

## **Commentary for the Bushfire Royal Commission, specifically the Constitution.**

The 2019-2020 bushfire crisis placed enormous strain on the necessarily limited firefighting resources of the whole of Australia during an ongoing drought. As the fires gained hold and spread related problems became evident. As with previous bushfires, authorities have recognised the need to learn and plan for future similar events. Many of those plans have not been followed through. It is evident that short memories exist at all levels. There is no quantifiable severity rating scale for bushfires. Australia has suffered similar disastrous bushfires in decades past yet was unable to cope adequately on this occasion. All levels of Government have a need to learn as much as possible from this Royal Commission and move in the direction of improved future mitigation. To this end the Federal Government has issued Commonwealth Letters Patent-20 February, 2020 under the Royal Commissions Act of 1902.

When Great Britain gave us our Constitution and accompanying Acts to establish the Commonwealth of Australia, it was written in the unambiguous English of the day. British Common Law applied. Citizens' Protections and Rights were assumed enduring. The authors had little appreciation of the relentless changes that would follow, both within Australia and without. The meanings of words altered. The Judicature opted for no-risk interpretation of intent or meaning approach allowing the Constitution to become ineffective in vital areas.

Recent critical events in modern Australia indicate the Constitution to be overdue for review and update to better prepare all Citizens, including politicians for accelerating changes and inevitable but as yet unknown challenges. In this context, bushfires coupled to drought and notional climate change. Another disastrous turn of rapid events, Covid 19, has caused this Royal Commission to pale almost into insignificance. It must not fail in its purpose. Its findings will require urgent action

The drought has obvious engineering solutions. Australia is not inherently deficient in water. Water appears in the wrong place at the wrong time. The solution is water storage and transport\_ Dams, pumps and pipes. Australia has all the necessary skills for implementation. Water management must become a strategic inclusion in the Constitution.

Bushfires likewise have obvious engineering solutions. Removal of general fire load from residential areas requires revision of ill-conceived vegetation regulations giving precedence to tree survival over human survival. Reduction of sources of ignition. Improved use of existing fire fighting equipment will aid Improved fire fighting strategy. All of which involve stronger political will and fortitude than presently exists. There is no positive social or economic value in large trees in residential areas. These assume economic value once converted into firewood.

Had the drought, bushfires and Covid 19 coincided, our nation would undoubtedly be crippled if not mortally wounded. These crises are beyond the management skills of politicians.

By reinvigorating and strengthening the Constitution, the Commonwealth, comprising States and Territories will be better empowered to avoid constant turmoil from fast moving events yet to be

defined. At present, little time exists at any level for good governance and Political management in time of multiple crisis.

This Royal Commission provides a vehicle to make recommendations on broad scale that will begin necessary changes. The Letters Patent were rushed. Prejudices and bias are apparent. There appears to be a distinction in the minds of those who drafted the articles of this Royal Commission about event nomenclature, natural or national or simple disaster. There are no unnatural disasters, no international disasters that do not include Australia. The word disaster needs no prenominal.

The principal of "One ship, one Captain" must apply and the National Captain in time of Disaster must be the Prime Minister, not a Committee. The qualification of what is a disaster must be stated for Parliament to give effect to the Prime Minister's political actions. That implies, from PM down, every MP and Civil Service Departmental Head must have a formalised position description including responsibilities by which performance will be determined. Any doubt in the minds of key players in disaster mitigation must be removed. The Captain must rely on a prequalified Chief Disaster Executive with exceptional man management skills. Seconded senior Military Officers would be an example. Their appointment cannot be left until a disaster or crisis commences.

Time is of the essence for the Bushfire Royal Commission enquiries and reporting. For this submission to be timely and relevant it will also be brief and directed toward identifying some areas of Constitutional Strengthening that may improve Australia's future Disaster Management, including but not limited to bushfires, as called for in the Letters Patent terms of inquiry at a, b, c.

A mechanism for immediate strengthening the Constitution possibly lies in the Constitution itself at **Chapter II\_The Executive Government, 61. Executive power**, where it directs the Federal Executive Council to maintain the Constitution. In the long term, **Chapter VIII\_Alteration of the Constitution** would prevail, but that Chapter itself requires certain clarifications as demonstrated by history. Specifically, the Constitution requires a glossary of terminology and definitions at the beginning, immediately following the Index. Some parliamentary definitions such as that of simple majority, parliamentary majority, electoral majority are necessary. In a Democracy a simple majority of one is no majority. The Schedule following Chapter VIII requires enlargement to include proforma Position Descriptions for MPs, Senators, The Judicature and Senior Civil Servants. These in themselves do not represent Alterations but Additions covered by maintenance.

The following commentary refers to existing Australian Constitution Divisions, Chapters, sections and sub-sections that should be upgraded to improve bushfires mitigation

## **Chapter1\_ The Parliament**

### **1 Legislative power**

All States to be returned to this original model i.e. two Houses of Parliament

### **5. Sessions of Parliament, prorogation and dissolution**

Include electronic sessions and voting in emergency.

## Part II\_ The Senate

### 7. The Senate or at 16. Qualifications of Senator.

Include qualifications and Position Description Schedule.

### 13 Casual Vacancies.

Include; PM to fill in time of Emergency.

## PART III\_ The House of Representatives

### 24. Constitution of House of Representatives.

Retitle; Composition of House of Representatives

### 34. Qualification of members

(i) raise age to 25 years, some life experience is a necessity

Add (iii) he must have read and understood this Constitution be fully aware of the Schedule Position Description for MP.

### 44. Disqualification

Add; (vi) Practising members of the Legal Profession on the grounds they are financial beneficiaries of the prime purpose and output of the House, namely the Laws.

## Chapter II\_ The Executive Government

### 61. Executive power

The intent and definition of the word "maintenance" in this sub section is vital. The GG must retake the powers originally intended. Add on: Maintenance of this Constitution will occur continually and continuously by a Constitutional Development department comprising a Chair and two members, none of whom to be State or Federal MPs or members of the Judicature. Their role would be to accept Constitutional revision proposals from any Citizen of the Commonwealth, investigate and comment on these with recommended action to the GG in Council.

### 64. Ministers of State

Senators to be ineligible.

### 68. Command of naval and military forces.

Rename; Command of **armed** military forces.

No State or Territory will retain armed military forces.

Martial Law may be proclaimed by the GG in Council.

### 69. Transfer of certain departments, and retention as Government monopoly.

To include all departments of strategic importance.

posts, telegraph, **internet**, and telephone.

military defence, **border defence**  
lighthouses, lightships, beacons, **communication and mobile phone towers**, and buoys  
**seaports, airports**, quarantine.

### **Chapter III\_The Judicature**

A position description as set out in the Schedules shall be given to each judge upon appointment. It will ensure the rights of Citizens, trial by jury, burden of proof, and judicial impartiality are paramount and the Laws of Australia apply in advance of any International Law or Treaty. There will be Qualifications and Disqualifications to the Judicature. Judges shall be empowered to comment on, enforce and interpret the legislation they support to Parliament

#### **72. Judges appointment, tenure and remuneration.**

Judges shall be appointed servants of the Crown.

(i) shall be appointed by the GG on advice from the Attorney General.

(ii) shall not be removed except by the GG in council, or upon simple request from Parliament to the GG.

#### **In Summary**

It is submitted that cognisance be given to necessary Constitutional revisions identified herein to gain maximum effect from the whole of the expected recommendations from this Royal Commission.

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12 April 2020