REFERRAL TO DRAFT A PREAMBLE FOR THE QUEENSLAND CONSTITUTION

ISSUES PAPER

MAY 2009

THE COMMITTEE

The Legal, Constitutional and Administrative Review Committee of the 53rd Parliament (The Committee) was appointed on 23 April 2009.

The Committee is an all-party standing committee established by the Parliament of Queensland Act 2001. The Committee has responsibility for administrative review reform, constitutional reform, electoral reform, and legal reform. This inquiry relates to constitutional reform.

THE REFERRAL

On 23 April 2009 the Committee received the following referral from the Legislative Assembly:

That 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 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 6 June 2009.

THIS ISSUES PAPER

The Committee has released this issues paper to call for submissions to the Committee’s inquiry into a preamble for the Queensland Constitution, and to develop options for modernising the Oaths or Affirmation of Allegiance contained in Schedule 1 of the Constitution of Queensland 2001. Details of how to make a submission are on page 4.

WHAT SHOULD BE INCLUDED IN THE PREAMBLE?

The Committee seeks input as to what should be included in the preamble. The Committee requests that submitters provide suggested wording to demonstrate the language, style and wording the Committee should consider when drafting the preamble.

PREVIOUS CONSIDERATION OF THIS MATTER

The Committee of the 52nd Parliament (the previous Committee) inquired into a preamble for the Queensland Constitution following a referral from the Legislative Assembly on 4 December 2008. That Committee also released an issues paper on 13 February 2009.1

By way of example, some of the suggested preambles contained in submissions received by the previous Committee included the following:

(Full preamble)

In the year of our Lord, 2009 on the one hundred and fiftieth anniversary of the separation of our present State of Queensland from the colony of New South Wales.

We, the people of Queensland, consisting of mixed race, and of mixed ancestral origins, and of many ethnic cultures, Indigenous, European, Asian and Middle Eastern, residing together in peace and harmony under the Laws and regulations authorised by this Constitution, framed in a manner so as not to discriminate or give favour to any person or group of people of any race or ancestral origin.

We, the people of Queensland also 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.

(Full preamble)

QUEENSLAND, By the Grace of God, Sovereign State and of the Commonwealth of Australia, a Democracy with it’s own and a federal system of Government, ensuring service to its people and to the common good and protection of their rights to freedom and liberty limited only by the rights of others and by the just requirements of its laws and those of the Commonwealth of Australia, without distinction of any kind such as race, gender, language, religion, political or other opinion, to life and the security of person, to recognition, equality and protection before those laws without any discrimination, to respect for traditional values of morality, marriage, parenthood, the unborn and of all children, ensuring equal opportunity of all its people in all areas of honest endeavour, care of and concern for the aged, the disabled, the poor and the needy, the weak and the downtrodden, the right to work, to free choice of employment and to just and favourable conditions of work and to protection against unemployment, to human dignity, to rest and leisure and reasonable conditions of work in hours and holidays, tolerance and understanding and compassion for the disadvantaged WHILST ACKNOWLEDGING with sincere gratitude the contributions to its establishment, growth, general improvement and well-being by our Indigenous Australians and its discovery, exploration and settlement by our forebears and its protection in War and Peace by the Armed Forces of the Commonwealth of Australia, particularly those who gave their lives in its cause,

WE, THE PEOPLE OF QUEENSLAND, WITH HOPE IN GOD, COMMIT OURSELVES TO THIS CONSTITUTION.

(partial wording)

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.

This matter has also been considered by a number of predecessor Legal, Constitutional and Administrative Review Committees and other bodies. This Committee will consider all information available to it when considering and drafting the preamble, such as the preamble proposed by the Queensland Constitutional Review Commission.

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.

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’.2

The QCRC proposed the following preamble:3

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

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3 Ibid, page 90.
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.

1. STATEMENT OF DUE RECOGNITION OF QUEENSLAND’S ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

The referral requires the Committee to provide a statement of due recognition of the state’s Aboriginal and Torres Strait Islander peoples. One submission to the previous Committee proposed this variation on the statement of recognition contained in the QCRC preamble above:

... 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.

The following wording is from the proposed preamble for the Australian Constitution which went to the people in a referendum in 1999:

honouring Aboriginal and Torres Strait Islanders, the nations first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of (our State) and country

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

2. AN ASPIRATIONAL STATEMENT

The referral requires the preamble to contain an aspirational statement on the commemoration of the 150th anniversary of the establishment of Queensland.

As noted by the previous committee, this aspirational statement could take many forms and include a wide range of matters.

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?

| Issue 2: | What should the aspirational statement include? How should it be phrased? What other matters, if any, should be included? How should they be phrased? |

3. OPTIONS FOR MODERNISING THE OATH OR AFFIRMATION OF ALLEGIANCE

The Committee is also tasked with providing options for modernising the Oaths or Affirmations of Allegiance contained in Schedule 1 of the Constitution of Queensland 2001. Before undertaking duties of their office, the Oath or Affirmation of Allegiance contained in the Constitution of Queensland must be taken by:

- Members of Parliament (s.22)
- The Governor (s.31) and Deputy Governors (s.41(5)),
- Ministers of the State (s.43(5)) and Acting Ministers (s.46(3)),

4 See previous committees issues paper, note 1, page 8
Members of the Executive Council (s.48(3)), and
Judges (s.59).

Provided below is the oath or affirmation which must be taken by Members of Parliament prior to sitting or taking a vote in the House.

I, ..(name).., do sincerely promise and swear (or, for an affirmation—do sincerely promise and affirm) that I will be faithful and bear true Allegiance to Her (or His) Majesty..(name of Sovereign).. as lawful Sovereign of Australia and to Her (or His) heirs and successors, according to law; and

I will well and truly serve the people of Queensland and faithfully perform the duties and responsibilities of a member of the Legislative Assembly to the best of my ability and according to law.

So help me God! (or omitted for an affirmation).

The Committee must provide options for modernisation of these oaths or affirmations. This could be achieved through the use of language.

### Issue 3: What options should the Committee provide to modernise the Oaths or Affirmation of Allegiance?

#### GUIDELINES FOR MAKING A SUBMISSION

Submissions can be made in writing, but the Committee will accept audio submissions. Submissions may also be lodged online at the Committee’s website at: [www.parliament.qld.gov.au/lcarc](http://www.parliament.qld.gov.au/lcarc).

Please contact the Committee secretariat if you require assistance.

All submissions must include the name, contact details of the person, and the capacity in which that person is making the submission (e.g. individual or organisation).

#### CONFIDENTIALITY

The Committee’s usual procedure is to publicly release and table submissions in the Legislative Assembly. If you want your submission (or part of it) to remain confidential, clearly write ‘confidential’ on each page/part you wish to remain so. The Committee will then consider your request for confidentiality.

#### UNAUTHORISED RELEASE

Once the Committee receives a submission, it becomes Committee property and should not be published without the Committee’s authorisation. Publication of a submission without the Committee’s authorisation means that that publication is not protected by parliamentary privilege and might amount to contempt of Parliament.

#### SUBMISSIONS CLOSE ON MONDAY, 18 MAY 2009 AND SHOULD BE ADDRESSED TO:

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
- **Email:** lcarc@parliament.qld.gov.au

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