



**LAW, JUSTICE AND SAFETY COMMITTEE**

**A preamble for the *Constitution of Queensland 2001***

**September 2009**

**Report No. 70**



## LAW, JUSTICE AND SAFETY COMMITTEE

### 53<sup>RD</sup> PARLIAMENT

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## **CHAIR'S FOREWORD**

This report represents the work both of the Law, Justice and Safety Committee of the current Parliament and of the Legal, Constitutional and Administrative Review Committee of the previous (52<sup>nd</sup>) Parliament.

These committees were tasked by the Legislative Assembly with developing a draft preamble for insertion in the *Constitution of Queensland 2001*. The inquiry process began following the first referral, made to the previous Committee in December 2008. That referral lapsed as a consequence of the dissolution of the Legislative Assembly in February 2009, prior to the general state election held in March 2009.

Shortly after the current Parliament was convened, it revived the inquiry by way of a fresh referral to the current Committee.

In summary, the referral required the Committee to:

- develop a draft preamble for the Queensland Constitution;
- include in the draft an aspirational statement on the commemoration of the 150<sup>th</sup> anniversary of the establishment of Queensland; and
- include a statement of due recognition of the state's Aboriginal and Torres Strait Islander people.

[The referral to the current Committee also asked the Committee to develop options for modernising the oaths and affirmations of allegiance in the *Constitution of Queensland 2001*. The Committee is reporting separately on that aspect.]

The preamble captures important core aspects of today's Queensland – elements which will continue to be relevant for future generations - such as sovereignty of the people and the rule of law, our system of representative and responsible government, our multi-cultural population, our environment and our history.

Importantly, the preamble acknowledges and honours Queensland's Aboriginal and Torres Strait Islander peoples and pays tribute to their ancient and enduring cultures, a significant step in the on-going reconciliation process.

I would like to thank the Queensland Aboriginal and Torres Strait Islander Advisory Council for meeting with the Committee and providing submissions on the statement of recognition. The Committee has accepted their proposed wording of the statement of recognition in full without amendment.

I thank those submitters and those who otherwise contributed to the inquiry, either by meeting with the Committee or appearing at the public hearing or the public forum. I acknowledge and express my appreciation for the work of all members of both the current and previous committees in the preparation of the draft preamble.

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**Ms Barbara Stone MP**  
Chair



## **BACKGROUND**

The Law, Justice and Safety Committee (LJSC or Committee) is a seven member multiparty committee of the Queensland Legislative Assembly established under the *Parliament of Queensland Act 2001*.

This report represents work both of the Legal, Constitutional and Administrative Review Committee of the 52<sup>nd</sup> Parliament and of the Law, Justice and Safety Committee of the 53<sup>rd</sup> Parliament.

## **THIS INQUIRY**

On 4 December 2008 the Legal, Constitutional and Administrative Review Committee of the 52<sup>nd</sup> Parliament received the following referral from the Legislative Assembly:

*That the Legal, Constitutional and Administrative Review Committee develop a draft preamble for insertion into the Constitution of Queensland 2001, which contains –*

- (1) an aspirational statement on the commemoration of the 150<sup>th</sup> anniversary of the establishment of Queensland; and*
- (2) a statement of due recognition to Queensland's Aboriginal and Torres Strait Islander people.*

*In developing the draft preamble, regard should be had to ensuring that the text to the preamble does not purport to include information to be used as an aid in statutory interpretation.*

*Stakeholders should be consulted during the development of the draft preamble, including the Aboriginal and Torres Strait Islander Advisory Council.*

This referral lapsed upon the dissolution of the Legislative Assembly in February 2009, prior to the general election of 23 March 2009.

On 23 April 2009, the newly convened Parliament provided a fresh referral in almost identical terms:

*1. The Legal, Constitutional and Administrative Review Committee develop options for modernising the oaths or affirmation of allegiance as outlined in Schedule 1 of the Constitution of Queensland 2001 and a draft preamble for insertion in the Constitution of Queensland 2001 which contains:*

- (i) an aspirational statement on the commemoration of the 150th anniversary of the establishment of Queensland; and*
- (ii) a statement of due recognition to Queensland's Aboriginal and Torres Strait Islander peoples.*

*2. In developing the draft preamble, regard should be had to ensuring that the text of the preamble does not purport to include information to be used as an aid in statutory interpretation.*

*3. Stakeholders should be consulted during the development of the draft preamble including the Aboriginal and Torres Strait Islander Advisory Council.*

*4. The Committee report, including its proposed text for the preamble, to the Legislative Assembly by 6 June 2009.*

On 2 June 2009, the Parliament extended the reporting date from 6 June 2009 to 3 September 2009.

In summary, the referral required the Committee to:

- develop a draft preamble for the *Constitution of Queensland 2001*;
- include in the draft preamble an aspirational statement on the commemoration of the 150<sup>th</sup> anniversary of the establishment of Queensland;
- include in the draft preamble a statement of due recognition of the state's Aboriginal and Torres Strait Islander people; and
- develop options for modernising the oaths and affirmations of allegiance contained in the *Constitution of Queensland 2001*.

This report deals with the draft preamble proposed by the Committee. The Committee has reported separately on the aspect of the referral relating to the oaths and affirmations of allegiance.

## THE INQUIRY PROCESS

The previous Committee undertook the following work in pursuance of the referral it had received:

- widely advertised for submissions in conjunction with the release of an issues paper in February 2009;
- wrote to approximately 950 stakeholders providing a copy of the issues paper and inviting submissions;
- met with members of the former Queensland Constitutional Reform Commission;<sup>1</sup>
- met with members of the Queensland Aboriginal and Torres Strait Advisory Council; and
- held a public forum in Townsville.

Following the fresh referral of 23 April 2009, the new Committee:

- advertised for submissions in conjunction with the release of an issues paper which was tabled on 7 May 2009;
- wrote, in early May 2009, to approximately 800 stakeholders providing a copy of the issues paper and inviting submissions;
- met with members of the Queensland Aboriginal and Torres Strait Advisory Council on two occasions; and
- held a public hearing in Brisbane.

The Committee resolved to have regard to the submissions received by its predecessor Committee.

A total of 203 submissions were received by the Committee, most of which are available on the Committee's website at [ljsc@parliament.qld.gov.au](mailto:ljsc@parliament.qld.gov.au)

More detail on the nature and content of the submissions is set out later in this report.

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<sup>1</sup> The Queensland Constitutional Review Commission formulated a draft preamble for the Queensland Constitution in February 2000. See Queensland Constitutional Review Commission, *Report on the possible reform and changes to the Acts and laws that relate to the Queensland Constitution*, February 2000, page 90.



## COMMITTEE RECOMMENDATIONS

This report provides the Committee's preamble for insertion into the *Constitution of Queensland 2001*, as required by the referral of 23 April 2009.

The Committee's recommendations, including its proposed preamble, are as follows:

### RECOMMENDATION 1

THE COMMITTEE RECOMMENDS THE FOLLOWING PREAMBLE BE INSERTED INTO THE *CONSTITUTION OF QUEENSLAND 2001*:

*The people of Queensland, free and equal citizens of Australia, subject to no law or authority but that sanctioned by this Constitution and the Constitution of Australia;*

- *intend through this Constitution, to foster the peace, welfare and good government of Queensland;*
- *adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution;*
- *honour the Aboriginal peoples and Torres Strait Islander peoples, the first Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community;*
- *determine to protect our unique environment;*
- *acknowledge the achievements of our forebears, coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us, and future generations, a realistic opportunity to strive for social harmony; and*
- *resolve on this the 150th anniversary of the establishment of Queensland, to nurture our inheritance, and build a society based on democracy, freedom and peace.*

### RECOMMENDATION 2

THAT PRIOR TO THE FINAL DECISION ON WHETHER TO INSERT A PREAMBLE INTO THE *CONSTITUTION OF QUEENSLAND 2001*, THE GOVERNMENT OBTAIN EXPERT LEGAL ADVICE ON ANY STATUTORY INTERPRETATION IMPLICATIONS WHICH MAY ARISE.

## 1. A PREAMBLE FOR THE CONSTITUTION

As required, the Committee has drafted a preamble which, in accordance with the referral, includes an aspirational statement on the commemoration of the 150<sup>th</sup> anniversary of the establishment of Queensland and a statement to recognise Queensland's Aboriginal and Torres Strait Islander peoples.

### 1.1 QUEENSLAND'S CONSTITUTION

The year of this report, 2009, sees the 150<sup>th</sup> anniversary of the separation of Queensland from New South Wales in 1859.

Queensland's constitution sits within a number of documents:

- *Constitution Act 1867*
- *Constitution Act Amendment Act 1890*
- *Constitution Act Amendment Act 1934*
- *Constitution of Queensland 2001*.

The aim of the *Constitution of Queensland 2001* was to consolidate the various constitutional provisions and documents then in operation into one clear and understandable document which could be easily accessed and understood. This objective was largely attained however, due to the entrenchment of certain constitutional provisions they remain within the earlier Acts. A referendum of the people of Queensland is required to alter or remove those provisions. A copy of these provisions can be found in attachments 1 to 4 of the *Constitution of Queensland 2001*.<sup>2</sup>

The *Constitution of Queensland 2001* has no entrenched provisions, and may be altered by an Act of Parliament.

### 1.2 WHAT IS A PREAMBLE?

A preamble is an introduction to an Act. A Constitutional preamble may outline the purpose of the Constitution, it may contain historical information on how the Constitution came about, and it may be aspirational in nature.

Queensland's *Constitution Act 1867* contained a lengthy preamble which covered seven areas:

1. power of alteration of the Constitution;
2. giving or withholding consent to bills;
3. disallowance of bills assented to;
4. assent to bills reserved;
5. Governor conforming to instructions from 'Her Majesty';
6. extending the Governor's powers as to giving or withholding the royal assent; and
7. reservation of bills.

The preamble to the 1867 Act was repealed by the *Constitution of Queensland 2001*.

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<sup>2</sup> The entrenched provisions are: sections 1, 2, 2A, 11A, 11B, 30, 40 and 53 *Constitution Act 1867*; section 2 *Constitution Act Amendment Act 1890*; and sections 3 and 4 *Constitution Act Amendment Act 1934*.

## 2. PREVIOUS CONSIDERATIONS OF A PREAMBLE

In Queensland there have been a number of considerations of constitutional preambles by predecessor Committees and by other bodies since 1999:

- the Queensland Constitutional Review Commission (1999-2000)
- the Legal, Constitutional and Administrative Review Committee – *Hands on Parliament* (2003)
- the Legal, Constitutional and Administrative Review Committee – *A preamble for the Queensland Constitution?* (2004)

### 2.1 THE QUEENSLAND CONSTITUTIONAL REVIEW COMMISSION

The Queensland Constitutional Review Commission (QCRC) was established in May 1999 to investigate and report on possible reforms to legislation relating to the Queensland Constitution.

As part of its inquiry, the QCRC considered the issue of a preamble for the then proposed Constitution, and produced a draft preamble. The QCRC recommended that there should be a preamble to the Queensland Constitution ‘to emphasise the new foundations of the State’s constitutional regime’ and that it should ‘affirm certain widely-held values’.<sup>3</sup>

It proposed the following preamble:<sup>4</sup>

*Since the Australia Acts 1986 no law made by the Parliament of the United Kingdom shall extend to the State of Queensland.*

*Previously the Parliament of the United Kingdom was the ultimate authority for the Acts, Laws and Documents relating to the Constitution of the State of Queensland.*

*We, the people of Queensland wish to continue as free and equal citizens under the Rule of Law, and to be governed in accordance with the democratic processes contained in this Constitution.*

*And being within the federal Commonwealth of Australia, we recognise we are subject also to its Constitution.*

*In a spirit of reconciliation, we recognise the contribution of both Aboriginal and Torres Strait Islander peoples as the original occupants and custodians of this land.*

*We declare that we respect the equality of all persons under the law, regardless of class, faith, gender, origin or race, and recognise the contribution they make to the State of Queensland.*

*We declare that we respect the land and the environment we all share.*

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<sup>3</sup> Queensland Constitutional Review Commission, *Report on the possible reform and changes to the Acts and laws that relate to the Queensland Constitution*, February 2000, page 29.

<sup>4</sup> Queensland Constitutional Review Commission, *Report on the possible reform and changes to the Acts and laws that relate to the Queensland Constitution*, February 2000, page 90.

The LCARC of the 51<sup>st</sup> Parliament resolved to consider QCRC recommendations regarding a preamble and reported on this matter in its 2004 report no. 46, *A preamble for the Queensland Constitution?* (see below).

## **2.2 LCARC REPORT NO 42, *HANDS ON PARLIAMENT***

The QCRC report recommended that LCARC conduct an inquiry into the possibility of special representation of Aboriginal and Torres Strait Islander communities in Queensland. In 2003 the Committee of the 50<sup>th</sup> Parliament resolved to commence such an inquiry, expanded to consider Indigenous peoples' participation in all levels of government.

The Committee identified and examined a number of barriers to Aboriginal and Torres Strait Islander peoples' involvement in democratic processes and made recommendations to overcome those barriers.

The Committee recommended that the issue of whether there should be a preamble should be fully examined by the Committee in a separate inquiry, effectively resourced by the Queensland Government.

Recommendation 2 of this report states:

*As a step towards constitutional recognition of Aboriginal and Torres Strait Islander peoples, the Legal, Constitutional and Administrative Review Committee should consider the issue of a preamble for the Constitution of Queensland 2001 and, in particular, inclusion in that preamble of due recognition of Aboriginal and Torres Strait Islander peoples.*

*Given the need to conduct wide public consultation regarding this issue, the Queensland Government should appropriately resource the committee to effectively carry out this task.*

## **2.3 LCARC REPORT NO 46, *A PREAMBLE FOR THE QUEENSLAND CONSTITUTION?***

In response to recommendation 2 of the Hands on Parliament Report (above), the Committee of the 51<sup>st</sup> Parliament commenced an inquiry into whether there should be a preamble to the Queensland Constitution. That Committee received 134 submissions; 55 of these submissions were form letters which briefly stated that no preamble was desired.

That Committee recommended that there should not be a preamble to the Constitution at that stage. In Report no 46, the Committee's reasons for this recommendation included:

- *the public input received by the committee demonstrates insufficient support for a preamble to the Queensland Constitution;*
- *uncertainty exists as to how such a preamble should or might be used to interpret the Constitution, particularly if that preamble contained statements of values or aspirations;*
- *concerns exist about the time, effort and public money required to develop and enact a preamble and whether these resources might be better directed to other competing needs for reform, such as recommendations by previous LCARCs for constitutional reform;*
- *the preamble would need to be modified again if Australia moves to a republican system of government;*
- *further steps need to be undertaken to complete the consolidation of the Queensland Constitution;*

- *there is a lack of consistency between the content of the Queensland Constitution and the proposed aspirational elements of the preamble;*
- *given the nature of the consolidated Queensland Constitution, a preamble enacted now could not set out the reasons for the enactment of the provisions in their original form; and*
- *given that the adoption of a preamble by the people of Queensland would be conditional on their broad support for the wording of that preamble, significant and prolonged consultation would be required to develop the form and text. Such consultation should, more appropriately, take place following substantive constitutional reform, or if the Queensland Constitution is to be amended at some time to effect change to a republican system of government.<sup>5</sup>*

The Government, in its response to report 46, stated:

*Given the apparent lack of public support for a preamble, concerns as to how a preamble should or might be used to interpret the Constitution, and other concerns raised by the Committee, there is insufficient justification for the Government to seek to include a preamble in Queensland's Constitution.*

*Furthermore, as noted by the Committee, there is continuing debate in the community regarding a republican system of government in Australia. Any change to a republican system of government would require significant constitutional amendment to both Federal and State constitutions. It is likely that this would include amendment of any preamble to the Queensland Constitution.*

*While finalising the constitutional reform process is desirable, it would be impractical to undertake this type of reform while the prospect of a change to a republican system of government remains on the agenda. Accordingly, it would be appropriate to delay the question of a preamble until the issue of an Australian republic has again been put to the people.<sup>6</sup>*

### **3. PREAMBLES IN OTHER JURISDICTIONS**

The Committee has considered constitutional preambles in other jurisdictions. The Committee of the previous Parliament set out several of these preambles in its February 2009 issues paper.<sup>7</sup>

#### **3.1 AUSTRALIA**

The preamble to the Australian Constitution does not contain any aspirational statements or fundamental foundations, other than that the union of the Federal Commonwealth is to be indefeasible. It states:<sup>8</sup>

*Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one*

<sup>5</sup> Legal, Constitutional and Administrative Review Committee, *A Preamble for the Queensland Constitution?*, report no 46, November 2004, page 23, available at [www.parliament.qld.gov.au/ljsc](http://www.parliament.qld.gov.au/ljsc)

<sup>6</sup> The final Government response to Report 46 was tabled on 19 May 2005. It may be accessed at the 'Responses' section of [www.parliament.qld.gov.au/ljsc](http://www.parliament.qld.gov.au/ljsc)

<sup>7</sup> Legal, Constitutional and Administrative Review Committee, *A preamble for the Queensland Constitution*, Issues Paper, February 2009, pages 8-9, available at [www.parliament.qld.gov.au/ljsc](http://www.parliament.qld.gov.au/ljsc)

<sup>8</sup> <http://www.aph.gov.au/Senate/general/constitution/preamble.htm> - viewed 2 June 2009.

*indefeasible Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:*

*And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies possessions of the Queen:*

*Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:*

The other Australian jurisdictions which have a constitutional preamble, (Tasmania, Victoria, and Western Australia) have formal preambles which recite procedural information and do not contain aspirational statements in the sense required by the Committee's referral.

### **3.2 PREAMBLES IN OTHER COUNTRIES**

The Committee has also considered preambles to Constitutions in other countries including France, India, Ireland, Japan, the Russian Federation, South Africa, Sri Lanka, and the USA.

The Committee notes that these preambles contain aspirational statements, their enactment often followed specific events which made a significant constitutional alteration to that country, such as war, or a dramatic change in the style of government.

## **4. WHAT THE COMMITTEE HEARD**

The Committee, and the previous Committee, canvassed a range of issues in the two issues papers (February 2009 and May 2009) regarding:

- what should be included in a preamble;
- whether it is desirable for Queensland to have a constitutional preamble; and
- how a preamble should be implemented.

The Committee received over 200 submissions in response to its two issues papers, hearings and call for submissions.

The Committee received 140 submissions, which included three variations of form letters, which stated that no preamble is desired. Almost all of these submissions provided no reasons for opposition to a preamble. A further 19 submissions opposed any preamble, with reasons.

A further four submissions did not support having a preamble, but provided suggestions as to the content of any preamble.

### **4.1 RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES**

The referral requires that the preamble contain a statement of due recognition to Queensland's Aboriginal and Torres Strait Islander peoples.

The Committee heard differing views as to what form this statement should take. A number of submissions were supportive of this requirement of the referral.<sup>9</sup>

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<sup>9</sup> The Committee notes that some submissions were not supportive of this requirement of the referral.

Jackie Huggins, a lecturer and former member of the Queensland Constitutional Review Commission, stated that due recognition of Queensland's Aboriginal and Torres Strait Islander peoples was a 'positive step forward' in the reconciliation process.

*The statement is a strong symbolic gesture of union between Indigenous and non-Indigenous Australians. This will be a positive step forward in the process of reconciliation.*

Ms Huggins' suggested wording regarding recognition of Queensland's Aboriginal and Torres Strait Islander peoples reads:

*...in a spirit of reconciliation, we recognise the continuing contribution of both Aboriginal and Torres Strait Islander peoples as the traditional owners of this land.<sup>10</sup>*

Dr Paul Reynolds stated:

*In my view it is imperative that the original inhabitants of Australia be mentioned in any proposed preamble. Their status as original owners and occupiers of the land and their continuing role as custodians of the sacred sites need emphasis. Past wrongs and injustices must be acknowledged.<sup>11</sup>*

The Committee considers that the recognition of Queensland's Aboriginal and Torres Strait Islander peoples is an important step in the reconciliation process.

The Committee consulted with the Queensland Aboriginal and Torres Strait Islander Advisory Council on a number of occasions. The previous Committee met with the Advisory Council at its inaugural meeting on 13 February 2009 and the Committee met with the Advisory Council on two occasions.

The Advisory Council provided an initial submission to the Committee.<sup>12</sup> The submission stated that culturally significant terms preferred by the Advisory Council are:

- *unique values;*
- *land, water and air;*
- *traditional owner, not custodian; and*
- *ancient and enduring cultures.*

At the invitation of the Committee, the Advisory Council provided a second submission which proposed the following wording on the statement of recognition:

*[The people of Queensland] honour the Aboriginal peoples and Torres Strait Islander peoples, the first Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community.<sup>13</sup>*

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<sup>10</sup> Submission No. 100, Jackie Huggins.

<sup>11</sup> Submission No. 40, Dr Paul Reynolds.

<sup>12</sup> Submission No. 197, Desley Boyle MP, Minister for Local Government, and Aboriginal and Torres Strait Islander Partnerships on behalf of the Queensland Aboriginal and Torres Strait Islander Advisory Council.

<sup>13</sup> Submission No. 203, Desley Boyle MP, Minister for Local Government, and Aboriginal and Torres Strait Islander Partnerships on behalf of the Queensland Aboriginal and Torres Strait Islander Advisory Council.

Following consideration of all of the submissions and information available to the Committee on this aspect of the referral, the Committee has adopted the wording provided by the Advisory Council in its second submission to the Committee in full without amendment.

## 4.2 CONSTITUTIONAL RECOGNITION

A number of submissions which supported due recognition of Aboriginal and Torres Strait Islander peoples also recommended that it would be appropriate, and more meaningful, if recognition was contained in a provision within the Constitution itself as opposed to a preamble.

The Committee notes the submissions requesting recognition of Queensland's Aboriginal peoples and Torres Strait Islander peoples within a constitutional provision. The Committee acknowledges that a recommendation of this nature is outside the requirements of the Committee's referral to draft a preamble.

## 4.3 AN ASPIRATIONAL STATEMENT

The referral requires that the preamble contain an aspirational statement on the commemoration of the 150<sup>th</sup> anniversary of the establishment of Queensland.

The previous Committee heard from a number of people at its public forum in Townsville. In particular, the previous Committee heard from Mr Max Lenoy that although the anniversary commemorates the 150 years since the establishment of the colony of Queensland, Aboriginal and Torres Strait Islander peoples inhabited this land for many years prior to this event.<sup>14</sup>

The Committee also considers that the 150<sup>th</sup> anniversary of the establishment of Queensland is an important milestone in Queensland's history. It is a point at which Queenslanders, united in diversity, can look back at the lessons offered from our past and continue to build upon the advances and endeavours of all Queenslanders, advances which make Queensland the place it is today.

The Committee acknowledges the injustices and struggles suffered by many Queenslanders, particularly Indigenous Queenslanders, whilst also commending the drive of our forebears to attain collective harmony for all who choose Queensland as their home.

Dr Paul Reynolds suggests that any aspirational statement in the preamble risks being 'banal and cliché ridden' if it tries to be all things to all people.<sup>15</sup>

Another submitter suggests that a preamble should not have aspirational elements; rather it should refer only to usual constitutional principles:

*I find the idea of expressing some 'vision for the state's future' in the Constitution quite ludicrous, **if** by that the resolution means that we should consider things beyond the usual constitutional principles such as government according to democratic principles, the rule of law and equality before the law...if you think we should have a preamble at all, those things certainly should be mentioned.*

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<sup>14</sup> Friday, 20 February 2009, held in the Mayoral Reception Room, Townsville City Council Chambers; Mr Lenoy provided comment in his personal capacity and not in relation to his membership of the Queensland Aboriginal and Torres Strait Islander Advisory Council.

<sup>15</sup> Submission No. 119, Dr Paul Reynolds.



Constitutional principles *belong in it; general back-slapping or day-dreaming do not. And since the Constitution is a document that is intended to have a long-term effect, it would seem very odd in some years' time for people to be reading a statement that says 'on the occasion of the 150<sup>th</sup> anniversary of the State, blah, blah, blah...'*<sup>16</sup>

The Committee acknowledges that all individual Queenslanders have their own aspirations and ideological ideals, and that it would be an impossible task to try to represent these in the preamble.

In drafting the preamble the Committee has incorporated a broad aspirational element which captures the essence of the constitutional framework and system of government in Queensland, acknowledges our past, recognises and honours Queensland's Aboriginal and Torres Strait Islander peoples, and looks to the future of Queensland based on democracy, freedom and peace.

#### 4.4 CULTURAL DIVERSITY

The Committee considers it important to recognise Queensland's diverse, multicultural community in the preamble. To endeavour to list all of the multicultural elements in Queensland's diverse community would be a fruitless task and would undoubtedly lead to the exclusion of a number of groups or communities.

In general, submissions favoured a general approach to acknowledging and recognising the many cultures present in Queensland's society.

Multicultural Affairs Queensland's submission stated that as Queensland is home to more than 200 cultures, with over 220 languages spoken, this diversity is a strength which should be recognised in the preamble. The Department recommended the following text:

*We declare that we respect the equality of all persons under the law, regardless of class, faith, gender, origin, **culture** or race, and **value** the contribution they make to the State of Queensland.*<sup>17</sup>

At the previous Committee's public forum in Townsville, Mr Bill Mitchell, of the Townsville Community Legal Centre, stated that the preamble should show '*equality, dignity and respect for all*'.

He went on to say that it is likely to be exclusive if the Committee tries to name all groups in preamble and that descriptors should not be used, (aside from recognition of Aboriginal peoples and Torres Strait Island peoples) as they are potentially exclusive, e.g. class, age, gender, sexual orientation. Though he did recognise that, on the other hand, the preamble could also potentially be exclusive if it was try to encapsulate all peoples in one term.<sup>18</sup>

This sentiment was contained in many of the submissions which favoured recognition of Queensland's diverse multicultural society.

*The task before us all should be to contribute in a purposeful way to strengthening the common values that connect and unify people who come from divergent cultural traditions,*

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<sup>16</sup> Submission No. 178, John Pyke, Lecturer, Queensland University of Technology.

<sup>17</sup> Submission No. 146, Multicultural Affairs Queensland (bold in original).

<sup>18</sup> Friday, 20 February 2009, held in the Mayoral Reception Room, Townsville City Council Chambers.

*and an appropriately worded Preamble can make a significant contribution to this process.*<sup>19</sup>

#### **4.5 ENVIRONMENT**

The Committee received submissions which addressed the environment. There was strong support in these submissions for the statement regarding the environment contained in the QCRC report: *We declare that we respect the land and the environment we all share.*

Submissions referred to the fact that we are the stewards of the land or environment we live in.

The Committee has included the following wording in the preamble in relation to the environment:

*‘[The people of Queensland...] determine to protect our unique environment’*

### **5. THE COMMITTEE’S PROPOSED PREAMBLE**

#### **RECOMMENDATION 1**

THE COMMITTEE RECOMMENDS THE FOLLOWING PREAMBLE BE INSERTED INTO THE *CONSTITUTION OF QUEENSLAND 2001*:

*The people of Queensland, free and equal citizens of Australia, subject to no law or authority but that sanctioned by this Constitution and the Constitution of Australia;*

- *intend through this Constitution, to foster the peace, welfare and good government of Queensland;*
- *adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution;*
- *honour the Aboriginal peoples and Torres Strait Islander peoples, the first Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community;*
- *determine to protect our unique environment;*
- *acknowledge the achievements of our forebears, coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us, and future generations, a realistic opportunity to strive for social harmony; and*
- *resolve on this the 150th anniversary of the establishment of Queensland, to nurture our inheritance, and build a society based on democracy, freedom and peace.*

### **6. STATUTORY INTERPRETATION**

The referral to the Committee requires that any wording used in the preamble does not purport to include information which could be used as an aid in statutory interpretation of the Constitution.

<sup>19</sup> Submission No. 119, Zelda Bailey.

Statutory interpretation in Queensland is governed by the *Acts Interpretation Act 1954*. A preamble to an Act can be used to determine a legal question where it assists in resolving existing ambiguity in the operative provisions of an Act.<sup>20</sup> Section 36 *Acts Interpretation Act 1954* defines ‘provision’ as including a preamble. As a provision of the Act the preamble can be used as an intrinsic aid to interpret the Act.

In 2004 the Committee of the 51<sup>st</sup> Parliament, in Report 46, addressed this issue. That Committee held a round table discussion with members of Queensland’s Constitutional Lawyers and academics to consider matters including the statutory interpretation of a constitutional preamble. The views of the constitutional lawyers and academics differed on the statutory interpretation implications of a preamble to the Queensland Constitution.

That Committee (of the 51<sup>st</sup> Parliament) cited the uncertainty of how a constitutional preamble could be used to interpret the Constitution, particularly if it contained aspirational statements or values.<sup>21</sup>

As stated in the issues paper of the Committee of the 52<sup>nd</sup> Parliament of February 2009, the effect of a constitutional preamble in statutory interpretation continues to be fraught with uncertainty.<sup>22</sup>

Professor George Williams (Anthony Mason Professor and Foundation Director of the Gilbert and Tobin Centre of Public Law) provided a submission on this aspect of the referral, citing an article he had co-authored:

*...Although a preamble does not create substantive rights or obligations, its symbolic aspect may assist in the interpretation of the constitution itself by providing normative guidance. Thus, in its second, justiciable aspect, a preamble can be used in constitutional interpretation and in the construction of statutes in the development of the common law as a legally useful statement of fundamental values.*<sup>23</sup>

The Committee discussed aspects of its referral including the matter of statutory interpretation with Professor Gerard Carney. Professor Carney noted that the question of statutory interpretation of the Queensland Constitution rarely arises in the courts. He advised that if this question did arise, a court might use the preamble as an intrinsic aid to interpretation where a constitutional term is imprecise. Further, if a court did use the preamble in this way, because the *Constitution of Queensland 2001* is not entrenched, the Parliament could respond to any concerns that might arise relatively quickly.

The Committee notes the divergent views expressed by attendees at the round-table discussion in 2004 and the advice of Professor Gerard Carney.

The Committee has prepared a draft preamble for insertion into the Constitution as required by the referral. In developing that preamble, the Committee has had regard to ensuring that the text

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<sup>20</sup> G Graven, ‘The Constitutionality of the Unilateral Secession of an Australian State’, *Federal Law Review*, vol 15, 1684, 123-135 at page 136.

<sup>21</sup> LCARC, *A Preamble for the Queensland Constitution?*, report no 46, November 2004, page 23 available at [www.parliament.qld.gov.au/ljsc](http://www.parliament.qld.gov.au/ljsc)

<sup>22</sup> LCARC, *A preamble for the Queensland Constitution*, Issues Paper, February 2009, page 13 available at [www.parliament.qld.gov.au/ljsc](http://www.parliament.qld.gov.au/ljsc)

<sup>23</sup> Submission No. 186, George Williams, Gilbert and Tobin Centre of Public Law, citing McKenna, M, Simpson, A, and Williams G., *First Words: The Preamble to the Australian Constitution* (2001) University of New South Wales Law Journal 382, page 382-383.

of the preamble does not purport to include information to be used as an aid in statutory interpretation. However, having regard to the divergence of views expressed at the round-table and elsewhere including in academic works, the Committee recommends that the Government seek expert advice on whether there are statutory interpretation implications prior to insertion of the preamble into the *Constitution of Queensland 2001*.

**RECOMMENDATION 2**

THAT PRIOR TO THE FINAL DECISION ON WHETHER TO INSERT A PREAMBLE INTO THE *CONSTITUTION OF QUEENSLAND 2001*, THE GOVERNMENT OBTAIN EXPERT LEGAL ADVICE ON ANY STATUTORY INTERPRETATION IMPLICATIONS WHICH MAY ARISE.

## 7. STATEMENT OF RESERVATION

We, the undersigned, support with reservation, recommendations 1 and 2, below.

### RECOMMENDATION 1

THE COMMITTEE RECOMMENDS THE FOLLOWING PREAMBLE BE INSERTED INTO THE *CONSTITUTION OF QUEENSLAND 2001*:

*The people of Queensland, free and equal citizens of Australia, subject to no law or authority but that sanctioned by this Constitution and the Constitution of Australia;*

- *intend through this Constitution, to foster the peace, welfare and good government of Queensland;*
- *adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution;*
- *honour the Aboriginal peoples and Torres Strait Islander peoples, the first Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community;*
- *determine to protect our unique environment;*
- *acknowledge the achievements of our forebears, coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us, and future generations, a realistic opportunity to strive for social harmony; and*
- *resolve on this the 150th anniversary of the establishment of Queensland, to nurture our inheritance, and build a society based on democracy, freedom and peace.*

### RECOMMENDATION 2

THAT PRIOR TO THE FINAL DECISION ON WHETHER TO INSERT A PREAMBLE INTO THE *CONSTITUTION OF QUEENSLAND 2001*, THE GOVERNMENT OBTAIN EXPERT LEGAL ADVICE ON ANY STATUTORY INTERPRETATION IMPLICATIONS WHICH MAY ARISE.

However, we wish to express reservations with respect to certain issues of process encountered during the committee's consideration of this matter.

#### 1. LIMITED PUBLIC SUPPORT FOR A PREAMBLE

The referral from the Parliament required the committee to develop a draft preamble for insertion into the Constitution of Queensland.<sup>24</sup> While the committee has fulfilled its obligations to the Parliament with respect to the referral, we note the majority of public submissions did not support the inclusion of a preamble into the Queensland Constitution and felt that a preamble was neither required nor necessary.

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<sup>24</sup> *Constitution of Queensland 2001.*

Report No 46 of the Legal, Constitutional and Administrative Review Committee<sup>25</sup> (to which the Law, Justice and Safety Committee is a successor), titled ‘A preamble for the Queensland Constitution?’, tabled in November 2004, recommended against the insertion of a preamble in the Queensland Constitution. The committee made the following observations in support of its recommendation:

*The committee does not believe that a preamble for the Queensland Constitution should be developed or enacted at this time. The reasons for this conclusion include:*

- *the public input received by the committee demonstrates insufficient support for a preamble to the Queensland Constitution;*
- *uncertainty exists as to how such a preamble should or might be used to interpret the Constitution, particularly if that preamble contained statements of values or aspirations;*
- *concerns exist about the time, effort and public money required to develop and enact a preamble and whether these resources might be better directed to other competing needs for reform, such as recommendations by previous LCARCs for constitutional reform;*
- *the preamble would need to be modified again if Australia moves to a republican system of government;*
- *further steps need to be undertaken to complete the consolidation of the Queensland Constitution;*
- *there is a lack of consistency between the content of the Queensland Constitution and the proposed aspirational elements of the preamble;*
- *given the nature of the consolidated Queensland Constitution, a preamble enacted now could not set out the reasons for the enactment of the provisions in their original form; and*
- *given that the adoption of a preamble by the people of Queensland would be conditional on their broad support for the wording of that preamble, significant and prolonged consultation would be required to develop the form and text. Such consultation should, more appropriately, take place following substantive constitutional reform, or if the Queensland Constitution is to be amended at some time to effect change to a republican system of government.*

A cursory examination of the public submissions and other material considered by the committee reveals that many, if not all of the matters outlined by the Legal, Constitutional and Administrative Review Committee of the 51<sup>st</sup> Parliament remain relevant and yet to be resolved. The Government’s acceptance of the recommendation of Report No 46 should inform and instruct Members of the 53<sup>rd</sup> Parliament in respect of these recommendations from the Law, Justice and Safety Committee.

## **2. CORRESPONDENCE FROM THE HONOURABLE DESLEY BOYLE MP**

In accordance with the referral from the Parliament, the committee consulted the Aboriginal and Torres Strait Islander Advisory Council in respect of the incorporation into the draft preamble of a statement of due recognition to Queensland’s Aboriginal and Torres Strait Islander people. A letter dated 27 June 2009 from The Honourable Desley Boyle MP, Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships, in her capacity as Chair of the Advisory Council, stated, in part, that:

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<sup>25</sup> Legal, Constitutional and Administrative Review Committee, *A Preamble for the Queensland Constitution*, Report No 46, Brisbane, 30 November 2004.

.....Your proposed wording has been reviewed and members **require** it to be more culturally atoned to both Aboriginal peoples and Torres Strait Islander peoples and therefore, the term “first inhabitants” needs to be replaced with “First Australians”.....

.....The wording for the Preamble for the Constitution **required** by the Advisory Council is as follows:.....

.....Given the expertise and cultural authority of the Advisory Council, I ask that you accept this recommended wording in full without further amendment.....

Although the Committee ultimately accepted the advice of the Advisory Council, we are concerned about the way in which this advice was provided. In particular, we are concerned about the expression of this advice by the Minister. The referral from the Parliament required the committee to consult relevant stakeholders (and specifically the Advisory Council). However, the referral did not direct the committee to adopt the submission from any stakeholder group, including the Advisory Council.

Our reservation derives from the degree to which the Minister’s correspondence seeks to direct the committee. The Law, Justice and Safety Committee, as a committee of the Parliament, cannot be directed by any entity, save for the Parliament itself.

### **3. NEED FOR A REFERENDUM OF THE PEOPLE OF QUEENSLAND**

Public submissions received by the committee demonstrated minimal support for a preamble. There was a clear desire and preference for any proposed preamble to be approved by the people of Queensland by way of a referendum. In the absence of a comprehensive public consultation process, a referendum is the only way to ensure any proposed preamble can claim to legitimately enjoy the support and approval of the people of Queensland. Accordingly, we believe that any proposed preamble ought to be put to the people of Queensland at a referendum.

### **4. STATUTORY INTERPRETATION OF A PREAMBLE**

The referral to the committee from the Parliament states that regard should be had to ensuring that the text of the preamble does not purport to include information to be used as an aid in statutory interpretation. The *Acts Interpretation Act 1954* applies to all Acts of the Queensland Parliament. Should a preamble be inserted into the *Constitution of Queensland Act 2001*, a preamble could be used as an aid in statutory interpretation of the Queensland Constitution and other statutes.

We are concerned about a preamble, without first being considered and approved by the people of Queensland by way of a referendum, being used to interpret statutes. It was noted by Professor George Williams in his submission to the committee that:

*Although a preamble does not create substantive rights or obligations, its symbolic aspect may assist in the interpretation of the construction itself by providing normative guidance. Thus, in its second reading, justiciable aspect, a preamble can be used in constitutional interpretation and in the construction of statutes in the development of the common law as a legally useful statement of fundamental values.*<sup>26</sup>

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<sup>26</sup> Submission No. 186, George Williams, Gilbert and Tobin Centre of Public Law, citing McKenna. M, Simpson. A, and Williams G., *First Words: The Preamble to the Australian Constitution* (2001) University of New South Wales Law Journal 382, pages 382-383.

No submission or advice received by the committee could discount the argument that under the *Acts Interpretation Act 1954*, the preamble can be used to interpret the Queensland Constitution and other statutes. Our concern is underlined by recommendation 2, where the committee recommends the Government obtain expert legal advice in respect of this matter. Further, it is our view that such legal advice should not be obtained from the Solicitor General and/or Crown Law, but that it should be from an expert or experts, completely independent of the Government.

[electronic

signatures

removed]

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**Mr Andrew Cripps MP**  
**Member for Hinchinbrook**

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**Mr Jarrod Bleijie MP**  
**Member for Kawana**

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**Mr Aidan McLindon MP**  
**Member for Beaudesert**