

# Recent Constitutional Developments in Queensland\*

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*Queensland's constitutional legislation has been subject to significant review over the last 14 years. This process of review was initially aimed at both consolidating and modernising the State's constitutional provisions so as to make the Queensland Constitution more accessible and readable. At least five different bodies were involved in this aspect of the review process, namely, the Electoral and Administrative Review Commission; the Parliamentary Committee for Electoral and Administrative Review of the Queensland Parliament; the Legal, Constitutional and Administrative Review Committee of the Queensland Parliament; the Members' Ethics and Parliamentary Privileges Committee of the Queensland Parliament; and the Queensland Constitutional Review Commission.*

*The enactment of the Constitution of Queensland 2001 and the Parliament of Queensland Act 2001 largely completed the consolidation process. Recommendations regarding substantive issues of constitutional reform also emanated from this review process. These recommendations included, extending the maximum term of the Legislative Assembly from three to four years with a fixed minimum period of three years; specific issues of constitutional reform including incorporation of some constitutional conventions in the Constitution; referendum entrenchment of designated sections, and 'parliamentary entrenchment' of all sections, of the Queensland Constitution; the possibility of special representation for Aboriginal and Torres Strait Islander peoples in the Legislative Assembly; and a preamble for the Queensland Constitution. This article canvasses subsequent consideration of these recommendations; discusses other recent significant events in Queensland's constitutional landscape; and identifies matters likely to be subject to further review in the near future.*

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## ***Introduction***

Queensland's constitutional legislation has been subject to significant review over the last 14 years. Much of this work has been carried out by the Legal, Constitutional and Administrative Review Committee (LCARC) of the Queensland Parliament which has specific responsibility regarding constitutional reform.<sup>1</sup>

In addition, the Queensland Constitutional Review Commission (QCRC) was established in May 1999 to research and investigate whether there should be reform of, and changes to, the Acts and laws that relate to the Queensland Constitution. In particular, the QCRC was to consider what constitutional amendments would be necessary if the 1999 federal republic referendum was successful.

On 29 February 2000, the Premier tabled in the Queensland Parliament the QCRC's *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*.<sup>2</sup> The Premier stated that he tabled the QCRC's report for LCARC's 'consideration and reporting'.

The QCRC's report not only incorporated previous work done by LCARC on consolidating the Queensland Constitution, but also made recommendations about substantive issues of constitutional reform. These recommendations concerned extension of the maximum term of the Legislative Assembly from three to four years with a fixed minimum period of three years; specific issues of constitutional reform including: incorporation of some constitutional conventions in the Constitution; the creation of a new statutory committee to report on all petitions received; and amendment to the *Referendums Act 1997* (Qld) to provide for indicative plebiscites; referendum entrenchment of designated sections, and 'parliamentary entrenchment' of all sections, of the Queensland Constitution; the possibility of special representation for Aboriginal and Torres Strait Islander peoples in the Legislative Assembly; and a preamble for the Queensland Constitution.

The LCARCs of the 49<sup>th</sup>, 50<sup>th</sup> and 51<sup>st</sup> Parliaments have progressively reviewed the QCRC's recommendations. This article addresses these key areas of constitutional reform in Queensland. Incorporated in this discussion is any relevant Government response to recommendations regarding constitutional reform. Copies of LCARC reports and Government responses to those reports can be accessed via the Parliament's website: [www.parliament.qld.gov.au](http://www.parliament.qld.gov.au).

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<sup>1</sup> Parliament of Queensland Act 2001 (Qld), s 87.

<sup>2</sup> Goprint, Brisbane, February 2000.

## *Consolidation of the Queensland Constitution*

Until recently, Queensland's constitutional provisions were scattered throughout numerous Acts and, in some cases, were difficult to understand due to their archaic drafting.

In November 2001, an extensive exercise to consolidate Queensland's Constitution culminated in the Legislative Assembly passing the *Constitution of Queensland 2001* (Qld) ('the Constitution') and the adjunct *Parliament of Queensland Act 2001* (Qld). These statutes commenced on Queensland Day, 6 June 2002. Their commencement was accompanied by the release of a range of constitutional resource materials including an annotated guide to the new consolidated Constitution with explanatory notes alongside each section.

The passage of these statutes followed not only the QCRC's review, but also reviews by other independent commissions and parliamentary committees over the previous nine years, namely: the Electoral and Administrative Review Commission;<sup>3</sup> the Parliamentary Committee for Electoral and Administrative Review;<sup>4</sup> and the Legal, Constitutional and Administrative Review Committees of the 48th and 49<sup>th</sup> Queensland Parliaments.<sup>5</sup>

The Queensland Government released discussion drafts of the Constitution of Queensland Bill and Parliament of Queensland Bill in July 1999 and exposure drafts of these bills in January 2001.

Input was also received from the Members' Ethics and Parliamentary Privileges Committee (MEPPC) of the Queensland Parliament during its complementary review of the powers, rights and immunities of the Parliament, its members and committees.<sup>6</sup>

With few exceptions, the *Constitution of Queensland* and *Parliament of Queensland Act* merely consolidate the various statutes that once contained Queensland's constitutional provisions. These exceptions mainly relate to: the qualification and disqualification of members; clarifying the laws relating to the powers, rights and

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<sup>3</sup> Electoral and Administrative Review Commission (EARC), Report on consolidation and review of the Queensland Constitution, report 93/R4, Goprint, Brisbane, August 1993.

<sup>4</sup> Parliamentary Committee for Electoral and Administrative Review (PCEAR), Report on consolidation and review of the Queensland Constitution, Goprint, Brisbane, November 1994.

<sup>5</sup> LCARC: Consolidation of the Queensland Constitution: Interim report, report no 10, Goprint, Brisbane, May 1998; Consolidation of the Queensland Constitution: Final report, report no 13, Goprint, Brisbane, April 1999; report no 24, Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution, Goprint, Brisbane, July 2000.

<sup>6</sup> MEPPC: First report on the powers, rights and immunities of the Legislative Assembly, its committees and members, report no 26, Goprint, Brisbane, January 1999; Report on a code of ethical standards for members of the Queensland Legislative Assembly, report no 44, Goprint, Brisbane, September 2000.

immunities of the Parliament, its members and committees; and the statutory recognition of Cabinet.

However, a referendum is required to relocate those provisions entrenched<sup>7</sup> in earlier constitutional legislation, and thereby fully complete the consolidation of Queensland's constitutional legislation. (The entrenched provisions are discussed further below.)

On 20 May 2004, the Parliament of Queensland Amendment Bill 2004 was assented to. This Act amended the *Parliament of Queensland Act* to correct an omission which occurred during the drafting stage of the consolidation process. During that process, the specific exemption regarding land transactions with the State provided for in the *Constitution Act 1867* (Qld) was inadvertently excluded from the consolidated *Parliament of Queensland Act*. The amending Act reinstated the exemption with respect to land transactions.<sup>8</sup>

### ***Four Year Parliamentary Terms***

Queensland is currently the only state legislature with parliamentary terms of three rather than four years. The parliamentary term has been of three years duration in Queensland since 1890 when the term of the Legislative Assembly was reduced from five years. The Premier may advise the Governor to dissolve the Assembly at any time during that three year period in order to hold a general election.

The present maximum three year parliamentary term is entrenched and can only be extended if the relevant amending bill, following its passage by the Assembly, is approved by a majority of electors at a referendum.

A 1991 referendum regarding four year parliamentary terms (with no fixed minimum period) was narrowly defeated.

The QCRC recommended that the maximum term of the Queensland Legislative Assembly be extended from three to four years. This recommendation was subject to a proviso that dissolution may not be granted during the first three years of this term unless: (a) a vote of no confidence is carried or fails to be carried; or (b) an appropriation bill is defeated or fails to pass.<sup>9</sup>

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<sup>7</sup> Entrenched provisions are laws enacted by Parliament that may not be repealed or amended, or the effect of which may not be altered by Parliament, unless a special, additional procedure is followed, such as approval by the majority of electors at a referendum or approval by a two-thirds majority in the Parliament.

<sup>8</sup> For further discussion on this issue see MEPPC, Report on an examination of the appropriate scope of provisions on Members transacting business with an entity of the State, and related matters, report no 64, Goprint, Brisbane, July 2004.

<sup>9</sup> QCRC report, n 2, recommendation 5.2.

The LCARC of the 49<sup>th</sup> Parliament essentially endorsed this recommendation with some minor amendments to the pre-conditions under which an election can be called in the first three years.<sup>10</sup> That committee considered that there was a compelling case for four year parliamentary terms as they would ensure that the government of the day has a longer period during which to address and implement important social and economic policies, and enable the private sector to plan their business cycles with greater predictability in accordance with government policies and agendas.

In its response to that report, the Government recognised the many benefits of four year parliamentary terms and endorsed the committee's recommendation subject to the outcome of negotiation with the leaders of other political parties as to the model for parliamentary terms that would ultimately be put to a referendum.<sup>11</sup> Those negotiations have yet to be successfully concluded.

In March 2004, the Government stated that it continues to be open to finding common ground with the other political parties so that a proposal to extend the term of the Parliament might be presented to the electorate with all-party support. Against this background, on 18 March 2004 the Premier wrote to the current LCARC requesting that it re-examine the issues surrounding four year parliamentary terms.

The committee gave consideration to the Premier's request and, in light of the report on this matter by a former committee in 2000, undertook a limited further examination of the issue. As part of its consideration, the committee sought the view of each political party represented in the Queensland Parliament and each Independent member of the Queensland Parliament on the question of four year parliamentary terms.

In August 2004, the committee advised the Premier there were varying degrees of support for four year fixed parliamentary terms from independent members and all political parties except for the One Nation Party.

### ***Members' Oath or Affirmation of Allegiance***

By letter dated 17 May 2001, the Premier asked the LCARC of the 50<sup>th</sup> Parliament to consider recommendation 7 of the Members' Ethics and Parliamentary Privileges Committee ('MEPPC') report no 44,<sup>12</sup> namely:

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<sup>10</sup> LCARC, Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms, report no 27, Goprint, Brisbane, July 2000.

<sup>11</sup> Available at: <http://www.parliament.qld.gov.au/view/committees/documents/lcArc/responses/Report27.pdf>

<sup>12</sup> MEPPC, Report on a code of ethical standards for members of the Queensland Legislative Assembly, report no 44, Goprint, Brisbane, September 2000.

That the Oath of Allegiance taken by members of the Legislative Assembly be reviewed, within current constitutional arrangements, as part of the consolidation of the Queensland Constitution and that such review take into account the aspirational statements contained in the previous Members' Ethics and Parliamentary Privileges Committee's Statement of Commitment.

The members' oath of allegiance was then contained in s 4 of the *Constitution Act 1867* (Qld). In its report on this issue,<sup>13</sup> the committee recommended that: the Premier introduce a bill to amend s 4 of the *Constitution Act* (as part of the then effort to consolidate Queensland's Constitution) to include a requirement that members of the Queensland Legislative Assembly make an oath or affirmation of office; and the committee conduct further public consultation on the issue of whether members of the Queensland Legislative Assembly should be provided with an option to swear or affirm allegiance to the Crown, or only to the people of Queensland.

The first recommendation was adopted by Government. Section 22 of the *Constitution of Queensland 2001* provides that no member may sit or vote in the Legislative Assembly unless the member has taken or made the oath or affirmation of allegiance and of office in schedule 1. The oath of office in the schedule states that:

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.

The committee considered the second recommendation in its subsequent review of 'Specific content issues' concerning the Constitution (discussed below), and recommended that the Constitution should be amended so that members have the option to take or make the oath or affirmation of allegiance to the Crown. The Government has recently stated that it supports this recommendation.<sup>14</sup>

### *Specific Content Issues*

The QCRC made numerous recommendations regarding substantive issues of constitutional reform which were not otherwise concerned with consolidation, parliamentary terms or entrenchment. The LCARC of the 50<sup>th</sup> Parliament considered these recommendations, which fell into three broad categories, in its 'Specific content issues' report.<sup>15</sup>

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<sup>13</sup> LCARC, Review of the Members' oath or affirmation of allegiance, report no 31, Goprint, Brisbane, October 2001.

<sup>14</sup> See: <http://www.parliament.qld.gov.au/view/committees/documents/lcadc/responses/Report36.pdf>

<sup>15</sup> LCARC, The Queensland Constitution: Specific content issues, report no 36, Goprint, Brisbane, August 2002.

## Codifying Constitutional Conventions

The first category of QCRC recommendations considered by the committee concerned constitutional conventions.

The committee's overarching recommendation was that the Constitution should identify the key components of government and include provisions that are necessary to explain the operation and interrelationship of these key components, but that constitutional principles, conventions and practices should only be expressly referred to in the Constitution where this can be achieved without detracting from their flexibility. Further, the committee recommended that constitutional principles, conventions and practices which are not expressly referred to in the Constitution should be recognised and explained in appropriate non-legislative annotations to the Constitution.<sup>16</sup>

Matters which the committee recommended should be referred to in the Constitution included: a statement of executive power; the function and membership of Executive Council; the Governor's right to request information; a requirement that a person appointed as a minister must either be, or become within 90 days of their appointment, a member of the Legislative Assembly; and a provision designating the office of Premier and providing for dismissal of the Premier.<sup>17</sup>

The Government supported the committee's broad approach and consequent recommendations with the exception of the recommendation regarding a statement relating to executive power. The Government was concerned that such a statement

carries with it the prospect of complication to the current non-justiciability of such decision-making. Codifying the exercise of executive power would serve to constrain it, and would limit its flexibility.<sup>18</sup>

The Government also responded that it believes the Constitution should include a provision to the effect that 'the Governor shall, in accordance with constitutional convention, act on the advice of the Premier in appointing and dismissing Ministers'.<sup>19</sup>

The committee recommended against such a provision on the basis that it might give a Premier leverage to bring pressure to bear on the Governor to immediately follow his or her advice in circumstances where that is undesirable. In particular, the committee was mindful of events in Queensland in 1987 where the Governor did not fully accept the then Premier's advice to replace some Ministers until it had become clear whether the Premier had the support of his party. The committee also felt that adding the phrase 'in accordance with constitutional convention' defeated the purpose of making the provision self-explanatory.

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<sup>16</sup> Note 15 at 6.

<sup>17</sup> Note 15 at 10–22.

<sup>18</sup> Note 14.

<sup>19</sup> Note 14.

The Government reasoned that:

The Constitution should reflect the existing convention that the Governor will generally act on the advice of the Premier in appointing and dismissing Ministers, without making this requirement absolute, as this would have a detrimental effect on the flexibility of Queensland's system of government. A reference to existing 'constitutional convention' will provide sufficient flexibility to allow a Governor to take action to deal with a constitutional crisis.<sup>20</sup>

## The Judiciary

The second category of QCRC recommendations examined by the committee concerned the judiciary. The committee's recommendations included that the Constitution should contain express recognition of the principle of judicial independence and that a compulsory retiring age of 70 years for judges should be retained.

The committee felt that an express statement of judicial independence in the Constitution would emphasise its fundamental importance in Queensland's constitutional system and proposed a provision along the following lines: '*Judges appointed under Queensland law are independent and subject only to the law which they must apply impartially*'.<sup>21</sup>

While the Government supported the compulsory retirement age for judges, it did not support a statement regarding judicial independence. The Government responded that judicial independence is already a well established and fundamental feature of Queensland's system of government and that express recognition of the principle '*may have the unintended consequence of constraining the Parliament's legislative power by formalising the doctrine of the separation of powers in the Constitution, and subjecting the performance of non-judicial functions by judges to legal challenge*'.<sup>22</sup>

The committee also recommended that a comprehensive review should be undertaken in relation to: the process for, and extent of, consultation prior to judicial appointments; mechanisms for investigating complaints against the judiciary; and the constitutional recognition and protection of the independence of magistrates.

The Government has stated that it does not support the conduct of such a review at this time.

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<sup>20</sup> Note 14.

<sup>21</sup> Note 15 at 56.

<sup>22</sup> Note 14.



## Various Issues

The third category of QCRC recommendations concerned various issues. These were considered by LCARC, and the Government's position on LCARC's recommendations included the following.<sup>23</sup>

A Lieutenant-Governor should again be appointed for Queensland. The Government agreed that 'appointment of a Lieutenant-Governor will release the Chief Justice from the responsibility of administering the State in the Governor's absence. The existing arrangement leaves open the possibility of a constitutional crisis or politically controversial decision that could potentially compromise the position of Chief Justice'.

The Constitution should be amended so that members of the Legislative Assembly have the option as to whether to take or make the oath or affirmation of allegiance to the Crown.

The *Referendums Act 1997* should not be amended at this point in time to provide for the conduct of indicative plebiscites.

A Petitions Committee should not be established but the current review of the *Standing Orders of the Legislative Assembly* should consider whether Standing or Sessional Orders should be amended so that a minister is required to provide a response to a petition within 30 calendar days.

The Constitution should include a requirement that the Legislative Assembly shall meet no later than 60 days after the day of a general election subject to extending that time limit to 90 days if the 60 day period would include the Christmas recess, or within one week of the date of return of the writ, if a later date has been substituted under the *Electoral Act 1992* (Qld).

The Constitution should include a broad description of the main role of a parliamentary secretary but should not put any limit on the number of parliamentary secretaries (or ministers, or a combined total of both).

While the Constitution should not identify certain statutory office holders as requiring special provision, the Government will conduct a review of the legislation governing independent statutory office holders with a view to there being consistency in provisions concerning the appointment, termination, tenure and salary of such officers; and the Queensland Legislation Handbook — which is a reference tool for departmental officers that outlines relevant policies, recommendations, information and procedures for the realisation of policy into legislation — should include a statement to the effect that '*an Act which creates an*

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<sup>23</sup> Note 14.

*office must contain provisions which secure the independence of the holder of the office to a degree appropriate to the office’.*

### ***Entrenchment of the Queensland Constitution***

Only a few provisions of the Queensland Constitution are entrenched. Section 53 of the *Constitution Act 1867* entrenches by referendum: the Legislative Assembly (s 1); the ‘peace, welfare and good government’ grant of legislative power (s 2); the requirement of Royal Assent to legislation (s 2A); and the office of Governor as the Queen’s representative and its powers (ss 11A and 11B).

The *Constitution Act Amendment Act 1934 (Qld)* entrenches: the unicameral nature of the Parliament by requiring referendum approval for the introduction of ‘another legislative body’ (s 3); and also requires referendum approval for any extension to the three year term of the Legislative Assembly (s 4).<sup>24</sup>

All of these provisions were doubly entrenched without seeking the people’s consent at a referendum.

These entrenched provisions remain in their original Acts. The *Constitution of Queensland 2001* includes signposts where the entrenched provisions are relevant and sets out the provisions in full in attachments.

Section 78 of the *Constitution of Queensland 2001* requires that a bill for an Act ending the system of local government in Queensland be approved at a referendum. This provision does not entrench itself and could be expressly repealed by an ordinary Act of Parliament.

Apart from the entrenched provisions identified above, Queensland’s Constitution can be amended by Parliament, either expressly or impliedly, like any other ordinary piece of legislation.

The QCRC considered that the status of the Queensland Constitution as the fundamental law of the State requires appropriate recognition but opposed referendum entrenchment of the entire text of the Queensland Constitution. Thus, the QCRC recommended two forms of entrenchment:

- (i) referendum entrenchment of the most fundamental aspects of the Constitution; and
- (ii) three requirements, together comprising ‘parliamentary entrenchment’, to apply to all sections of the Constitution.

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<sup>24</sup> The *Constitution Act Amendment Act 1890 (Qld)*, s 2 provides that the maximum term of the Legislative Assembly is three years. The *Constitution Act Amendment Act 1934 (Qld)*, s 4 prevents the term of the Legislative Assembly being extended without the approval of a referendum and referendum entrenches itself.

The QCRC's concept of 'parliamentary entrenchment' involved an additional three steps to the ordinary law-making procedure, namely:

- (i) a minimum period of one calendar month between the first and second readings of a bill to amend the Constitution (to ensure sufficient time for the community to be alerted to what is proposed and, if they wish, to take any appropriate action);
- (ii) a LCARC report on the bill to the Legislative Assembly before the second reading (to enable a careful and public examination of the merits of the proposal); and
- (iii) the short title of the bill to include the words 'Constitution Amendment' (to ensure that the Constitution is not amended inadvertently or by concealment).

In reviewing the QCRC's recommendations regarding entrenchment of the Constitution, the LCARC of the 50<sup>th</sup> Parliament<sup>25</sup> noted that the QCRC's report relates to the current system of government, that is, a constitutional monarchy, but that there is considerable support for, and activity directed at, change in this system of government to a republic. Any successful Commonwealth referendum on this issue would, practically, require Queensland and each of the other Australian states to take steps to also become republics.

In this light, the committee stated that it could not support referendum entrenchment of provisions of the Constitution relating to the current monarchical system of government. Further, the committee considered that, unless compelling justification for an earlier constitutional referendum arises, any further consolidation or referendum entrenchment of the Constitution should be delayed until the Queensland Parliament seeks a republic referendum.

Subject to these comments, the committee proposed in its report a test for deciding which provisions of the Constitution should be referendum entrenched. The committee used this test to identify essential elements of the Constitution which should be referendum entrenched at the appropriate time.

The Government supported the committee's general approach and agreed that it would be impractical to seek referendum entrenchment of provisions relating to a monarchical system of government while the prospect of a change to a republican system of government remains on the agenda.<sup>26</sup>

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<sup>25</sup> LCARC, Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution, report no 41, Goprint, Brisbane, August 2003.

<sup>26</sup> The Government's response to this report is available at:  
<http://www.parliament.qld.gov.au/view/committees/documents/lcsrc/responses/Report41.pdf>.

The committee also recommended that the Constitution should be amended as soon as possible by way of ordinary legislative amendment so that four requirements together comprising ‘parliamentary entrenchment’ apply to the whole Constitution. These four requirements would mean that any bill which seeks to amend or repeal the Constitution:

- (i) cannot be passed within 27 calendar days of being introduced;
- (ii) must be the subject of an inquiry and report to Parliament by a committee of the Queensland Parliament before being passed;
- (iii) must contain the words ‘Constitution Amendment’ in its title; and
- (iv) must be passed by a majority of the Legislative Assembly equal to a majority of the number of seats in the Assembly (an absolute majority of the Legislative Assembly).

The committee saw parliamentary entrenchment as an important procedural mechanism to ensure that amendments to the Constitution are given detailed consideration and in such a way as to facilitate public input to the proposed amendments.

The Government did not support the concept of parliamentary entrenchment due to concerns regarding: constitutional validity of parliamentary entrenchment; the possibility of inadvertent non-compliance with the proposed requirements; and the 27 calendar day requirement being too restrictive.

### ***‘Hands On Parliament’***

The QCRC recommended that the LCARC ‘conduct an inquiry into the possibility of special representation for Aborigines and for Torres Strait Islanders’.<sup>27</sup>

In August 2002, the LCARC resolved to broaden the QCRC’s recommendation and inquire into the participation of Aboriginal and Torres Strait Islander peoples in democratic processes in Queensland, including the possibility of special representation for Aboriginal and Torres Strait Islander peoples.

Within this framework, the committee sought to examine barriers to Indigenous peoples’ participation in democratic processes, and identify various strategies to overcome those barriers and, thereby, enhance participation.

Following an extensive consultation and research process, the committee found that various factors have limited Aboriginal and Torres Strait Islander peoples’ participation in democratic processes. These factors fit broadly under five categories:

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<sup>27</sup> QCRC report, n 2, recommendation 5.6.

- (i) historical factors (including past government policies, exclusion and imposition of a Westminster system of government over existing governance structures);
- (ii) cultural factors (including the inappropriateness of a Westminster system of government and liberal democracy, different concepts of citizenship and the operation of traditional governance);
- (iii) lack of understanding of political and government processes (including lack of civics and voter education and a lack of cross-cultural awareness);
- (iv) apathy/disillusionment with the political process (including disillusionment with party and parliamentary processes, the adversarial nature of politics and apathy to voting); and
- (v) other factors (including the impact of racism and other priorities such as health, housing, criminal justice and geographical remoteness).

The committee therefore concluded that there is a need for increased participation by Aboriginal and Torres Strait Islander peoples in all levels of government and the various processes which feed into those levels.

In its report,<sup>28</sup> the committee recommended a range of strategies to enhance the participation of Aboriginal and Torres Strait Islander people in Queensland's democratic processes. These strategies centre around acknowledging Aboriginal and Torres Strait Islander peoples as the first peoples of this country. Encouraging political parties to actively recruit, encourage and support Aboriginal and Torres Strait Islander people in various aspects of party processes. Enhancing civics and voter education. Enhancing employment, training and leadership development opportunities and programs for Aboriginal and Torres Strait Islander people in democratic institutions and processes. Enhancing Aboriginal and Torres Strait Islander peoples' participation in local government. Enhancing Aboriginal and Torres Strait Islander peoples' direct input into policy, legislative and consultative processes.

Action to be undertaken by the Queensland Government as a result of the committee's recommendations includes<sup>29</sup> writing to the leaders of Queensland's political parties encouraging their participation in examining measures to increase Aboriginal and Torres Strait Islander peoples' participation in the political process. Enhancing inclusive civics education for all students in Queensland schools. Taking steps to expand the national civics test to test knowledge of civics from an Indigenous perspective (including knowledge of Indigenous systems of governance)

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<sup>28</sup> LCARC, *Hands on Parliament: A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes*, report no 42, Goprint, Brisbane, September 2003.

<sup>29</sup> This is drawn from the Government's response to the committee's report which is available at: <http://www.parliament.qld.gov.au/view/committees/documents/lcArc/responses/Report42.pdf>

to enhance accountability for the teaching of civics in the context of inclusive history. Examining the possibility of establishing a project taskforce to assist Parliamentary Education Services to: (a) review its programs and educational material to ensure that they are inclusive of Aboriginal and Torres Strait Islander peoples; and (b) consider ways in which Aboriginal and Torres Strait Islander citizens might be further engaged in parliamentary education. Enhancing youth participation in local government processes. Raising with the federal government the need to reinstate funding to the Australian Electoral Commission to carry out activities aimed at encouraging enrolment and electoral education in Aboriginal and Torres Strait Islander communities and to Aboriginal and Torres Strait Islander people living in urban areas. Committing \$75,000 to the Electoral Commission of Queensland to continue enrolment and electoral education campaigns targeted to Aboriginal and Torres Strait Islander peoples in 2003–04. Supporting specific employment and training strategies directed to Aboriginal and Torres Strait Islander people in the Queensland Parliament, the Electoral Commission of Queensland and local governments. Examining the development and implementation of specific strategies and programs to encourage more Aboriginal and Torres Strait Islander people to stand for election to local government. Taking measures to increase the participation of Indigenous peoples in the community cabinet process, and to adapt Government processes to show an appreciation of, and respect for, cultural differences.

The former committee also recommended that the LCARC should: (a) monitor the implementation and effectiveness of the strategies recommended in the *Hands on Parliament* report to enhance the participation of Aboriginal and Torres Strait Islander peoples in Queensland's democratic processes; and (b) after three state electoral cycles or nine years, whichever is the later, conduct an evaluation of the effect of these strategies on Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes to determine the extent to which these strategies have enhanced participation and whether any further action is required.

The Government has stated that it will also request that the committee undertake an interim evaluation after the first full electoral cycle, that is, after the 2007 election.

### ***A Preamble for the Queensland Constitution***

The final recommendation of the QCRC to be reviewed by the LCARC was that there should be a preamble to the Queensland Constitution and that it should state:

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.

And that the preamble should continue:

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.<sup>30</sup>

In its *Hands on Parliament* inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes, the LCARC of the 50<sup>th</sup> Parliament considered formal legal recognition of Aboriginal and Torres Strait Islander people in the Queensland Constitution. The committee noted in its report that recognition of Aboriginal and Torres Strait Islander people has often been discussed in the past in terms of a preamble. The committee recommended:

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.<sup>31</sup>

After a consultative review process, the current LCARC (of the 51<sup>st</sup> Parliament) concluded that the Queensland Constitution should not include a preamble at this stage. Reasons for this conclusion include: insufficient public support and consensus; concerns about the legal effect of a preamble; queries as to whether the extensive consultation required to develop the form and text of a preamble is an effective use of resources; and the likelihood of having to revisit any preamble if there is a change to a republican system of government.

A significant number of contributors to the committee's review, particularly from Aboriginal and Torres Strait Islander organisations and communities, regarded a preamble as a potential vehicle for reconciliation in so far as it could provide constitutional recognition of Aboriginal peoples and Torres Strait Islanders. In this regard the committee noted a then recent amendment to the text of Victoria's

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<sup>30</sup> QCRC report, n 2, recommendations 3.1 and 3.2.

<sup>31</sup> Note 28 at 21.

Constitution recognising Aboriginal peoples and suggested that the Queensland Government might consider a similar amendment to Queensland's Constitution.

The Government is yet to provide its final response to the committee's recommendation regarding a preamble.

### ***Conclusion***

As the above discussion demonstrates, recently there has been significant consideration of, and consequent reform regarding, constitutional issues in Queensland. The Government's acceptance of a number of the committee's recommendations will require amendments to the *Constitution of Queensland 2001* and *Parliament of Queensland Act 2001*.

These amendments aside, there is also likely to be significant discussion and activity regarding constitutional issues this Parliament.

In a ministerial statement to the Legislative Assembly on 2 September 2004, the Premier announced a review of various legislative provisions regarding certain statutory office holders as recommended by the committee in its report 36. The Government has recently embarked on this review with the aim of achieving further consistency in provisions regarding the appointment, termination, tenure, salary and budget of certain key independent statutory officers. Underlying the review of many of these provisions is finding an appropriate balance in the relationship between Parliament and the relevant officers.

A further constitutional issue examined by the committee and which has re-emerged in the media is the oath or affirmation of allegiance to the Crown required to be taken or made by members before they can take their seat in the Legislative Assembly. As discussed, the committee recommended in report no 36 that this component of the oath should be optional. In late 2004 the Queensland Attorney-General was reported as stating that he would seek to amend the Queensland Constitution '*so new state parliamentarians don't have to swear allegiance to the Crown*', but rather have the option of '*a simple oath of loyalty to the people of Australia*'.<sup>32</sup>

The possibility of a referendum to extend the current parliamentary term to four years also remains. However, agreement between the political parties aside, there is a question regarding the timing of such a referendum. There is some doubt that, legally, the referendum could be held at the same time as a general State election.

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<sup>32</sup> D. Houghton, 'Attorney-General Rod Welford will seek to amend the Queensland Constitution', *The Courier-Mail*, 18 December 2004 at 30.



Beyond this Parliament, there remain various issues regarding constitutional entrenchment. Not only is the consolidation of the Queensland Constitution still technically incomplete, but there is also the question of entrenching further key aspects of the Constitution. As discussed, at present this is unlikely to occur until such time as the issue of a republic is again considered. Of course, any move to a republican system of government would also raise many other constitutional issues.

