



Legal, Constitutional and Administrative Review Committee

A PREAMBLE FOR THE QUEENSLAND CONSTITUTION

**ISSUES PAPER
FEBRUARY 2009**

The purpose of this paper is to facilitate the Committee's call for public submissions on the wording of a preamble for the Queensland Constitution.

The closing date for submissions is Friday, 13 March 2009. Please see the back page of this paper for guidelines on making a submission and the committee's contact details.

INTRODUCTION

The Legal, Constitutional and Administrative Review Committee of the Queensland Parliament is to draft a preamble for the Queensland Constitution. This follows a referral to the Committee from the Parliament.

On 4 December 2008 the Committee 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 150th 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.

The committee is to report, including its proposed text for the preamble, to the Legislative Assembly by 21 April 2009.

In summary, the referral requires the Committee to:

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

The Committee must provide a draft preamble to the Legislative Assembly by 21 April 2009.

As required, the Committee will draft a preamble which will, in accordance with the referral, include an aspirational statement on the commemoration of the 150th anniversary of the establishment of Queensland, and a statement to recognise Queensland's Aboriginal and Torres Strait Islander people.

The Committee of the 51st Parliament (the previous Committee) inquired into a preamble for the Queensland Constitution. In its report in November 2004 the Committee recommended that there be no preamble at that time.¹

THIS ISSUES PAPER

The Committee is releasing this issues paper to inform the drafting process and to assist the public in having input into that process. The Committee will also be consulting by meeting with community groups.

In an issues paper dated June 2004, the previous Committee canvassed a range of matters regarding both the desirability of, and the content of, a preamble. Those matters largely remain relevant to this current inquiry. Accordingly, this issues paper draws considerably upon the content of the 2004 paper.²

The Committee is conscious of the outcome of recent considerations of the issue of a preamble by the Committee and its predecessors and others.

¹ Legal, Constitutional and Administrative Review Committee, Report 46, *A preamble for the Queensland Constitution?*, November 2004, page 23. An electronic copy of this report is available at www.parliament.qld.gov.au/lcsrc

² Legal, Constitutional and Administrative Review Committee, Issues Paper, *A preamble for the Queensland Constitution?* June 2004. An electronic copy of this paper is available at www.parliament.qld.gov.au/lcsrc

Outlined below is a brief summary of recent considerations of a constitutional preamble by the Committee and by other bodies since 1999:

- The Queensland Constitutional Review Commission (1999-2000)
- Referendum on including a preamble in the Australian Constitution (November 1999)
- Legal, Constitutional and Administrative Review Committee – *Hands on Parliament* (2003)
- Legal, Constitutional and Administrative Review Committee – *A preamble for the Queensland Constitution?* (2004)

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. [Since the QCRC report, the *Constitution of Queensland 2001* has come into force, and it is for that document that the Committee is drafting a preamble.]

The QCRC's 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*'.³

It proposed the following preamble:⁴

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.

THE 1999 REFERENDUM FOR A PREAMBLE TO THE AUSTRALIAN CONSTITUTION

On 6 November 1999 Australians voted on two referendum proposals. The first question was to change the Constitution to create a republic. The second proposal was to add a preamble to the Australian Constitution.

³ 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.

⁴ 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 preamble put to the people was as follows:

With hope in God, the Commonwealth of Australia is constituted as a democracy with a federal system of government to serve the common good.

We the Australian people commit ourselves to this Constitution proud that our national unity has been forged by Australians from many ancestries;

never forgetting the sacrifices of all who defended our country and our liberty in time of war;

upholding freedom, tolerance, individual dignity and the rule of law;

honouring Aborigines and Torres Strait Islanders, the nation's first people, for their kinship with their lands and for their ancient and continuing cultures which enrich the life of our country;

recognising the nation-building contribution of generations of immigrants;

mindful of our responsibility to protect our unique natural environment;

supportive of achievement as well as equality of opportunity for all;

and valuing independence as dearly as the national spirit which binds us together in both adversity and success.⁵

In accordance with a recommendation of the Commonwealth Constitutional Convention⁶, the 1999 referendum also proposed adding a new section to the Constitution providing that the preamble would have no legal effect and could not be used to interpret the Constitution or any other law.⁷

Both proposals failed at the referendum.

Australians voted against inclusion of this preamble in the Australian Constitution. Nationally, 60.66% of people voted against the proposed preamble. The figure was significantly higher in Queensland where 67.19% of the voting population voted against the proposal. This was the highest 'no' vote of all the states and territories.⁸

HANDS ON PARLIAMENT

In 2003, in accordance with a recommendation by the QCRC, the Legal, Constitutional and Administrative Review Committee of the 50th Parliament commenced an inquiry into the possibility of special representation of Aboriginal and Torres Strait Islander communities in Queensland. The inquiry - Hands on Parliament - was expanded to consider Indigenous peoples' participation in all levels of government and the processes that feed into those levels.

In its Hands on Parliament report in September 2003, the Committee of the 50th Parliament recommended that the issue of whether there should be a preamble should be examined by the Committee and that such an inquiry should be effectively resourced by the Queensland Government.

Recommendation 2 in this report stated:

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.

⁵ Constitution Alteration (Preamble) Bill 1999 (Cth), Schedule.

⁶ Commonwealth Constitutional Convention, *Report of the Constitutional Convention: Vol 1 – Report on Proceedings*, 1998, CanPrint Communications Pty Ltd, page 36.

⁷ Constitution Alteration (Preamble) Bill 1999 (Cth), clause 4 sought to insert a new s 125A into the Constitution.

⁸ The referendum results can be accessed at www.aec.gov.au/Elections/referendums/1999/Referendum_Reports_Statistics/summary_preamble.htm

*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.*⁹

The Committee's recommendation was noted by the Government in its response to the Hands on Parliament report. The Government advised that any such funding would be determined by the Cabinet Budget Review Committee.¹⁰

The Government response also contained a request that the Committee conduct an interim evaluation of the implementation of the recommendations in the report after a full electoral cycle, or three years.

In accordance with that request, in 2007 the present Committee conducted an interim evaluation of the implementation of recommendations in the Hands on Parliament report.

The Committee heard strong support for recognition of Aboriginal and Torres Strait Islander peoples, through either a preamble or a separate section in the Constitution.

The Committee noted in its Hands on Parliament interim evaluation report that in 2004 Victoria recognised Aboriginal people in a section of its Constitution, rather than in the preamble.¹¹ Further, the Law Reform Commission of Western Australia recommended that the Constitution of that State be amended to recognise Aboriginal people, and that to be taken as a serious conciliatory gesture this must be done in a dedicated provision rather than a preamble.¹²

The Committee stated that, in the event that a referendum was held to include formal recognition of Indigenous Australians in the preamble to the Australian Constitution, that might prove to be an opportune time for Queensland to reconsider the issue.¹³

THE PREVIOUS COMMITTEE'S INQUIRY

The previous Committee inquired into a preamble for the Queensland Constitution. That Committee's inquiry followed on from part of the review of the Constitution undertaken by the QCRC. [See further at page 3 above.]

In response to its issues paper of June 2004 the previous Committee received 134 submissions.

That Committee tabled its report - A preamble for the Queensland Constitution? - in November 2004. The Committee recommended there should be no preamble at that time. Reasons for the Committee's recommendation included:

- insufficient support for a preamble to the Constitution;
- uncertainty 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 about the time, effort and public money required to develop and enact a preamble;
- the possible need to modify any preamble if Australia moved to a republican system of government;
- further steps [then] required to complete the consolidation of the Queensland Constitution;

⁹ Legal, Constitutional and Administrative Review Committee, Report 42, *Hands on Parliament*, September 2003, page 21. An electronic copy of this report is available at www.parliament.qld.gov.au/lcsrc

¹⁰ The Government response was tabled on 28 April 2004 and is available at www.parliament.qld.gov.au/lcsrc

¹¹ s1A *Constitution Act 1975* (Vic) – see further at section 9 below.

¹² Law Reform Commission of Western Australia, *Aboriginal Customary Law, The interaction of Western Australian law with Aboriginal law and culture, Final Report, Project 94*, September 2006, page 74.

¹³ Legal, Constitutional and Administrative Review Committee, Report 61, *Hands on Parliament interim evaluation*, November 2007, page 14. An electronic copy of this report is available at www.parliament.qld.gov.au/lcsrc

- a lack of consistency between the content of the [then] Queensland Constitution and the proposed aspirational elements of the preamble;
- given the nature of the consolidated Queensland Constitution, a preamble enacted then 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.¹⁴

The Committee considered the draft preamble proposed by the QCRC. Given that the Committee recommended against a preamble, it did not draft any preamble itself.

On 19 May 2005, the Government tabled its response to the previous Committee's report *A preamble for the Queensland Constitution?*. The Government supported the Committee's recommendation that the Constitution of Queensland should not contain a preamble at that stage. The Government stated:

Given the 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.¹⁵

DEVELOPMENTS SINCE THE PREVIOUS COMMITTEE'S INQUIRY

Since the previous Committee's inquiry, there have been a number of developments relevant to the question of a preamble, particularly the issue of recognition of Aboriginal and Torres Strait Islander peoples.

Apology to Australia's Indigenous Peoples

On 13 February 2008, the Parliament of Australia passed a motion of apology to Australia's Aboriginal and Torres Strait Islander peoples. The text of the apology, in a motion put by the Prime Minister, Hon Kevin Rudd MP, and supported by the then Leader of the Opposition, Dr Brendan Nelson MP, is as follows:¹⁶

That today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history.

We reflect on their past mistreatment.

We reflect in particular on the mistreatment of those who were Stolen Generations—this blemished chapter in our nation's history.

The time has now come for the nation to turn a new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future.

We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians.

¹⁴ Legal, Constitutional and Administrative Review Committee, Report 46, page 23.

¹⁵ The Government response is available at www.parliament.qld.gov.au/lcsrc

¹⁶ House of Representatives Hansard, 13 February 2008, page 167.

We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country.

For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry.

To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.

And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.

We the Parliament of Australia respectfully request that this apology be received in the spirit in which it is offered as part of the healing of the nation.

For the future we take heart; resolving that this new page in the history of our great continent can now be written.

We today take this first step by acknowledging the past and laying claim to a future that embraces all Australians.

A future where this Parliament resolves that the injustices of the past must never, never happen again.

A future where we harness the determination of all Australians, Indigenous and non-Indigenous, to close the gap that lies between us in life expectancy, educational achievement and economic opportunity.

A future where we embrace the possibility of new solutions to enduring problems where old approaches have failed.

A future based on mutual respect, mutual resolve and mutual responsibility.

A future where all Australians, whatever their origins, are truly equal partners, with equal opportunities and with an equal stake in shaping the next chapter in the history of this great country, Australia.

Recognition by the Queensland Parliament

On the same day as this apology was made in the Australian Parliament, it was supported by both the Queensland Premier and the Leader of the Opposition in statements in the Queensland Parliament.¹⁷

Prior to this, the Speaker of the Legislative Assembly, Hon Mike Reynolds AM MP, had from May 2007 observed a practice of commencing each sitting day with an acknowledgment of the traditional owners of the land upon which the Parliament is assembled and of the sacred lands of Queensland.

Queensland 2020: Ideas to Action forum

In May 2008, the Queensland Government convened the *Queensland 2020: Ideas to Action* forum. One of the recommendations arising from the forum was that¹⁸:

...the preamble to the Constitution of Queensland Act be amended to recognise Indigenous Australians.

¹⁷ Queensland Hansard, 13 February 2008, page 124.

¹⁸ *Queensland 2020: Ideas to Action Forum Report*, page 21, available at http://www.thepremier.qld.gov.au/initiatives/2020_forum/

According to the forum report, delegates were of the view that such an amendment:

could be developed as an important staging post in the reconciliation agenda, and would not need a referendum for action.

In its response to the recommendations of the *Queensland 2020: Ideas to Action* forum, the Queensland Government accepted and widened this suggestion, by proposing¹⁹:

... the insertion of a preamble into the Constitution of Queensland 2001 as an aspirational statement for all Queenslanders which gives due recognition to Queensland's Aboriginal peoples and Torres Strait Islander people, and also to commemorate the 150th anniversary of the State of Queensland.

The Government stated that it would ask the House to refer the development of a draft preamble text to this Committee "with a view to the Government finalising the preamble text by mid 2009." As mentioned above, such referral was provided to the Committee by the Legislative Assembly in December 2008.

WHAT SHOULD BE IN THE PREAMBLE?

The Committee seeks input as to what should be included in the preamble. In responding, people might find it useful to consider the specific issues set out below. People are welcome to provide specific wording if they wish, or to just state what matters they would like to see included.

1. STATEMENT OF DUE RECOGNITION OF QUEENSLAND'S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

The referral requires the Committee to provide a statement of due recognition of the state's Aboriginal and Torres Strait Islander people. As the previous Committee noted, whilst there are many aspects to reconciliation and many day-to-day issues such as housing, education, health and employment are a high priority for Indigenous peoples, at the same time, symbolic recognition of Aboriginal and Torres Strait Islander peoples is an important part of reconciliation.²⁰

The QCRC draft preamble (set out in full at page 3 above) included the following statement:

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.

The preamble proposed for inclusion in the Commonwealth Constitution and put before the Australian people at the 1999 referendum included the words:

...honouring Aboriginal and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country...

[As noted in the issues paper put out by the previous Committee, this wording was the subject of considerable criticism by Indigenous people.²¹]

¹⁹ *Queensland 2020: Ideas to Action Queensland Government response*, page 62, available at http://www.thepremier.qld.gov.au/initiatives/2020_forum/

²⁰ Legal, Constitutional and Administrative Review Committee, Report 46, page 22.

²¹ Legal, Constitutional and Administrative Review Committee, Issues Paper, *A preamble for the Queensland Constitution?*, June 2004, page 11.

In Victoria, a statement of recognition is included not in a preamble but in a section within the Constitution itself. The wording of the provision is as follows:

- (1) *The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Australia.*
- (2) *The Parliament recognises that Victoria's Aboriginal people, as the original custodians of the land upon which the Colony of Victoria was established –*
 - (a) *have a unique status as their descendants of Australia's first people; and*
 - (b) *have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and*
 - (c) *have made a unique and irreplaceable contribution to the identity and well-being of Victoria.*
- (3) *The Parliament does not intend by this section –*
 - (a) *to create in any person any legal right or give rise to any civil cause of action; or*
 - (b) *to affect in any way the interpretation of this Act or of any other law in force in Victoria.*²²

Issue 1: What form should the statement in the preamble to give due recognition to Queensland's Aboriginal and Torres Strait Islander people take?

2. AN ASPIRATIONAL STATEMENT

The referral requires the Committee to provide in the draft preamble an aspirational statement to commemorate the 150th anniversary of the establishment of Queensland.

There are many matters that could be mentioned in this aspirational statement. Should it make *express* reference to the 150th anniversary? Should it make reference to the past, including to any of the various milestones in Queensland's constitutional development? Should it include a vision for the state's future?

An appropriate aspirational statement will likely differ from jurisdiction to jurisdiction. Many preambles in other Australian jurisdictions include a recitation of how that particular Constitution came about and the mechanics of the legislative process. In some overseas jurisdictions, such as those outlined below, an aspirational preamble resulted from a dramatic event which led to a significant change to a democratic situation, e.g. war, or from a change to a republic style of government. Constitutional preambles often encapsulate the specific circumstances or events of that time relevant to the development of the constitution of that country or state.

*United States*²³: *We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

[This preamble is contained in the Constitution following the American War of Independence.]

²² s1A Constitution Act 1975 (Vic)

²³ www.archives.gov/exhibits/charters/constitution_transcript.html

*France*²⁴: *The French people hereby solemnly proclaim their dedication to the Rights of Man and the principle of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble to the 1946 Constitution.*

By virtue of these principles and that of the free determination of the peoples, the Republic offers to the overseas territories expressly desiring this to adhere to them new institution based on the common ideal of liberty, equality and fraternity and conceived with a view to their democratic evolution.

[This preamble is in the French Constitution (and the Rights of Man) which resulted from the French civil war and the development of the French republic.]

*South Africa*²⁵: *We, the people of South Africa, Recognise the injustices of our past;*

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to

- *Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;*
- *Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;*
- *Improve the quality of life of all citizens and free the potential of each person; and*
- *Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*

May God protect our people.

[This preamble is from the South African Constitution which followed, and acknowledges, a history and subsequent abolition of apartheid.]

Issue 2: What should be included in the aspirational statement which will be in the preamble?

The Committee requests input from the public on what elements should be included in a preamble. Some issues for consideration in this regard follow.

2.1 History of the Constitution

A reference to the origins or history of the Constitution could include:

- significant historical constitutional instruments and Acts;
- significant constitutional events, such as becoming a colony, becoming a state, severing ties with the British Parliament; and
- aspects of the system of government established by the Constitution.

²⁴ www.elysee.fr/elysee/elysee.fr/anglais/the_institutions/founding_texts/the_1958_constitution/the_1958_constitution.20245

²⁵ www.info.gov.za/documents/constitution/1996/96preamble.htm

Issue 2.1: Should there be a reference to the origins or history of the Constitution in the preamble?

2.2 Sovereignty of the people

One reason for the rejection of a preamble by the previous Committee was that any statement in a preamble regarding sovereignty of the people would be subject to review if there were to be a change to a republican system of government.

Whilst the republic proposal in the 1999 referendum was defeated, there remains considerable community support for a republican system of government in Australia.²⁶ The republic question could be put to the Australian people again. Any change in our system of government will involve significant constitutional amendment both at the federal and state level.

Issue 2.2: Should the preamble refer to the sovereignty of the people and, if so, how?

2.3 God

Queensland is home to people who believe and practise many different religions and faiths, as well as non-believers.

Submissions to the inquiry by the previous Committee's preamble inquiry expressed diverse views on whether the preamble should refer to God at all, as this might exclude or offend some people or religions.

Some submissions wanted a preamble to recognise the Christian God, one rationale being that the first European settlers were predominantly of the Christian faith.

There was also support for a broader reference to a general God, embracing the 'god' of any specific religion or belief - the rationale being that this was unlikely to offend people of differing religions and spiritual beliefs.

Issue 2.3: Should the preamble refer to God and, if so, how?

2.4 Cultural diversity

Submissions to the previous Committee's preamble inquiry differed on this point.

Arguments for recognition of cultural diversity included that it could be a celebration of Queensland's diverse community. Arguments against recognition of cultural diversity included that any statement risks being exclusive rather than inclusive and possibly causing offence to some groups and communities.

The QCRC preamble included the following, encompassing both diversity and equality:

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.

The preamble proposed by the 1999 referendum relevantly included:²⁷

We the Australian people commit ourselves to this Constitution:

²⁶ Roy Morgan opinion poll, *Now Only 45% of Australians Want a Republic with an Elected President (Down 6% Since 2001)*, Finding No. 4290, 7 May 2008, see www.roymorgan.com/news/polls/2008/4290/

²⁷ Constitution Alteration (Preamble) Bill 1999 (Cth), Schedule.

proud that our national unity has been forged by Australians from many ancestries;

...

recognising the nation-building contribution of generations of immigrants...

The proposed preamble for the Northern Territory went further:²⁸

The people of the Northern Territory are concerned to preserve a harmonious, tolerant and united multicultural society, and to this end, it is desirable that no person should be unreasonably denied the right:

- (a) *to use his or her own language in communicating with others speaking or understanding the same language;*
- (b) *to observe and practice his or her own social and cultural customs and traditions in common with others of the same tradition; and*
- (c) *to manifest his or her own religion or belief in worship, ceremony, observance, practice or teaching.*

Issue 2.4: Should the preamble recognise cultural diversity and, if so, how?
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2.5 The rule of law

The previous Committee in its issues paper stated:

There is no clear definition of the rule of law and differing views as to the theory which underpins the notion. However, in essence the concept means that every person and organisation including the government is subject to the same laws.²⁹ More broadly, the rule of law has been described as entailing *'limitation of state power, and insistence upon legal rules and compliance with judicial orders to achieve this end, together with consistency in the treatment of individuals, and mechanisms for preventing excessive government action'*.³⁰

Issue 2.5: Should the preamble recognise the rule of law and, if so, how?

2.6 Equality

The previous Committee in its issues paper stated:

The concept of equality before the law generally refers to equal protection of the law and equal treatment before judicial bodies. The following articles of the International Covenant on Civil and Political Rights explain the concept further:

Article 14: All persons shall be equal before the courts and tribunals.

Article 26: All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³¹

²⁸ Sessional Committee on Constitutional Development of the Legislative Assembly of the Northern Territory, *Final Draft Constitution of the Northern Territory*, Government Printer of the Northern Territory, Darwin, 1996, page 4.

²⁹ P Nygh, and P Butt (eds), *Butterworths Concise Australian Legal Dictionary*, 2nd ed, Butterworths, Sydney, 1998.

³⁰ M Allars, *Australian Administrative Law: Cases and materials*, Butterworths, Sydney, 1997, page 40.

³¹ See www.unhchr.ch/html/menus/b/a_ccpr.htm

The QCRC preamble included the following:

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

Issue 2.6: Should the preamble refer to ‘equality’ and, if so, how?

2.7 Government

A preamble might make some reference to the basic system of government which the constitution embodies or creates. Queensland is one state within the federation of Australia, which has a constitutional monarchy.

Issue 2.7: Should the preamble recognise the system of government the Constitution establishes and, if so, how and to what extent?

2.8 The environment

There has in the past been support for inclusion in a preamble of a reference to the land or the environment. This could reflect the impact of the environment on Queensland and its people, and also bear some relationship to the significance of the land to Indigenous peoples.

The QCRC preamble included the following:

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

Issue 2.8: Should the preamble refer to the environment and, if so, how?

2.9 Other elements

There might be other elements that people would like to see included. One suggested element is “enterprise and incentive”. The previous Committee in its issues paper referred to the following which the Constitutional Centenary Foundation had listed as suggested elements put before it for inclusion in a preamble to the Australian constitution:

- stewardship for future generations;
- tolerance;
- peace;
- ‘fair-go’;
- freedom and liberty;
- references to the world community;
- citizenship;
- mateship; and
- the English language.³²

³² Constitutional Centenary Foundation, “*We the people of Australia...*” – *Ideas for a New Preamble to the Australian Constitution*, 1999, Melbourne, pages 13-14.

Issue 2.9: Should the preamble contain any other elements and, if so, what should they be?

3. PREAMBLE NOT TO INCLUDE INFORMATION WHICH CAN BE USED AS AN AID IN STATUTORY INTERPRETATION

Under the referral from the Parliament, the Committee is to have regard to ensuring that the text of the preamble does not purport to include information which could be used as an aid in statutory interpretation of the Constitution.

Based on previous experience, the effect of a preamble in statutory interpretation of an Act is an area fraught with uncertainty.

This was one of the reasons the previous Committee rejected a preamble in 2004.³³ During its inquiry that Committee heard from a number of persons, including some with considerable expertise in constitutional law, who provided varying views on the question.³⁴

A preamble can be used to determine a legal question where it assists in resolving existing ambiguity in operative provisions.³⁵ However, as a provision of the Act, the preamble is an intrinsic aid to interpretation of the Act for judges and arguably it can be so used.³⁶

Issue 3: Can a preamble be included in the *Constitution of Queensland 2001* and not be able to be used as an aid in statutory interpretation?

If so, what is needed to ensure that the preamble does not include information which can be used as an aid in any statutory interpretation of the *Constitution of Queensland 2001*?

4. ADOPTING A PREAMBLE

The Committee is tasked by the referral from the Parliament to draft a preamble. The question arises as to what is to be done with the draft preamble that will result from the Committee's inquiry.

The Committee acknowledges that the issue of whether or not to have a preamble is the subject of varying views, often strongly held. The Committee anticipates it will receive submissions opposed to any preamble. All submissions will be considered by the Committee.

The previous Committee in its 2004 issues paper stated:

*There is no doubt that there should be wide consultation in the development of any preamble to the Constitution. If a preamble is to have legitimacy then it must involve public input, particularly if it is to include reference to specific groups.*³⁷

It might be appropriate that there be further consultation with the people of Queensland on the issue of a preamble after the Committee provides a draft preamble.

³³ Legal, Constitutional and Administrative Review Committee, Report 46, page 23.

³⁴ Legal, Constitutional and Administrative Review Committee, Report 46, see the varying views set out by the previous Committee on pages 10 & 11.

³⁵ G Craven, 'The Constitutionality of the Unilateral Secession of an Australian State', *Federal Law Review*, vol 15, 1984, 123-135, page 126.

³⁶ Section 36, *Acts Interpretation Act 1954* (Qld), defines 'provision' as including a preamble.

³⁷ Legal, Constitutional and Administrative review Committee, Issues Paper, *A preamble for the Queensland Constitution?*, June 2004, page 16.

A preamble does not need to contain any particular elements to be legally valid. There is no legal requirement to hold a referendum to insert a preamble into the *Constitution of Queensland*, an ordinary act of Parliament will suffice.

Whilst a referendum is not required by law, the question could be posed whether holding a referendum is desirable, having regard to the significant and highly symbolic nature of a preamble.

In its 2004 issues paper, the previous committee noted that the Queensland Electoral Commissioner estimated that the cost of holding a stand-alone state referendum would be approximately \$9.6 million.³⁸ The Committee expects that that figure will be significantly higher today.

Several submissions to the Committee's previous inquiry into a preamble suggested holding a referendum on the matter at the same time as a State election. It was suggested that this would considerably reduce the cost of any referendum by allowing people to vote on both matters at once.

The Committee notes that any proposed referendum would require a comprehensive public communication strategy prior to the vote to ensure that Queenslanders are fully informed on the contents and effects of a draft preamble and the issues involved.

Issue 4: **Is it desirable that there be a preamble in the *Constitution of Queensland 2001*?**

If so, should the Queensland community be further consulted on the issue of a preamble?

What form should any such further consultation take?

Should any preamble be inserted by Act of the Parliament alone, or should a referendum first be held?

When is the appropriate time for the adoption of a preamble?

³⁸ Legal, Constitutional and Administrative Review Committee, Issues Paper, *A preamble for the Queensland Constitution?*, June 2004, page 17.

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

If you require further information, contact the Committee's secretariat on:

Telephone: (07) 3406 7307
Fax: (07) 3406 7070
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