can't. The Australian Constitution can only be altered by referendum of the people (Para 128). The referendum with the following context (provided by the AEC) was put to the Australian people. It was (3) Constitution Alteration *(Local Government) 1988.

The actual wording of the legislative proposal was, "119A. - Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make bylaws, for their respective areas in accordance with the laws of the State." Unlike a plebiscite, a referendum is binding on the government. This means that all local government authorities are now constitutionally illegal. They operate without a lawful head of power. No state government can now enact or retain legislation that condones or establishes any form of local government.

There are those who would like to kid themselves that this didn't really happen. That won't help them in a court of law where honest judges sit.

These are the questions that must be asked in any court of law:

Did the people vote NO to the establishment of a system of local government? They did.

Did the people vote NO to the continuance of a system of local government?

They did.

Did the people vote NO to local government bodies empowered to administer?

They did.

Did the people vote NO to local government empowered to make bylaws?

They did.

Is the Australian Constitution the supreme and binding legislation that empowers, and limits the powers of, the States and the Commonwealth?

It is. Is the Independent Judiciary obligated to uphold and obey the requirements of the Australian Constitution? It is.

When the people, by a majority vote, in a constitutional referendum, prohibit a proposed change to the constitution is their prohibition order legally enforceable? It is.

Opinions by legal advisers to the ALP offer the lame excuse that, the States always traditionally had the right to have local government. They did UNTIL the outcome of that referendum was formally declared. There have been suggestions that the Constitutional amendment was a ploy to transfer power over local government to the Commonwealth and it was only this transfer of power that was voted on the the people of Australia. This is not correct. Read that actual amended Section 119A. Nowhere does it infer a transfer of power to the Commonwealth. The people voted on state powers and voted NO.

Not even the dumbest looney lefty lawyer can deliver an opinion saying the referendum said that the ALP/Dem/Lib/Nat/Greens could establish and/or continue local government.

Ministers, councillors and bureaucrats scuttle around in panic seeking MICKEY MOUSE legal opinions to reassure themselves that they are not vulnerable. They go to YES MINISTER self-seekers who would sell their country for some promotion.

Whether the people understood what they voted is immaterial. Any councillor, CEO or staff member who seizes any property, imposes any fine, or upsets any ratepayer is personally liable. That is now the law.

The intent of this letter is not to destroy local government. It is aimed at stopping petty bureaucrats in local government destroying us. The idea is to legalise local government on terms favourable to the past and future victims of local government.

I have prepared a draft Bill to be put to federal and state parliaments. Nothing is perfect so I ask you to read the draft Bill and make suggestions for improvement based on your experience.

I also ask that you circulate this to the many hundreds of Ratepayers Association that are not listed in national address lists and to all known victims of council harassment. ... Tony Pitt

URGENCY MOTION - DRAFT BILL

A bill to initiate a Constitutional Referendum to legalise LOCAL GOVERNMENT in the State of Queensland and all other states and Territories.

REASON

All local government authorities are constitutionally illegal. They operate without a lawful head of power. No state government can now enact legislation that condones or re-establishes any form of local government.

CONSTITUTIONAL LAW

On 3 September 1988 a referendum with the following context (provided by the AEC) was put to the Australian people. It was (3) Constitution Alteration *(Local Government) 1988.

ACTUAL WORDING

The legislative proposal was "119A. - Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make bylaws, for their respective areas in accordance with the laws of the State."

THE RESULT

The people of Australia and the states of WA, SA, Vic, Tas, NSW and Qld voted "No". It is clear that no "system of local government" may be lawfully "established or continued" within the Commonwealth of Australia, or within any of the various states. In fact, as a result of that referendum states are specifically prohibited from establishing or continuing local government.

No council officer is now indemnified from prosecution or from any private form of litigation and no council laws or bylaws can be used lawfully against any citizen. All dispossessions, fees and fines imposed since the referendum are unlawful.

A pretender claiming to be Minister for Local Government could be held to account under the Crimes Act for sedition.

RECOMMENDATIONS

That a referendum proposal be re-submitted to the people of Australia to establish a form of local government that would receive general acceptance. To facilitate the rapid passage of the referendum to legalise existing councils as soon as possible it is proposed that each paragraph be individually approved or rejected so only contentious issues are held in abeyance.

THE PROPOSAL

"119A. Each State shall provide for the establishment and continuance of a system of local government (hereafter called councils), with local government bodies elected in accordance with the following aims and conditions:

SERVICES

Local urban and rural councils shall be established to provide reasonable roads, walkways, sewerage, garbage, water, and drainage.

Councils may provide other minor community services such as beautification, bikeways, tourist facilities, kindergartens and major long term community undertakings only if the rate payers approve the proposed expenditure at the time of the council elections as part of a mandatory "Declaration of Intent"

SERVICES RESERVATIONS

In the past councils have plunged communities into huge debts to buy short-term popularity. They have used ratepayers' money taken from businessmen to compete with local business on unfair terms producing amateurish results with over paid quasi entrepreneurs.

SERVICES AMENDMENT = APPROVED Yes/No _____

RATES

Rates shall be imposed on a basis of services provided plus 10% for extension of services. Those ratepayers, who have amenities such as roads, water, sewerage etc shall pay a rate component commensurate with the services received. It shall be lawful to impose rates on an area where there is a firm proposal to provide a service for three years in advance. The level of rates to be imposed during the elected council's term in office which shall be a fixed term of three years must be disclosed and be approved by a majority of rate payers at the time of the council elections. There shall be no borrowing unless the amount of proposed debt and the source of the loan are disclosed at the election prior to the term in office.

RATES RESERVATIONS

The whole idea of councils was to spread the cost of community services over many years so all could enjoy essential services without having to, at some given instant, come up with a quarter of a year's wages for the road/gutter/footpath provided. Those who had services paid not only for the upkeep but also for the extension to others of the services they were lucky enough to have.

This idea was bastardised when councils found they could blackmail a developer into providing the services they were contracted to supply by withholding approval. The result was that young families were suddenly forced to borrow the pay for the complete cost of their road/gutter/footpath in the price of their allotment. The principle of spreading the cost of services was negated.

RATES AMENDMENT = APPROVED Yes/No _____

DISCRIMINATION There should be no discrimination between ratepayers.

DISCRIMINATION RESERVATION

In the past councils have charged small business rates on vague premises of unimproved valuation.

DISCRIMINATION AMENDMENT = APPROVED Yes/No _____

DISINCENTIVE In the past councils have charged businesses multiple rates for providing toilets etc for customers. They should have given rate relief because business was providing amenities for public that could and should be supplied by council.

DISINCENTIVE AMENDMENT = APPROVED Yes/No _____

ABSOLUTE LIMITS OF POWER All councils are bound by entrenched and inherited law and shall observe the citizen's

fundamental rights without transgression. No federal, state or local Act can indemnify any elected or appointed council officer from prosecution and punitive damages for infringement of these rights. Star Chamber justice is prohibited. In the past councils have passed bylaws that grant unto council officer the power to be prosecutor, judge and jury. There is no dispute involving council that cannot be taken before a jury of peers.

ABSOLUTE LIMITS OF POWER AMENDMENT = APPROVED
Yes/No

FREEHOLD

The right of a free-holder of land to do with his property as he wishes shall not be infringed unless by his actions he causes excess, odour, noise, or danger to others.

FREEHOLD AMENDMENT = APPROVED Yes/No

BUILDING STANDARDS The council shall be responsible for building standards but only to protect unwary buyers from being duped. Each house shall be fitted with a metal plaque identifying the standards to which the dwelling and extensions were built. This in no way empowers the council to interfere with the free-holders inalienable right to do as he wishes in accordance with his finances.

BUILDING STANDARDS AMENDMENT = APPROVED Yes/No

PERMITS FREE No fee can be charged for any application, town planning consideration or inspection of works carried out in the public interest. Any undue delay caused by elected or appointed council officers shall be subject to punitive legal action.

PERMITS RESERVATIONS

In the past councils have obstructed and hindered applicants. In some cases this was sheer bloody-minded bureaucratic obstruction. In other cases councillors saw the chance of profit by stealing other peoples ideas.

PERMITS AMENDMENT = APPROVED Yes/No

LICENCES

No licence can be invented and no fee imposed unless the licence and the fee are agreed to at the time of the election as part of the election declaration.

LICENCE RESERVATIONS

Bureaucrats inventing licences such as dog licences have wasted ratepayers' money. The cost of recording stupid information such as that "Mr Jones has a dog/female/de-sexed/brown and grey and white, kelpie and collie and heeler cross/called Freda/parvo proof/collar number XXE103Z/expiry date 19th of whatever/price \$40" is not justified.

LICENCES AMENDMENT = APPROVED Yes/No

TRADESMEN There shall be no requirement that a qualified tradesman do work.

TRADESMEN RESERVATIONS

This is a vast land. Most farms and out stations never see a tradesman. To legally replace a power point in some areas would cost thousands of dollars in fares, travel time, accommodation and the parts plus labour. Reality must prevail. If government wants safety they can inspect and test the work but at their expense.

TRADESMEN AMENDMENT = APPROVED Yes/No _____

_____OWNER BUILDER Councils cannot interfere with a ratepayer exercising his right to build and live in a house of his choice. Even eccentrics have rights. The absolute limit of council power shall extend to the point at which a householder connects to council services to ensure that services are not damaged or otherwise adversely affected.

OWNER BUILDER AMENDMENT = APPROVED Yes/No _____

_____TOXIC WASTE Any waste deemed toxic to the environment shall be disposed of by council free of charge if the waste has potential to cause harm.

TOXIC WASTE RESERVATIONS

Over zealous assessment of risk, irrational regulation and punitive charges have forced entrepreneurs to dump and run. This is more harmful than any alternative. It drives any problem underground.

TOXIC WASTE AMENDMENT = APPROVED Yes/No _____

TRESPASS

No federal, state or council law or regulation can indemnify any council officer from prosecution for trespass.

TRESPASS AMENDMENT = APPROVED Yes/No _____

_____UNWARRANTED SEARCH

Where there is a need to search a search warrant is required and such warrant can only be issued if there is real evidence of a real and serious crime. No federal, state or local government law can indemnify from prosecution any member of the judiciary issuing "fishing expedition" search warrants.

UNWARRANTED SEARCH AMENDMENT = APPROVED Yes/No _____

_____CITIZEN INITIATED REFERENDUM
Ratepayers can require that a referendum be held upon any issue relating to the areas of responsibility of council upon submission of a petition signed by 5% of ratepayers. Such referendum shall coincide with council elections and candidates shall be required to publicly declare intent as their will on the issue. No cost shall apply to a Citizen Initiated Referendum held in conjunction with council elections.

Where individual rights are involved, the case infringing on a citizen's rights shall require a 65% majority. In all other cases a simple majority shall prevail.

CITIZEN INITIATED REFERENDUM AMENDMENT = APPROVED

Yes/No _____VOTER VETO

Ratepayers may at any time as a matter of urgency bring on a

referendum to block any council action provided they muster a petition signed by 10% of the ratepayers.

VOTER VETO AMENDMENT = APPROVED Yes/No _____

_____RIGHT TO WORK The right to work shall not be infringed. All citizens should be encouraged to augment their income with hobby and cottage industries. Where elected or appointed council officers prevent a person conducting a business, that person shall have the right to sue for damages against the individuals who infringe on his rights. In all cases the cost of such litigation shall be bourn by those responsible not the ratepayers.

RIGHT TO WORK - RESERVATIONS

The hobby and cottage industries frequently become the manufacturing bases and employment source. While earning a wage in the security of a job the entrepreneur can test his product and his marketing skill before over committing himself in a yet to be tested enterprise. This is the real source of Australian owned productivity.

RIGHT TO WORK AMENDMENT = APPROVED Yes/No _____

WARDS

Each council shall offer ratepayers the choice of style of representation. Wards are one option with a councillor elected from each area. A quota of votes is another alternative. It should be up to ratepayers to decide on individual geographic structures what form of representation they require. Any council, which over a long period disadvantages a particular ward by weight of numbers or by political skulduggery, shall be liable.

WARDS AMENDMENT = APPROVED Yes/No _____

_____MAYORS

Shall be elected by the councillors elected unless ratepayers decide to vote separately on their choice of mayor.

MAYORS AMENDMENT = APPROVED Yes/No _____

REMUNERATION FOR ELECTED COUNCILLORS

Rates of pay and allowances shall promulgated at the time of council elections and either approved, reduced or rejected by a vote of ratepayers. REMUNERATION FOR ELECTED COUNCILLORS

AMENDMENT = APPROVED Yes/No _____

_____REMUNERATION FOR APPOINTED STAFF The average rates of pay of those in council employ shall not exceed the average rates of pay in the community.

In the past council staff have received rates of pay at least 15% higher than the ratepayers for similar work, less responsibility and less accountability.

REMUNERATION FOR APPOINTED STAFF AMENDMENT = APPROVED Yes/No _____

SUPERANNUATION FOR APPOINTED STAFF Council employees shall not enjoy better conditions of retirement than the ratepayers shall.

SUPERANNUATION FOR APPOINTED STAFF RESERVATIONS

If the ratepayers pensions are not indexed to inflation then nor shall the pensions of council employees be indexed. Such pressure on public servants might encourage a rational decision on fixing the retirement problems of the population that pay the public servants.

SUPERANNUATION FOR APPOINTED STAFF AMENDMENT =
APPROVED Yes/No

Please include this submission in the report and advise me of the Submission number allocated to this submission.

A R (Tony) Pitt
for John Kingston
Following Telcon 09.35 on 31/5/02
JOHN KINGSTON