

Legal, Constitutional and Administrative Review Committee

REVIEW OF THE MEMBERS' OATH OR AFFIRMATION OF ALLEGIANCE

REPORT NO 31, OCTOBER 2001

1 INTRODUCTION

By letter dated 17 May 2001, the Premier asked the Legal, Constitutional and Administrative Review Committee ('the committee' or 'LCARC') to consider recommendation 7 of the Members' Ethics and Parliamentary Privileges Committee ('MEPPC') report no 44,¹ namely:

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 is contained in s 4 of the *Constitution Act 1867* (Qld). One of the LCARC's statutory areas of responsibility is constitutional reform.²

At its meeting held on 30 May 2001, the committee resolved to: (a) consider the issue raised in the Premier's letter; and (b) as a first step, seek expert advice from Dr Gerard Carney, Associate Professor of Law, Bond University, regarding a number of issues associated with the MEPPC's recommendation. The committee has relied upon Dr Carney's advice in preparing this report.

The committee has dealt with this issue on a stand alone basis and not as part of any wider review of constitutional reform.³

2 THE CURRENT OATH OR AFFIRMATION OF ALLEGIANCE

Section 4 of the *Constitution Act 1867* which contains the members' oath of allegiance provides:

No member of the Legislative Assembly shall be permitted to sit or vote therein until that member has taken and subscribed the following oath before the Governor or before some person or persons authorised by the Governor to administer the oath-

I, .(name of member).. do sincerely promise and swear that I will be faithful and bear true allegiance to Her (or His) Majesty (name of Sovereign).. as lawful Sovereign of Australia and Her (or His) other realms and territories, and to Her(or His) heirs and successors, according to law. So help me God.

¹ MEPPC, *Report on a code of ethical standards for members of the Queensland Legislative Assembly*, report no 44, Goprint, September 2000. Available via <<http://www.parliament.qld.gov.au/Committees/>>.

² *Parliamentary Committees Act 1995* (Qld), s 11.

³ The current committee has decided to defer finalising the former LCARC's review of the Queensland Constitutional Review Commission's *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution* to enable it to focus on finalising the review of the *Freedom of Information Act 1992* (Qld).

Members who object to swearing an oath because they have no religious belief, or who object on conscientious grounds or for any sufficient reason, are permitted by s 5 of the *Constitution Act*—when read with the *Oaths Act 1867* (Qld)—to make an *affirmation* of allegiance in lieu of the oath. The affirmation is made in these terms:

I, . (name of member)..do sincerely promise and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of Australia and Her other Realms and Territories, and to Her Heirs and Successors, according to Law.

3 BACKGROUND TO THE MEPPC'S RECOMMENDATION

The MEPPC is charged under s 16 of the *Parliamentary Committees Act 1995* (Qld) with recommending to the Legislative Assembly a proposed code of conduct for members.

3.1 Report on a draft code of conduct

In accordance with its statutory responsibility regarding a code of conduct, the MEPPC of the second session of the 48th Parliament tabled in May 1998 MEPPC report no 21⁴ which consisted of two parts:

- Part A - *Report on a draft code of conduct for members of the Queensland Legislative Assembly*; and
- Part B - *Draft code of ethical conduct for members of the Queensland Legislative Assembly*.

Part A comprised an overview of the conduct of the inquiry and a summary of the committee's deliberations.

The committee's draft code of ethical conduct (contained in Part B) consisted of three parts:

- an aspirational *Statement of Ethical Principles* including a *Statement of Commitment* (aimed at clarifying the principles which underpin a member's unique parliamentary role);
- the enforceable *Obligations and Requirements of Members* (a consolidation of members' specific obligations regarding their behaviour, duties and relationships); and
- a *Procedure for Complaints* (a summary of the complaints which might arise about a member's conduct, the categories of complaint into which specified behaviour would fall, the enforcement mechanism for each category of complaint, and the consequences of non-compliance with the *Obligations and Requirements of Members*).

The MEPPC tabled the draft code to enable a period of consultation and debate prior to the presentation of a final report to the Legislative Assembly.

In report no 21, Part A the MEPPC reported that it had considered the current oath of allegiance for members of the Legislative Assembly contained in s 4 of the *Constitution Act 1867*. The committee made the following comment regarding this oath in its report:

*The committee, whilst not criticising the current oath, notes that it is an oath of allegiance only. It contains no aspirational objectives, and does not refer to the people or good government of the State. For this reason the committee considers that members should be required to make a Statement of Commitment after taking the Oath of Office [sic], but before taking their seat in the House. The committee has developed a Statement of Commitment, largely modelled on the Tasmanian statement, for consideration. The proposed Statement of Commitment is included within the code of ethical conduct.*⁵

⁴ Goprint, May 1998. Available via <<http://www.parliament.qld.gov.au/Committees/>>.

⁵ Note 4, Part A at 84.

The committee's proposed *Statement of Commitment* provides:

To the people of the State of Queensland, we owe the responsible execution of our official duties, in order to ensure peace, welfare and good government.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Queensland people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions.⁶

3.2 Report on a code of ethical standards

In September 2000, the MEPPC of the 49th Parliament tabled MEPPC report no 44 being the committee's final report on a code of ethical standards (conduct) for members of the Queensland Legislative Assembly.

This report included a separate proposed *Code of Ethical Standards*, the focal point of which was the *Statement of Fundamental Principles* (called the *Statement of Ethical Principles* in MEPPC report no 21). The six fundamental principles draw together the various concepts underpinning the duties and obligations of members of Parliament and are designed to assist members to better understand their role and responsibilities. The principles are:

- integrity of the Parliament;
- primacy of the public interest;
- independence of action;
- appropriate use of information;
- transparency and scrutiny; and
- appropriate use of entitlements.

In its report, the MEPPC recommended a number of steps in adopting a *Code of Ethical Standards* for members of the Queensland Legislative Assembly.

In accordance with recommendation 3, the Legislative Assembly adopted the *Statement of Fundamental Principles* on 17 May 2001.

In accordance with recommendation 9, the Legislative Assembly adopted the *Procedures for raising and considering complaints of breach of privilege or contempt* on 8 August 2001.⁷

Recommendation 7 (the subject matter of this report) represented a change in approach. In contrast to the earlier MEPPC which recommended that members subscribe to the *Statement of Commitment* immediately after taking their oath of allegiance but before taking their seat, the later MEPPC sought to have the aspirational statements contained in that statement "taken into account" in a modified oath.

⁶ Note 4, Part B at 2-3.

⁷ These procedures were initially outlined by the MEPPC in its September 1999 report no 36 *Report on procedures for raising and considering matters of privilege or contempt and the definition of contempt* and repeated as part of the *Code of Ethical Standards* tabled with MEPPC report no 44.

The later MEPPC concluded that it would be "impractical and unwieldy" for members to both take an oath of allegiance and also subscribe to a statement of commitment at the time of taking their seat in the Legislative Assembly.⁸ Instead, that committee felt that "it is desirable and appropriate for members upon taking office to make a personal commitment to the people and good government of Queensland" and that this could be effected by amending the oath of allegiance rather than by subscribing to an additional statement of commitment.⁹

The MEPPC further emphasised that in recommending a review of the oath of allegiance it was not suggesting that allegiance to the Sovereign be reviewed, noting that this was "a matter for wider constitutional debate and an issue that has recently been rejected at referendum".¹⁰

The Government, in its response to MEPPC report no 44, stated that it endorsed recommendation 7 but considered that any amended wording would be best determined by the House itself.¹¹ The Premier subsequently considered it appropriate that the issue be considered by LCARC.

4 THE CONSOLIDATION OF THE QUEENSLAND CONSTITUTION

Recommendation 7 of MEPPC report no 44 refers to the current effort to consolidate Queensland's Constitution.

The previous two LCARCs undertook significant work in examining how all Acts and laws relating to Queensland's Constitution could, as far as possible, be consolidated into one Act.¹² Queensland's constitutional provisions are not only found in the *Constitution Act 1867* but in a wide range of other Acts.

The aim of the former committees' inquiry was to consolidate existing constitutional provisions and modernise the language of those provisions rather than to change the meaning of the Constitution. Accordingly, the most recent version of the former committee's proposed oath or affirmation which appears in the draft Constitution of Queensland 2000 remains an oath of allegiance.¹³

The committee understands that the Government intends to introduce a consolidated Constitution into the Legislative Assembly in the short term.

5 THE PURPOSE OF THE OATH OR AFFIRMATION

The current oath prescribed by s 4 of the *Constitution Act 1867* is an oath of *allegiance* to the Queen of Australia and thus its purpose is to affirm a member's loyalty to the Queen of Australia. It is not an oath of *office*, as such, because it does not swear any commitment to perform faithfully the duties and responsibilities of a member of Parliament.

The requirement to make the oath or affirmation of allegiance is effectively enforced by the prohibition in s 4 on sitting and voting in the House until either is given. A member cites the oath or affirmation in the House before the Governor or other authorised person and signs it. The ceremony entailed in making that oath or affirmation serves a practical purpose in defining the moment when a member is entitled to take his or her seat in the House.

⁸ Note 1 at 5.1.

⁹ Note 1 at 5.1.

¹⁰ Note 1 at 5.1.

¹¹ Tabled on 22 March 2001.

¹² LCARC, *Consolidation of the Queensland Constitution: Interim report*, report no 10, Goprint, Brisbane, May 1998; LCARC, *Consolidation of the Queensland Constitution: Final report*, report no 13, Goprint, Brisbane, April 1999. LCARC *Review of the QCRC's recommendations relating to a consolidation of the Queensland Constitution Commission's recommendations relating to a consolidation of the Queensland Constitution*, report no 24, Goprint, Brisbane, July 2000. All reports are available via <<http://www.parliament.qld.gov.au/Committees/>>.

¹³ See LCARC report no 24: n 12.

Moreover, in making an oath or affirmation, a member is making a solemn public declaration or promise to comply with the terms of the oath or affirmation.

As the commitments or promises made in an oath or affirmation are morally and not legally binding, an oath or affirmation does not impose any penalty for a failure to comply with its commitments.

However, *conduct* which violates the promises made may have legal or other consequences which arise independently from the fact that those promises were made in an oath or affirmation. For example, if the commitment were to comply with a code of conduct, a failure to do so would attract whatever enforcement mechanism was imposed by that code. If there was none, that is, it was a purely aspirational code, then the only consequences are likely to be political and those which flow from the force of public opinion.

Accordingly, the inclusion of aspirational statements in a members' oath or affirmation will not attract any additional legal liability for being so included.

6 OTHER JURISDICTIONS

An oath of allegiance rather than an oath of office is prescribed for members of all Australian Parliaments, except in the ACT.¹⁴ Members of the ACT Legislative Assembly are given three options: the traditional oath or affirmation of allegiance to the Queen; an oath or affirmation of office, that is, a commitment to the people of the ACT to: 'faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge [their] responsibilities according to law'; or a combination of both of these.¹⁵

The oath taken by members of the United Kingdom's House of Commons also contains no pledge of duty towards the people.¹⁶

7 OPTIONS CONSIDERED BY THE COMMITTEE

Recommendation No 7 of MEPPC report no 44 does not contemplate incorporation of the entire *Statement of Commitment* in the oath or affirmation. There is no limit on the length of an oath or affirmation but the committee is conscious that their effectiveness as a solemn commitment could be reduced if too verbose.

The committee has considered the following options for expanding the oath or affirmation.

- Option 1:** Include in the oath or affirmation a redrafted *Statement of Commitment* in a condensed form.
- Option 2:** Incorporate in the oath or affirmation a commitment to comply with the *Statement of Commitment* (as adopted by the House) without repeating its provisions.
- Option 3:** Include in the oath or affirmation a commitment to the people of Queensland to faithfully execute the duties and responsibilities of a member of Parliament. This effectively adds to the oath or affirmation of allegiance, an oath or affirmation of office.

¹⁴ However, the House of Representatives Standing Committee on Procedure has recommended that the form of oath or affirmation of allegiance taken by members and Senators be reviewed with a view to including an acknowledgment of responsibility to the people of Australia. Commonwealth Parliament. House of Representatives, Standing Committee on Procedure, *Balancing tradition and progress*, August 2001, Canberra at 3.51, 4.18 and recommendation 5. The committee further recommended that a proposed new form of oath or affirmation be put to the people in a referendum.

¹⁵ *Oaths and Affirmations Act 1984* (ACT), s 6A.

¹⁶ House of Commons Library, *The Parliamentary Oath*, Library Research Paper 00/17, February 2000 at 9.

Option 4: Adopt both 2 and 3 above to produce an oath or affirmation along the lines of:

I ... do sincerely promise and swear (or, for an affirmation—affirm) that as a member of the Legislative Assembly I :

- *shall be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of Australia and Her other realms and territories and to Her heirs and successors, according to law; and*
- *shall faithfully serve to the best of my ability the people of Queensland according to law and in accordance with the principles and standards of the Members' Statement of Commitment to which I subscribe along with this oath.*

This, like option 2, would require the Legislative Assembly to adopt the *Statement of Commitment*.

Option 5: Include in the oath or affirmation a commitment to the people of Queensland to faithfully execute the duties and responsibilities of a member of Parliament in accordance with the Statement of Fundamental Principles adopted by the House on 17 May 2001.

The committee has also considered whether the oath or affirmation of allegiance should be retained.

8 INDIVIDUALISING THE OATH OR AFFIRMATION

A further, broad option is a provision enabling members to individualise the oath or affirmation.

As s 4 of the *Constitution Act 1867* currently stands, it is unclear whether an oath substantially in the terms of the oath prescribed would be sufficient. However, provision could be made in the Constitution for an individualised oath or affirmation by permitting an addition in the following manner:

I ... do sincerely promise and swear (or, for an affirmation—affirm) that as a member of the Legislative Assembly I :

- *shall be faithful and bear true allegiance to Her Majesty ... as lawful Sovereign of Australia and Her other realms and territories and to Her heirs and successors, according to law; and*
- *shall*

Some parameters would need to be imposed on such an addition. At least, any addition should not be permitted to conflict with that part of the oath or affirmation which is prescribed. It would be inappropriate for there to be no fixed content, otherwise the reason for members making an oath or affirmation could be undermined.

A general parameter might be that the terms of any addition express a commitment to the people of Queensland which is consistent with the duties and responsibilities of a member of Parliament. Further, the enforcement of any parameters as to an individual addition to an oath or affirmation ought to be vested exclusively in the House to avoid the risk of unjustified legal challenges disrupting parliamentary business.

On balance, as the committee believes that prescribing parameters to any provision enabling members to individualise the oath or affirmation is fraught with difficulties, it concludes against the option of individualising oaths.

9 THE CURRENT MEPPC'S PREFERRED OPTION

Prior to tabling this report, the committee provided the current MEPPC with a copy of Dr Carney's advice on this issue and the opportunity to comment on that advice.

By letter dated 5 September 2001, the MEPPC advised that it agreed to support the current wording of the oath being retained, with an additional phrase pledging a commitment (in the terms below) to the people of Queensland.

'I, .. (name of member) .. do sincerely promise and swear that I will be faithful and bear true allegiance to Her (or His) Majesty .. (name of Sovereign) .. as lawful Sovereign of Australia and Her (or His) other realms and territories, and to Her (or His) heirs and successors, according to law and as a consequence I also pledge my commitment to the people of Queensland.' So help me God.
[Addition underlined]

While this suggestion attempts to include an oath of office as in option 3, it fails to adequately explain the nature of the commitment.

10 THE COMMITTEE'S PREFERRED OPTION

The committee has considered a number of aspects of the current oath or affirmation of allegiance in light of the MEPPC's recommendation and other research.

10.1 Should members be required to make an oath or affirmation of office?

The committee believes that, upon taking office, members should be required to make a personal commitment to the people of Queensland—the actual font of sovereign power in this State. Given the solemn public declaration entailed in making an oath or affirmation, the inclusion of a commitment to act faithfully in the public interest of Queensland is eminently appropriate. It serves to remind members of their special duty, while the public ceremony hopefully reassures the people of Queensland that their members of Parliament are acutely aware of their responsibilities. An oath or affirmation of office would therefore complement the range of mechanisms already in place to bolster public confidence in the parliamentary process.

An oath of office, as a promise to faithfully perform the functions of one's office, seemingly entails a commitment to performing those functions:

- to the best of one's abilities;
- according to law; and
- in accordance with the relevant ethical standards of that office.

The last of these implicitly incorporates the other two aspects. Therefore, in the committee's view, if an oath of office does not refer to ethical standards, express reference should be made to the other two aspects to give the oath of office some substance.

Requiring members to take or make an oath or affirmation of office explains the commitment referred to in the oath recommended by the current MEPPC, and essentially accords with the comments made by the MEPPC of the 49th Parliament.

An oath or affirmation of office (as per recommendation 1 in section 11 of this report) should be included in the consolidated Queensland Constitution which, the committee understands, will be introduced into Parliament in the short term.

10.2 Should an oath or affirmation of allegiance be retained?

Section 4 of the *Constitution Act 1867* currently mandates members to swear or affirm allegiance to the Crown.

Originally, an oath of allegiance was to ensure loyalty of subjects to the reigning Sovereign. Later, one could view an oath of allegiance as serving the purpose of making a public commitment to perform one's duties of office for the benefit of the state, personified in the Sovereign. That might be the purpose that an oath or affirmation of allegiance still performs. However, since it is not as clear as it might be, the oath or affirmation of office has developed to expressly promise that the duties of office will be lawfully and faithfully performed.

The committee recognises that some members have difficulties with a mandatory requirement that members of the Queensland Legislative Assembly swear or affirm allegiance to a person who is a foreign national, living in a foreign country and whose position is attained by genetic inheritance. These members believe a compulsory oath or affirmation of allegiance to the Crown is contrary to the notion of a modern, independent and democratic Australia.

These members would argue that removing a requirement to swear or affirm allegiance to the Crown is not solely an issue related to the republican debate. Nor does it deny Australia's history with Great Britain, the strong relationship between the two countries, or respect for Queen and the position she holds. Rather, it concerns members properly acknowledging where their allegiance and duties lie and whom they are required to serve—that is, to the people of Queensland who elected them.

There is no constitutional impediment to repealing the requirement of members of the Queensland Parliament to make an oath or affirmation of allegiance. It is not protected by s 53 of the *Constitution Act 1867* nor by any other manner and form provision. Further, and as noted above, an oath or affirmation is a commitment which is morally, not legally, binding.

Members of the ACT Legislative Assembly and various judicial officers in the ACT have a choice as to whether they swear or affirm allegiance to the Crown (although slightly different constitutional arrangements exist in the ACT).¹⁷ There is also currently a bill before the Tasmanian Parliament to remove the oath or affirmation of allegiance from judicial oaths in that state.¹⁸

There is a good case for members of the Queensland Legislative Assembly to also have a choice as to whether they swear or affirm allegiance to the Crown. Members currently have a choice as to whether they swear an oath or make an affirmation, and likewise could have a choice as to whether they swear allegiance to the Crown. This option enables respect to be given to members' different opinions, and enables members to make a promise which truly reflects their moral commitment.

On the other hand, there are sound reasons not to remove the oath or affirmation of allegiance to the Crown from s 4.

Under our current system of government—which remains unchanged following the unsuccessful referendum in 1999—the Queen remains Queensland's Head of State. Queensland's Constitution provides that the Parliament of Queensland consists of the Queen and the Legislative Assembly.¹⁹

Giving members a choice not to swear or affirm allegiance might also require consideration of whether all other oaths of allegiance taken by public officers and Judges in Queensland should likewise be altered. People who are currently required to, or by practice, make an oath or affirmation of allegiance include the

¹⁷ In relation to MLAs see the *Oaths and Affirmations Act 1984* (ACT), s 6A. In relation to the various judicial officers, see the *Coroners Act 1997* (ACT), s 10; *Administrative Appeals Tribunal Act 1989* (ACT), s 11; *Supreme Court Act 1933* (ACT), s 19.

¹⁸ See the Promissory Oaths Amendment Bill 2001 (Tas), introduced 23 August 2001. The Bill does not seek to do the same for the oath of allegiance required to be taken of MPs.

¹⁹ *Constitution Act 1867* (Qld), s 2A. This provision is entrenched.

Governor, Ministers of State, and Judges of the Supreme Court. (Although, only few public officers are required by statute to swear or affirm allegiance to the Crown.)

On balance, the committee believes that the most appropriate course of action is for the committee to conduct public consultation regarding whether there should be a mandatory requirement for members to swear or affirm allegiance to the Crown. Given the committee's understanding of time frames, this issue will not be resolved before introduction of a consolidated Constitution.

The committee has placed on hold a stage 2 review of the Queensland Constitutional Review Commission's February 2000 *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution* pending finalisation of its review of the *Freedom of Information Act 1992*. The issue of the oath or affirmation of allegiance fits in with that wider constitutional reform project.

10.3 Should other statements be included in a revised oath or affirmation?

The committee has considered, and concluded against, including in an expanded oath or affirmation reference to or incorporation of some form of the:

- *Statement of Commitment* proposed by the MEPPC (but not yet adopted by the House); and/or
- *Statement of Fundamental Principles* adopted by the House on 17 May 2001.

Option 1 (to include in the oath or affirmation a redrafted *Statement of Commitment* in a condensed form) has the potential to make the oath or affirmation lengthy.

Moreover, including a reference to the *Statement of Commitment* in the oath or affirmation without repeating its provisions (options 2 and 4) is relatively inflexible in that the Legislative Assembly might, in the future, decide on another form of commitment for members. The oath or affirmation forms part of Queensland's Constitution and therefore can only be changed by Parliament passing amending legislation. If Queensland's Constitution is entrenched, change will require some additional mechanism, for example, a referendum.

Should the House nevertheless decide to include in an expanded oath or affirmation reference to or incorporation of some form of the *Statement of Commitment*, the committee notes that, despite its name, the *Statement of Commitment* recommended by the MEPPC in its report No 21 Part B is not drafted clearly in terms of a commitment. In citing that the members "owe" certain duties, the *Statement* does not require members to *expressly* undertake to fulfil those duties. A commitment entails a promise to do something, such as, "I *pledge to serve* my constituents with honesty, accessibility, accountability, courtesy and understanding". Merely to say "I owe" these things to my constituents, does not express an intention actually to do that.²⁰

Accordingly, if it is to be incorporated in the oath or affirmation, the MEPPC's *Statement of Commitment* should be redrafted so that members send a clear message of their commitment to the contents of the statement—even if they are only "aspirational".

The committee has also decided against including any reference to the *Statement of Fundamental Principles* (option 5) in the oath or affirmation. The *Statement of Fundamental Principles* is designed to assist members to better understand their role and responsibilities and is not drafted as a commitment to the people of Queensland. Therefore, it is more appropriate that the House adopt the statement (as it has done) rather than it forming part of the oath or affirmation contained in the Constitution.

Again, a future Parliament might not adopt the *Statement of Fundamental Principles* but rather some other form of that statement.

²⁰ The committee notes that the Tasmanian Parliament's statement of commitment—on which the MEPPC's proposed statement is based—is likewise drafted in terms of what members 'owe' rather than 'pledge'.

11 RECOMMENDATION

11.1 Recommendation 1

The committee recommends that the Premier—as the minister responsible for Queensland’s constitutional legislation—introduce a bill to amend s 4 of the *Constitution Act 1867* (Qld) (as part of the current effort to consolidate the Queensland Constitution) to include a requirement that members of the Queensland Legislative Assembly make an oath or affirmation of office in the following terms:

- *shall, in serving the people of Queensland, faithfully perform the duties and responsibilities of a member of Parliament to the best of my abilities and according to law.*

11.2 Recommendation 2

The committee recommends that the Legal, Constitutional and Administrative Review Committee conduct further public consultation on the issue of whether members of the Queensland Legislative Assembly should be provided with an option as to whether to swear or affirm allegiance to the Crown, or only to the people of Queensland. The committee intends to conduct this consultation as part of a review of wider constitutional reform issues raised by the Queensland Constitutional Review Commission.

Karen Struthers MP
Chair

LCARC MEMBERSHIP – 50TH PARLIAMENT

Mrs Karen Struthers MP (Chair)
Miss Fiona Simpson MP (Deputy Chair)
Mrs Liz Cunningham MP
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DISSENTING REPORT

We wholeheartedly agree with recommendation 1 that members of the Queensland Legislative Assembly should, upon taking office, be required to swear or affirm to the people of Queensland that they will faithfully perform the duties and responsibilities of a member of Parliament to the best of their abilities and according to law.

However, we do not agree with recommendation 2 that the committee conduct further public consultation on the issue of whether members should have the option to swear or affirm allegiance to the Crown.

The issue of whether members of the Legislative Assembly should swear or affirm their allegiance to the Crown is essentially an issue about whether Australia should be a republic. Australians recently defeated a referendum on becoming a republic. The people at the recent referendum did not vote to change the constitution and thus, to remove the mandatory requirement that members swear or affirm allegiance to the Crown would be presumptuous. Removal of the oath or affirmation of allegiance is an issue for the people not for members of Parliament.

Regardless of the personal opinions of members of the Legislative Assembly, until such time as Australia becomes a republic we are a constitutional monarchy and our head of state is Queen Elizabeth the Second, her heirs and successors. Queensland's Constitution provides that the Queen and the Legislative Assembly currently constitute our Parliament.¹ Declaring one's loyalty to the Head of State of Queensland is of particular significance given that members of the Queensland Parliament are disqualified if they make a declaration or acknowledgment of allegiance to a foreign state or power.²

Members of all other Australian Parliament's (except the ACT) must swear or affirm allegiance to the Crown. The current proposal in Tasmania to remove the oath or affirmation of allegiance required of various judicial officers of that state does not extend to members of the Tasmanian Parliament.

Different constitutional arrangements exist in the ACT where MPs have a choice whether to swear or affirm allegiance to the Crown. As the Leader of the ACT Opposition stated when introducing the legislation to give MLAs this choice:

Of all the parliaments in Australia, this Assembly has the least connection with the monarchy. The Territory does not have its own representative of the Queen in the form of a governor or an administrator, as do all other States and Territories. Australia's Governor-General retains some specific powers in relation to the Assembly, but has, in fact, had no dealings with the Assembly since self-government; nor does the ACT have an Executive Council to advise the Governor-General on appointments, et cetera. Legislation passed in this Assembly is proclaimed and gazetted without reference to anyone other than the Chief Minister, and the Chief Minister alone appoints the ACT's Ministers—quite unlike the situation in other

¹ Constitution Act 1867 (Qld), s 2A. This provision is entrenched.

² Legislative Assembly Act 1867 (Qld), s 7(1).

*parliaments. Thus, for all practical purposes, the Queen has almost no relevance for the operation of this Assembly or the ACT Government. The Governor-General, who is the Queen's representative, does have some reserve powers; but as yet he has not exercised those powers or expressed any interest in doing so.*³

For these reasons we cannot agree with the committee's arguments regarding the removal of a mandatory requirement that members swear or affirm allegiance in section 10.2 of the report and nor can we agree with recommendation 2.

In our view, the only appropriate form of consultation on this issue is another referendum of the people on changing our system of government. Removing the mandatory requirement for members to swear or affirm allegiance to the Crown should only occur as a consequence of a successful referendum for an Australian republic.

Miss Fiona Simpson MP

Member for Maroochydhore
Shadow Minister for Health;
Shadow Minister for Tourism; and
Shadow Minister for Women's Policy

Ms Liz Cunningham MP

Member for Gladstone

Ms Dorothy Pratt MP

Member for Nanango

³ Leader of the Opposition (Ms Follett), Oaths and Affirmations (Amendment) Bill 1995, ACT Hansard, 21 June 1995 at 970.

Dissenting Report by
Ronan Lee MP
Member for Indooroopilly

Queensland's society is built upon free and democratic values. It is these same values upon which we should build our Legislature and expect our Members of Parliament to uphold.

It is my strong view that our Members of Parliament derive their authority from the people of Queensland whose will is expressed at free, fair, democratic and regular elections and hence, as MPs we owe the people of Queensland our allegiance.

For this reason I believe that it is important that the MPs' Oath of Allegiance should contain a commitment to "*be faithful and bear true allegiance to the people of Queensland*" and I am supportive of this aspect of the Committee's Recommendations.

I have difficulties, however, with the Committee's conclusion that there is not, at this time, some scope to make the Oath of Allegiance to the reigning monarch *optional*. The substantive conclusion of the Committee's Report is that the Members' Oath should contain a compulsory Oath of Allegiance to the monarch. This situation, I believe is at odds with community values and expectations but it is a situation which could easily be remedied.

The legal advice obtained by the Committee made it clear that there are no Constitutional restrictions upon making an oath of allegiance to the monarch *optional* or even to removing it altogether.

However, I acknowledge that our State has historical links with the monarchy and that Members often feel the need to swear an allegiance to the monarch as Australia's Head of State. For this reason, I believe that the making of an oath of allegiance to the monarch should be an optional part of the Members Oath sworn (or indeed affirmed) prior to taking their seat.

My preferred Members' Oath would read:

I, (name of member)... do sincerely promise and swear (or, for an affirmation – do affirm) that as a member of the Legislative Assembly I:

- *shall be faithful and bear true allegiance to the people of Queensland,*
- *shall, in serving the people of Queensland, faithfully perform the duties and responsibilities of a member of Parliament to the best of my abilities and according to law.*

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

OR;

I, (name of member)... do sincerely promise and swear (or, for an affirmation – do affirm) that as a member of the Legislative Assembly I:

- *shall be faithful and bear true allegiance to Her or (His) Majesty (name of Sovereign)...as lawful Sovereign of Australia and Her (or His) other realms and territories and to Her (or His) heirs and successors, according to law and;*
- *shall be faithful and bear true allegiance to the people of Queensland.*

- shall, in serving the people of Queensland, faithfully perform the duties and responsibilities of a member of Parliament to the best of my abilities and according to law.

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

It is my hope that at some time in the not too distant future the Parliament will consider this issue and provide elected Members with this option.

Ronan Lee MP
Member for Indooroopilly