



Submission NO. 6

Spec 29.1

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

**REVIEW of QUEENSLAND CONSTITUTION RELATING to CONSOLIDATION**

Dear Ms Newton,

**THE PRESENT SITUATION**

The Queensland Constitution is presently not consolidated in one document, called "**THE QUEENSLAND CONSTITUTION**", as is "**the Australian Constitution**", or "**the Constitution of the United States of America**".

Rather more like the "**English Constitution**"; it remains scattered throughout many acts of parliament and other documents.

**ACTION REQUIRED?**

**There would be a strong argument for consolidating the Queensland Constitution into one document.**

This could be a wonderful way to facilitate the teaching of the **Queensland Constitution** in schools as the **American Constitution** is taught in America, *if the schools actually did so*. It would also help to remove some of the difficulty the man in the street faces in finding out about the Constitution of Queensland. I would have no problem with consolidating the Queensland Constitution into one document providing **all of our rights and freedoms are left totally intact**.

**There would be an equally strong argument to leave it alone.**

- (1) We have got this far without too much difficulty.
- (2) If it ain't broke don't fix it! You can't do any damage if you don't touch it!
- (3) Although spread among many documents, the **English Constitution** has worked wonderfully well throughout the centuries, giving us the cradle of western civilization, and our legal heritage, including such magnificent documents as the **MAGNA CARTA**, **HABEUS CORPUS** and the **BILL of RIGHTS 1689 (William and Mary)**, among many others.

### SOME CONCERNS WITH ALTERING THE CONSTITUTION

The main concern I have is when politicians start messing about with things like the constitution, they may be tempted to make alterations which tend to move democratic power away from the people, and toward the politicians.

This could possibly happen when “modernizing” the language of various archaic documents.

We must remember political power is never destroyed.

It is merely moved from one class of people to another.

It cannot be given to one without taking it from another.

One way to overcome any such “errors” would be to include **Citizens Initiated Referenda** in the constitution.

Another concern is the temptation to whittle away at the rights and freedoms we still have, which our predecessors struggled so hard to gain.

This must be watched for and guarded against with the greatest vigilance!

One example of lack of vigilance was the passing of the “**Australia acts 1986**”.

This was a most important and powerful *constitutional change*\* to Australia and Queensland, but the general public was almost totally unaware of the event until it was accomplished, and had no time to register their opposition.

\*(Although it does not *alter* the Australian Constitution, it has a great effect upon it)

Whether one thinks it was a good thing or not, such a far-reaching and important constitutional change should have been widely advertised and a **referendum** taken, to see if such a change was in accordance with the **will of the people**.

**It is very wise to leave the Australia acts 1986 out of any consolidation of the Queensland constitution.**

Not only for the reasons mentioned in the position paper, but also because many Queenslanders find this particular act is a very contentious and controversial issue, particularly in the way it was implemented. Some have called this sneaky and underhanded, others say it is repugnant to the Queensland Constitution act 1867. To include this would do little to enhance what little trust the people may still have in politicians.

### SMALL CHANGES TO DOCUMENTS?

It only takes small harmless-looking changes to documents, or interpretations of them to cause enormous consequences.

One such example is in the **Bill of Rights 1689**, where our politicians *chose* to interpret the word “**and**” as though it were “**if**” in paragraph 25 which says



*"Those subjects which are Protestants may have arms for their defense suitable to their conditions **and** as allowed by law."*

In 1688 when the bill of rights was written, *statute law and common law allowed arms to be used for defense*, but King James II, in trying to wipe out the Protestant religion, had disarmed the Protestants illegally while leaving the Catholics armed. A similar situation occurred recently in RWANDA and again in BOSNIA, where one side had been disarmed, whilst the other side had arms. Such situations are the antithesis of the Aussie tradition of *"a fair go"*

The Bill of Rights made things even again by allowing *everyone arms for their defense as the law allowed!*

*The reason for paragraph 25 was that some of the people had been disarmed!*

This is why the *meaning* of the word "**and**" is so important in this paragraph.

If it meant that the *law of the day could take precedence*, it would have said "**if**".

As a consequence of this small "*interpretation*" today in this free nation we are *specifically* not allowed arms *for our defense*, which **totally negates the meaning** of that paragraph of the Bill of Rights 1689 which is "*continued in force*" in Queensland.

**Thus one of our rights has been "*interpreted*" out of existence!**

*Whatever your opinion* of the results of that "*interpretation*", it does have an enormous impact upon the way our rights and freedoms have been diminished. (A whole paragraph of the Bill of Rights has been killed dead by one word!)

**Thus we must be wary of "small changes" to the wording of constitutions.**

(Politicians use paragraph 27 of the same Bill of Rights as their "cowards castle" as it gives them free debate in parliament)

**As the Bill of Rights 1689 is "continued in force" in Queensland it would be a good move to enshrine it in the preamble and not attempt to supersede it with a "modern" one!**

### **CATEGORY A RECOMMENDATIONS**

**R11.3** *"and a person or persons appointed to perform the functions and the powers of the local government as an administrator".* It seems fairly harmless and desirable to delete these words particularly if the deletion facilitates a speedy fresh election to be held.

**R16.3** These changes seem sensible and also appear not to have any dangers. A simpler form is always more desirable.

**R16.7** This also seems a reasonable move.

None of these changes appear to hold any threat to the rights and freedoms of Queenslanders

### CATEGORY B RECOMMENDATIONS

**R4.1** “*The Constitution of Queensland 2000*” This would be a good name for the Constitution of Queensland, and the deletion of the word “act” gives it more power.

**R5.3** If this makes it clear that Members of the Legislative Assembly are directly elected, then it is good. Anything other than direct election is not to be tolerated. To interpret this to mean that MLAs could be appointed would be most undemocratic, and likely to cause much concern.

This could be an example of politicians abusing “interpretation”.

**If any doubt exists, it should be put to referendum.**

**R5.4** I see no danger in reducing the maximum time to 6 months, and the minimum number of sittings be 2 per year. This only reflects reality.

**R5.8** This recommendation also seems to hold no dangers to democracy. If the Governor appoints parliamentary secretaries, then he should have the responsibility of dismissing them.

**R6.1** This seems to be a sensible recommendation, if it makes clear where executive power lies. (Any reference to the Australia acts should be left out.)

**R6.7** This section seems to reflect reality, and there seems no reason to exclude it as long as it does not restrict all policy making solely to the cabinet. (*The word “principal” in 40.2 is important, as it does not preclude other sources of policy.*)

**R6.5** This change reflects modern reality. There seems no harm in it.

Although wary of the danger of “*small changes*”, it seems to be a good and worthwhile project to consolidate the Queensland Constitution into one document **as long as the Bill of Rights 1689 remains continued in force**, and other rights and freedoms are not further eroded in the process.

The Constitution should be more accessible and phrased in language that is easy to understand, as is the Australian Constitution.

The real worry with these things is in the "*interpretation*", as much mischief has been caused there. i.e. "*External affairs powers*" which causes States rights to be overridden by Federal Dictatorship, and was clearly not meant to be that way.


Another worry is if you make rights or freedoms "concrete" or define them you tend to limit them and make them subject to attack by "*interpretation*"!

I am looking forward to the opportunity to submit further input into the more controversial aspects of the proposed Queensland Constitution.

### CONCLUSION

**I am in favor of consolidating the Queensland Constitution as long as the necessary changes do not reduce the rights or freedoms of the people of Queensland by one iota.**

*John H. Walter.*

A handwritten signature in dark ink, appearing to read 'John H. Walter', with a horizontal line drawn underneath the name.