

Legal, Constitutional and Administrative Review Committee

CONSTITUTIONAL AND OTHER LEGISLATION AMENDMENT BILL 2005 (QLD)

REPORT NO. 50, SEPTEMBER 2005

1. INTRODUCTION

1.1 The Legal, Constitutional and Administrative Review Committee

The Legal, Constitutional and Administrative Review Committee (the committee or LCARC) is a statutory committee of the Queensland Parliament established under s80 of the *Parliament of Queensland Act 2001* (Qld). The committee's responsibilities are set out in the *Parliament of Queensland Act* and other legislation.

The *Parliament of Queensland Act* provides that the committee has four areas of responsibility.¹ One of these areas of responsibility is 'constitutional reform', and s87 of the *Parliament of Queensland Act* further provides that:

The committee's area of responsibility about constitutional reform includes any Bill expressly or impliedly repealing any law relevant to the State's constitution.

1.2 This report

This report sets out background information relevant to the passage of the Constitutional and Other Legislation Amendment Bill 2005 (Qld) (the bill), to the extent that some provisions of the bill relate to recommendations made by LCARC.

The report does not contain a detailed examination of provisions of the bill. Consistent with the committee's statutory responsibility in the area of constitutional reform, it contains information about certain matters relevant to the bill which have received past consideration by LCARC. In particular, the report contains information relevant to clauses 5, 8 and 14 of the bill.

In this context, the report contains a discussion about these matters to inform the Legislative Assembly's debate on the bill.

2. BACKGROUND

On 23 August 2005, the bill was introduced into the Legislative Assembly by the Premier and Treasurer. In his second reading speech, the Premier stated:

Today we are seeing the culmination of several years of detailed examination of issues of constitutional reform in Queensland, dating back to the Queensland Constitutional Review Commission which I established in 1999.

I am pleased to introduce the Constitutional and Other Legislation Amendment Bill 2005. The bill amends the Constitution of Queensland 2001 and the Parliament of Queensland Act 2001 to give effect to the government's response to the Legal, Constitutional and Administrative Review Committee's reports Nos 36, 41 and 42. My government tabled its response to these three reports on 27 April 2004. There were 11 recommendations that

¹ *Parliament of Queensland Act 2001* (Qld), ss 85-89.

*were accepted which required amendment of the Constitution of Queensland 2001 and a total of three recommendations requiring amendment of the Parliament of Queensland Act 2001.*²

The Explanatory Notes to the bill state that the constitutional amendments are to give effect to the Government's response to the following LCARC reports:

- report no. 36, *The Queensland Constitution: Specific content issues*;³
- report no. 41, *Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution*;⁴ and
- report no. 42, *Hands on Parliament – A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes*.⁵

It is explained that the bill also gives effect to the Government's response to report no. 64 of the Members' Ethics and Parliamentary Privileges Committee (MEPPC), *Report on an examination of the appropriate scope of provisions on Members transacting business with an entity of the state, and related matters*.⁶

The Explanatory Notes further state that the constitutional amendments in the bill were developed in consultation with:

- the Department of the Premier and Cabinet;
- the Crown Solicitor;
- the Department of Justice and Attorney-General (which in turn consulted with the judiciary, the magistracy, the Bar Association of Queensland and the Queensland Law Society);
- the Government Superannuation Office;
- the Clerk of the Parliament; and
- the Office of the Queensland Parliamentary Counsel.

² Hon P D Beattie MP, Premier and Treasurer, Constitutional and Other Legislation Amendment Bill 2005 (Qld), Second Reading Speech, *Parliamentary Debates (Hansard)*, 23 August 2005, page 2576.

³ LCARC, *The Queensland Constitution: Specific content issues*, report no. 36, Goprint, Brisbane, August 2002.

⁴ LCARC, *Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution*, report no. 41, Goprint, Brisbane, August 2003.

⁵ 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.

⁶ MEPPC, *Report on an examination of the appropriate scope of provisions on Members transacting business with an entity of the state, and related matters*, Goprint, Brisbane, July 2004.

3. LCARC REPORTS RELEVANT TO THE BILL

Reports of the LCARCs of the 48th, 49th, 50th and 51st Parliaments have contained recommendations relevant to a consideration of the bill. These reports are outlined below.

3.1 Report of the LCARC of the 48th Parliament

On 2 May 1996, the LCARC of the 48th Parliament resolved to inquire into 'the issue of consolidation of the Queensland Constitution'.⁷ The consolidation of the Queensland Constitution had received prior consideration by the Electoral and Administrative Review Commission and the Parliamentary Committee for Electoral and Administrative Review.⁸ However, at that time, the Queensland Constitution remained in a number of statutes.

The committee's inquiry sought to bring together the disjointed constitutional provisions into two easily-intelligible primary statutes. The aim was to enhance public access to, and understanding of, Queensland's Constitution,⁹ but the inquiry's terms of reference did not include revision of the content of the Constitution.¹⁰ The committee provided an interim report, report no. 10, which contained consultation drafts of a Constitution of Queensland Bill 1998 and a Parliament of Queensland Bill 1998.

3.2 Reports of the LCARC of the 49th Parliament

In April 1999, the LCARC of the 49th Parliament tabled report no. 13, *Consolidation of the Queensland Constitution: Final Report*.¹¹ The committee said that its report finalised the inquiry to consolidate the Constitution undertaken by the committee of the previous Parliament and contained revised drafts of a constitutional consolidation bill and a Parliament of Queensland bill.

On 29 February 2000, the Premier tabled in the Legislative Assembly the report of the Queensland Constitutional Review Commission (QCRC) entitled *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*.¹² The Premier stated that the report was tabled for 'consideration and reporting' by the committee.¹³

The LCARC of the 49th Parliament gave consideration to, and reported on, recommendations of the QCRC relating to:

- consolidation of the Queensland Constitution (report no. 24);¹⁴ and
- an extension of the maximum term of the Legislative Assembly to four years with a fixed minimum period of three years (report no. 27).¹⁵

⁷ LCARC, *Consolidation of the Queensland Constitution: Interim report*, report no. 10, Goprint, Brisbane, May 1998, p 1.

⁸ Electoral and Administrative Review Commission, *Report on consolidation and review of the Queensland Constitution*, report 93/R4, Goprint, Brisbane, August 1993; and Parliamentary Committee for Electoral and Administrative Review, *Report on consolidation and review of the Queensland Constitution*, Goprint, Brisbane, November 1994.

⁹ Report no. 10, page 2.

¹⁰ Report no. 10, page 1.

¹¹ LCARC, *Consolidation of the Queensland Constitution: Final Report*, report no. 13, Goprint, Brisbane, April 1999.

¹² QCRC, *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*, Goprint, Brisbane, February 2000.

¹³ Hon P D Beattie MP, *Parliamentary Debates (Hansard)*, 29 February 2000, pages 45-46.

¹⁴ LCARC, *Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution*, report no. 24, Goprint, Brisbane, July 2000.

¹⁵ LCARC, *Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms*, report no. 27, Goprint, Brisbane, July 2000.

3.3 Reports of the LCARC of the 50th Parliament

On 31 May 2001, the committee of the 50th Parliament resolved to consider an issue relating to the oath of allegiance taken by Members of Parliament. The oath of allegiance was then contained in s 4 of the *Constitution Act 1867* (Qld), and the committee resolved to deal with the issue separate to any wider review of constitutional reform it might later undertake. In report no. 31 relating to that inquiry, a majority of the committee recommended that:

- s4 of the *Constitution Act 1867* be amended to require Members to make an oath or affirmation of office; and
- the committee conduct further public consultation on the issue of whether, for Members of the Legislative Assembly, swearing or affirming allegiance to the Crown should be optional.

The three non-government members of the committee provided a dissenting report, as did Mr Ronan Lee MP.

In November 2001, the Legislative Assembly passed the *Constitution of Queensland 2001* (Qld) and the *Parliament of Queensland Act 2001* (Qld). These statutes commenced on 6 June 2002.

Following the enactment of those statutes, the committee resolved to conduct an inquiry into further matters of constitutional reform, including:

- a review of QCRC recommendations not considered by the LCARC of the 49th Parliament;
- issues of constitutional reform referred to the committee by the Government in a letter dated 17 January 2002 from the then Acting Premier; and
- the outstanding issue from report no. 31 (regarding public consultation on the need for members to swear or affirm allegiance to the Crown).

The committee dealt with these matters in three separate but interrelated inquiries into:

- substantive issues of constitutional reform - see report no. 36;
- entrenchment of provisions of the Constitution – see report no. 41; and
- the possibility of special representation for Aboriginal peoples and Torres Strait Islanders – see report no. 42.

3.4 Report of the LCARC of the 51st Parliament

The present committee completed the broad, incremental constitutional project with an inquiry into the issue of a preamble for the *Constitution of Queensland*.

On 30 November 2004, the committee tabled report no. 46 in which it recommended that, at that stage, the *Constitution of Queensland* should not contain a preamble.¹⁶ Reasons for that conclusion included: insufficient public support and consensus; concerns about the legal effect of a preamble; concern whether the extensive consultation required to develop the form and text of a preamble would be an effective use of resources; and the likelihood of having to revisit any preamble if there were a change to a republican system of government.

¹⁶ LCARC, *A preamble for the Queensland constitution?*, report no. 46, Goprint, Brisbane, November 2004.

4. THE BILL

4.1 Matters addressed by bill

As stated in the Explanatory Notes to the bill, the amendments to the *Constitution of Queensland* and to the *Parliament of Queensland Act*¹⁷ are to effect the following:

- clarification of constitutional conventions relating to the functions of the Executive Council, the Governor's rights and powers, and the appointment and dismissal of the Premier and Ministers;
- provision of choice for Members of the Legislative Assembly whether to take an oath/affirmation of allegiance to the Crown;
- provision of choice for Judges and Ministers whether to take an oath/affirmation of allegiance to the Crown;
- creation of a statutory requirement for the Legislative Assembly to meet soon after a general election;
- statement of the role of the Parliamentary Secretaries;
- inclusion in the Constitution of a retirement age of Judges and more detailed provisions relating to the removal of Judges;
- extension of the objects of the statutory committees of the Legislative Assembly to include extending democratic government and the transparency of public administration;
- extension of LCARC's area of responsibility regarding legal reform to include considering whether Queensland law has sufficient regard to Aboriginal tradition and Torres Strait Islander custom;
- implementation of the Government's response to the MEPPC report no. 64;
- amendment of the definition of 'State' under the Constitution (as it relates to a department's authority to engage in commercial activities);
- amendment of the definition of 'proceedings in the Assembly' (concerning section 9 of the *Parliament of Queensland Act*);
- provision of new salary sacrifice arrangements for Members of the Legislative Assembly; and
- clarification of procedures for the tabling of documents when Parliament is expired, dissolved or prorogued.

4.2 Certain matters relevant to provisions of the bill

4.2.1 Clause 5

Section 22(1) of the *Constitution of Queensland* would be amended by clause 5 of the bill to provide members of the Legislative Assembly with a choice whether to take the oath/affirmation of allegiance to the Crown. This amendment would allow members to choose not to swear or affirm allegiance to the Crown. The Explanatory

¹⁷ Related amendments are made also to the *Supreme Court Act 1991* (Qld), *District Court Act 1967* (Qld), *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld), *Magistrates Act 1991* (Qld), *Magistrates Regulation 2003* (Qld) and *Oaths Act 1867* (Qld).

Notes state that the reform 'respects members' different opinions and enables members to make a promise which reflects their personal commitment'.¹⁸

In this context, the committee raises a further non-statutory reform which might further ensure respect for the diversity of members of the Queensland Parliament and enable members to make a promise reflecting their personal commitment. Where relevant, in addition to taking an oath/affirmation in English, a member of the Legislative Assembly could be provided with an opportunity to repeat that oath/affirmation in his or her Aboriginal or Torres Strait Islander language.

In the United Kingdom in 1974, a Speaker's private ruling was made allowing a member to recite the oath or affirmation in Welsh or Scots-Gaelic after he or she had taken the oath/affirmation in English.¹⁹ In 2005, the Speaker further ruled that members could also take the oath in Cornish once they had taken the oath/affirmation in English.

At present, no member of the Queensland Parliament identifies as Aboriginal or Torres Strait Islander. However, recommendations of the previous committee in its *Hands on Parliament* report were aimed at ensuring that Aboriginal peoples and Torres Strait Islanders participate in all aspects of government in Queensland. The opportunity for any future member who identifies with a culture indigenous to Queensland, and who speaks an Aboriginal or Torres Strait Islander language, to also take the oath/affirmation in that language might further ensure that such members were able to 'make a promise that reflects their personal commitment'.

In a future inquiry, the committee will seek the views of the people of Queensland about whether, upon the election to the Legislative Assembly of a member who identifies with a culture indigenous to Queensland and who speaks an Aboriginal or Torres Strait Islander language, consideration should be given to allowing that member to recite the oath/affirmation in that language after he or she has taken the oath/affirmation in English.

4.2.2 Clause 8

Effect of clause 8

Section 34 of the *Constitution of Queensland* would be amended by clause 8 of the bill. Currently, s34 provides:

34 Power of Governor—Ministers

Ministers hold office at the pleasure of the Governor who, in the exercise of the Governor's power to appoint and dismiss the Ministers, is not subject to direction by any person and is not limited as to the Governor's sources of advice.

¹⁸ Explanatory Notes, page 13.

¹⁹ *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, Twenty-second edition, Butterworths, London, 1997, page 309.

Should clause 8 of the bill be enacted, s34 would then read:

34 Power of Governor—Ministers

Ministers hold office at the pleasure of the Governor who, in the exercise of the Governor's power to appoint and dismiss the Ministers, must, in accordance with constitutional conventions, act on the advice of the Premier.

It is important to note that clause 8 amends only s34; that is, the Governor's statutory powers of appointment and removal of Ministers. At the same time, it should be noted that clause 10 of the bill inserts new ss 43A-43D which make further provision regarding Ministers and the Premier.

QCRC recommendation

In its report, the QCRC recommended that the (then) existing provision concerning the appointment of Ministers be amended to provide that the Governor shall act on the advice of the Premier in appointing and removing Ministers.²⁰ Such an amendment would require, in accordance with the general rule of practice, the Governor to act on the advice of his or her constitutional advisers.²¹

The amendment recommended by the QCRC would have excluded, in relation to the appointment and removal of Ministers, the operation of powers held 'in reserve' by the Governor which allow the Governor to act in the absence of advice or even contrary to advice in extreme circumstances. Those reserve powers have been described in brief in the following way:

*The reserve powers are intended to deal with a situation where the normal constitutional machinery has for some reason broken down. The exercise of these powers is largely guided by a mix of prior constitutional practice and the judgment of the Governor [or Governor-General].*²²

LCARC recommendation

In its report no. 36, the previous committee gave consideration to the QCRC recommendation and recommended that the *Constitution of Queensland* should not provide that the Governor shall act on the advice of the Premier in appointing and dismissing Ministers. In its analysis of the issues the committee expressed concern that an absolute requirement that the Governor always act on the advice of the Premier in appointing and dismissing Ministers would mean that such a requirement 'cannot be lawfully deviated from and thus impinges on the flexibility of our system of government'.²³

The committee provided an example of a situation where an absolute requirement would be to the detriment of our system of government. The example was taken from a submission to the committee by Mr John Pyke:

A section such as is suggested ... would imply that the Governor must dismiss Ministers on the advice of a Premier even if it is possible that the Premier has lost the support of his party. If the Constitution had so provided in

²⁰ QCRC report, pages 53-54.

²¹ See *Sue v Hill* (1999) 199 CLR 462 at [70]; D Clark, *Principles of Australian Public Law*, Butterworths, Sydney, 2003, para. [8.46].

²² Clark, para. [8.46].

²³ Report no. 36, page 16.

*November 1987, Sir Walter Campbell may not have been able to take the wise decision to not fully accept Sir Joh's advice to replace some Ministers until it had become clear whether the Party supported Sir Joh or not.*²⁴

The present committee takes the same view about the matter as the previous committee.

Possible ambiguity in the effect of clause 8

In its response to report no. 36, the Government stated that it did not support the committee's recommendation.²⁵

In his second reading speech to the bill, the Premier stated that 'the bill clarifies constitutional conventions relating to the ... appointment and dismissal of the Premier and ministers'.²⁶ However, as drafted, it is not certain that s34, as amended by clause 8, would 'clarify' the constitutional conventions. The amended provision can be interpreted in two ways:

- as a mere restatement of the conventions; or
- as –
 - a statutory requirement that, when appointing or dismissing Ministers, the Governor act on the advice of the Premier; and
 - an exclusion of the operation of any powers held 'in reserve' by the Governor which would allow the Governor to act in the absence of advice or even contrary to advice in certain circumstances.²⁷

Neither the explanatory notes nor the second reading speech indicate which interpretation is intended. Similarly, when read with the new ss43A-43D, the interpretation to be given to the amended s34 is not clear.

Desirability of certainty as to the intended effect of clause 8

In extreme situations the exercise by the Governor of Queensland of any powers he or she may have 'in reserve' can be controversial. In relation to the appointment and dismissal of Ministers, uncertainty about the scope of those reserve powers due to the drafting of clause 8 would create additional controversy.²⁸

It is desirable for the effect of clause 8 to be certain as to whether in respect of the appointment and dismissal of Ministers it removes the reserve powers of the Governor.

4.2.3 Clause 14

Section 52 of the Constitution would be amended by clause 14 of the bill. Section 52 provides, for the purposes of division 2 of the Constitution, definitions of 'commercial activities' and the bodies authorised to undertake those activities on behalf of the State. As stated in the Explanatory Notes to the bill:

The meaning of the term 'State' was amended during the consolidation of the Constitution. An unintended consequence of the expansion of the term 'State' has been to extend the authority to engage in commercial

²⁴ Report no. 36, page 16. That situation is also discussed in B Galligan, 'Australia' in D Butler and DA Low (eds) *Sovereigns and Surrogates – Constitutional Heads of State in the Commonwealth*, Macmillan, Hampshire, 1991, pages 83-96 at pages 85-92. See also Proceedings of the Australian Constitutional Convention, Brisbane, 1985, vol 1, page 390.

²⁵ Tabled on 27 April 2004, available at: www.parliament.qld.gov.au/LCARC.

²⁶ Parliamentary Debates (Hansard), 23 August 2005, page 2576.

²⁷ The committee is aware that the possible uncertain meaning of the amended s34 has been the subject of some debate in the print media: see, eg, Richard Murray, 'Amendment to Constitution "dangerous", "unnecessary"', *The Independent Monthly*, September 2005, pages 1-2.

²⁸ The Governor is required to obey the law and may seek advice about what the law requires in any given situation: see Anne Twomey, *The Constitution of New South Wales*, The Federation Press, Sydney, 2004, pages 632 and 636.

*activities beyond government departments to public sector officers. The amendment will reinstate the definition of 'State' applicable before the consolidation of the Constitution.*²⁹

In 2003, the need for amendment to the definition of 'State' in s52 was raised with LCARC by the Public Accounts Committee (PAC). In the PAC's report no. 64, concerns were raised about the scope of the definition of bodies authorised by division 2 of Part 4 of the *Constitution of Queensland* to conduct commercially competitive activities. The PAC had engaged Professor Gerard Carney to provide advice about the matter. Professor Carney's advice indicated that an unintended consequence of the amendment of the definition of 'State' during the consolidation of the Constitution in 2001 had been to authorise statutory office holders, such as the Auditor-General, to engage in commercially competitive activities. The PAC referred this issue to LCARC for its consideration.³⁰

In a letter dated 16 October 2003, LCARC referred the matter to the Premier and Minister for Trade. The Premier's reply, in a letter dated 26 November 2003, proposed that the issue be addressed as part of any legislative response to LCARC's earlier recommendations regarding specific issues of constitutional reform. The Premier's letter is at **appendix A**.

4.3 Outstanding matters of constitutional reform

4.3.1 Four year parliamentary terms

In his second reading speech to the bill, the Premier and Treasurer noted that 'there is one other area of constitutional reform that is still on the government's agenda, and that is four-year fixed terms'.³¹

This matter has received consideration by LCARC.

In July 2000, in report no. 27, the LCARC of the 49th Parliament reported on the recommendation of the QCRC for a four year parliamentary term.

On 18 March 2004, the Premier wrote to the committee requesting that the committee undertake a new examination of the issues surrounding four year parliamentary terms for Queensland.³² As the matter had received consideration by the former in 2000, the present committee 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 a letter dated 19 August 2004, the committee advised the Premier that its canvassing of the views of the registered political parties had indicated that 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.

The committee further advised the Premier that, while the Australian Labor Party and Liberal Party members of the committee were prepared to endorse fixed four year terms as the most appropriate model if the length of Parliamentary terms was to be changed, those members were of the view that the committee was not the appropriate forum for the

²⁹ Explanatory Notes, page 18.

³⁰ PAC, *Inquiry into whether the Financial Administration and Audit Act 1977 should be amended to permit the Queensland Audit Office to undertake services in addition to those currently specified in the Act*, report no. 64, Goprint, Brisbane, October 2003, pages 15-16.

³¹ Parliamentary Debates (Hansard), 23 August 2005, page 2577.

³² Previous consideration of the matter included:

- a 1991 referendum which was narrowly defeated;
- the February 2000 report of the Queensland Constitutional Review Commission;
- LCARC report no. 24; and
- the Government's response to that report.

resolution of the differences between political parties on the question of preconditions for a referendum on four year Parliamentary terms.

In addition, the National Party and Liberal Party members also consider that any extension of the parliamentary term should be tied to additional accountability mechanisms. Unlike the Liberal Party which has indicated support for four year parliamentary terms with a fixed election date, the National Party members of the committee did not endorse any particular model for four year terms.

4.3.2 Review of certain matters relating to the judiciary

In report no. 36, the previous committee recommended that, before finalising the current process of constitutional reform, 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 committee further recommended that the review body should have jurisdiction to consider related matters.³³

In its response tabled on 27 April 2004, the Government stated that it did not support the Committee's recommendation 'at that time'.

At present, the role and functions of the Judicial Commission of New South Wales are being reviewed by the Government of that state. In addition, reform of the process for, and extent of, consultation prior to judicial appointments continues to be the subject of informed debate in many Australian jurisdictions, including Queensland.³⁴ The committee notes, in this context, that the publication of the review report on the Judicial Commission of New South Wales may provide an appropriate time for a reconsideration by the Queensland Government of the LCARC recommendation.

³³ Report no. 36, page 59.

³⁴ See, for example, Justice G Davies, 'Judge on merit', *Courier Mail*, 10 September 2004; George Williams, 'Remove the doubt on judges', *Australian*, 16 November 2004.

5. CONCLUSION

This report has set out details of the broad, incremental constitutional project undertaken by LCARCs of the 48th, 49th, 50th and 51st Parliaments, so as to provide some background information to the bill.

The committee acknowledges the significant body of work of the committees of successive Parliaments. The committee thanks the consultants and legal practitioners who have assisted those committees. Importantly, the committee additionally acknowledges, and thanks, the people of Queensland for their expressing their views to the committee throughout the lengthy constitutional project.

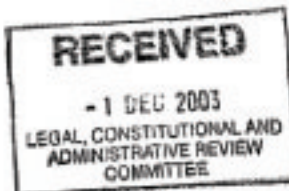
Dr Lesley Clark MP

Chair

APPENDIX A:



Please quote: 41192/EN03/CALS



**Queensland
Government**

**Premier of Queensland
and Minister for Trade**

26 NOV 2003

Ms Karen Struthers MP
Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
George St
BRISBANE Q 4000

Dear Karen

Thank you for your letter of 16 October 2003 concerning public service offices and commercial activity.

As you have noted, the definition of 'State' in section 52 of the *Constitution of Queensland 2001* was amended, during the constitutional consolidation exercise in 2001, to include 'a public sector unit'.

Section 52 was amended to ensure the definition of 'State' was consistent with the definition of 'officer of the State' in section 55 (previously section 47E of the *Acts Interpretation Act 1954*) which includes 'a chief executive, or employee, of a public sector unit'.

On the basis of the legal advice presented to the Public Accounts Committee by Professor Carney it would appear the unintended consequence of that amendment is to extend the authority to engage in commercial activities beyond government departments to public sector offices.

However, as any exercise of the unintended grant of authority remains subject to the appropriate delegation by a Minister, there is no immediate urgency with regard to this issue.

Accordingly, I recommend that this issue be addressed as part of any legislative response the Government may endorse in response to your Committee's recommendations regarding specific issues of constitutional reform.

Thank you for seeking my views in relation to this matter.

Yours sincerely

[Original Signed]

**PETER BEATTIE MP
PREMIER AND MINISTER FOR TRADE**

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LCARC MEMBERSHIP – 51ST PARLIAMENT

| | |
|---------------|--|
| CHAIR: | Dr Lesley Clark MP, Member for Barron River |
| DEPUTY CHAIR: | Miss Fiona Simpson MP, Member for Maroochydore |
| MEMBERS: | Mr Paul Hoolihan MP, Member for Keppel |
| | Mr Ronan Lee MP, Member for Indooroopilly |
| | Mr Mark McArdle MP, Member for Caloundra |
| | Mr Andrew McNamara MP, Member for Hervey Bay |
| | Mr Ian Rickuss MP, Member for Lockyer |

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Copies of this report and other LCARC publications are available on the Internet via the Queensland Parliament's home page at: <www.parliament.qld.gov.au/LCARC>.

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

REPORTS

| REPORTS | DATE TABLED |
|---|-------------------|
| 1. Annual report 1995-96 | 8 August 1996 |
| 2. Matters pertaining to the Electoral Commission of Queensland | 8 August 1996 |
| 3. Review of the Referendums Bill 1996 | 14 November 1996 |
| 4. Truth in political advertising | 3 December 1996 |
| 5. The Electoral Amendment Bill 1996 | 20 March 1997 |
| 6. Report on a study tour relating to the preservation and enhancement of individuals' rights and freedoms and to privacy (31 March 1997—14 April 1997) | 1 October 1997 |
| 7. Annual report 1996-97 | 30 October 1997 |
| 8. The Criminal Law (Sex Offenders Reporting) Bill 1997 | 25 February 1998 |
| 9. Privacy in Queensland | 9 April 1998 |
| 10. Consolidation of the Queensland Constitution – Interim report | 19 May 1998 |
| 11. Annual report 1997-98 | 26 August 1998 |
| 12. The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights? | 18 November 1998 |
| 13. Consolidation of the Queensland Constitution: Final Report | 28 April 1999 |
| 14. Review of the <i>Report of the Strategic Review of the Queensland Ombudsman</i> (Parliamentary Commissioner for Administrative Investigations) | 15 July 1999 |
| 15. Report on a study tour of New Zealand regarding freedom of information and other matters: From 31 May to 4 June 1999 | 20 July 1999 |
| 16. Review of the Transplantation and Anatomy Amendment Bill 1998 | 29 July 1999 |
| 17. Annual report 1998-99 | 26 August 1999 |
| 18. Issues of electoral reform raised in the Mansfield decision: Regulating how-to-vote cards and providing for appeals from the Court of Disputed Returns | 17 September 1999 |
| 19. Implications of the new Commonwealth enrolment requirements | 2 March 2000 |
| 20. The Electoral Amendment Bill 1999 | 11 April 2000 |
| 21. Meeting with the Queensland Ombudsman (Parliamentary Commissioner for Administrative Investigations) regarding the Ombudsman's <i>Annual Report to Parliament 1998 – 1999</i> | 19 April 2000 |
| 22. The role of the Queensland Parliament in treaty making | 19 April 2000 |
| 23. Issues of Queensland electoral reform arising from the 1998 State election and amendments to the <i>Commonwealth Electoral Act 1918</i> | 31 May 2000 |
| 24. Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution | 18 July 2000 |

| REPORTS | DATE TABLED |
|---|-------------------|
| 25. Annual report 1999-00 | 19 July 2000 |
| 26. <i>The Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner</i> | 19 July 2000 |
| 27. Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms | 28 July 2000 |
| 28. The prevention of electoral fraud: Interim report | 14 November 2000 |
| 29. Annual report 2000-01 | 2 August 2001 |
| 30. Progress report on implementation of recommendations made in the <i>Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner</i> | 8 August 2001 |
| 31. Review of the Members' oath or affirmation of allegiance | 25 October 2001 |
| 32. Freedom of Information in Queensland | 20 December 2001 |
| 33. The Electoral (Fraudulent Actions) Amendment Bill 2001 | 27 March 2002 |
| 34. Meeting with the Queensland Ombudsman – 12 April 2002 | 14 May 2002 |
| 35. Annual report 2001-02 | 23 August 2002 |
| 36. The Queensland Constitution: Specific content issues | 27 August 2002 |
| 37. Meeting with the Queensland Ombudsman – 26 November 2002 | 12 December 2002 |
| 38. Meeting with the Queensland Ombudsman – 29 April 2003 | 6 June 2003 |
| 39. The role of the Queensland Parliament in treaty making – Review of tabling procedure | 17 July 2003 |
| 40. Annual report 2002-03 | 21 August 2003 |
| 41. Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution | 27 August 2003 |
| 42. Hands on Parliament – A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes | 11 September 2003 |
| 43. Meeting with the Queensland Ombudsman (25 November 2003) and final report on implementation of recommendations made in the <i>Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner</i> | 17 December 2003 |
| 44. Meeting with the Queensland Ombudsman - 11 May 2004 | 17 June 2004 |
| 45. Annual Report 2003/2004 | 19 August 2004 |
| 46. A preamble for the Queensland Constitution? | 30 November 2004 |
| 47. Meeting with the Queensland Ombudsman – 23 November 2004 | 21 December 2004 |
| 48. Publication of Committee Proceedings – 22 February 2005 | 10 March 2005 |
| 49. Meeting with the Queensland Ombudsman (24 May 2005); meeting with the Queensland Information Commissioner (24 May 2005); and report on matters raised in a Ministerial Statement by the Premier and Minister for Trade on 23 March 2005 | 9 June 2005 |

PAPERS

| PAPERS | DATE TABLED |
|---|--------------------|
| Truth in political advertising (Issues paper) | 11 July 1996 |
| Privacy in Queensland (Issues paper) | 4 June 1997 |
| The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights? (Issues paper) | 1 October 1997 |
| Upper Houses (Information paper) | 27 November 1997 |
| PAPERS | DATE TABLED |
| Inquiry into issues of Queensland electoral reform (Background paper) | 25 November 1999 |
| The role of the Queensland Parliament in treaty making (Position paper) | 25 November 1999 |
| Freedom of Information in Queensland (Discussion paper) | 8 February 2000 |
| Four year parliamentary terms (Background paper) | 11 April 2000 |
| Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution (Position paper) | 27 April 2000 |
| Inquiry into the prevention of electoral fraud (Issues paper) | 8 September 2000 |
| The Queensland Constitution: Specific content issues (Issues paper) | 18 April 2002 |
| The Queensland Constitution: Entrenchment (Proposals for Comment) | 27 August 2002 |
| Hands on Parliament - A parliamentary committee Inquiry into Aboriginal and Torres Strait Islander Peoples' Participation in Queensland's Democratic Process (Issues paper) | 12 December 2002 |
| A preamble for the Queensland Constitution? | 17 June 2004 |
| Voices and Votes – a Parliamentary Committee inquiry into young people's engagement in democracy in Queensland | 8 July 2005 |