



## **LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE**

### **THE ROLE OF THE QUEENSLAND PARLIAMENT IN TREATY MAKING – REVIEW OF TABLING PROCEDURE**

Report no 39, July 2003

#### **1. INTRODUCTION**

##### **1.1 BACKGROUND**

In April 2000 the LCARC of the 49<sup>th</sup> Parliament tabled report no 22 *The role of the Queensland Parliament in Treaty Making*.<sup>1</sup> The committee's inquiry emanated from a letter dated 31 August 1999 from the Hon Andrew Thomson MP, then Chair of the Commonwealth Parliament's Joint Standing Committee on Treaties (JSCOT), to the Speaker of the Queensland Parliament. In his letter, Mr Thomson urged the Queensland Parliament to consider implementing various proposals developed at a June 1999 seminar on the role of parliaments in the treaty making process, convened by JSCOT and the Australasian Study of Parliament Group.

The former LCARC subsequently considered these proposals which were designed to improve parliamentary awareness of, and involvement in, treaty making and to make the treaty making process more open.

In report no 22 the former committee recommended that:

- the Premier be required to:
  - table in the Queensland Parliament, as and when they are received, advices from JSCOT concerning proposed treaty actions under negotiation and tabled in both Houses of the Commonwealth Parliament together with the National Interest Analyses (NIAs) which relate to each of the proposed treaty actions under review;
  - at any time but at least annually, report to the Queensland Parliament on: (a) any substantive issues for Queensland arising out of particular treaties during the reporting period; and (b) the adequacy of the treaty making and consultation process from Queensland's perspective.
- the above requirement initially be adopted by the Legislative Assembly by Sessional Order, such Sessional Order to specifically enable the Premier to table the JSCOT advices at a time when the Legislative Assembly is not sitting;

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<sup>1</sup> Tabled 19 April 2000, Goprint, Brisbane.

- **the effectiveness of the above requirement be reviewed by the LCARC two years after its implementation.** (The former committee also noted that following a review of the effectiveness of the requirement, the Standing Orders Committee of the Queensland Legislative Assembly might consider the desirability of the proposed procedures being incorporated into the Legislative Assembly's Standing Rules and Orders.)

In his ministerial response tabled in the Legislative Assembly on 26 October 2000, the Premier stated that the recommendations of the committee as they related to him would be adopted. The Premier proposed to table advices received from JSCOT concerning proposed treaty actions, together with the relevant NIAs, within 10 working days of their receipt. The Premier forwarded the first treaty advice and relevant NIAs to the Legislative Assembly on 20 March 2001.

Further, the Premier reported on treaties issues in his department's annual reports for 2000/01 and 2001/02.<sup>2</sup>

Given that the purpose of this committee's review is to assess the effectiveness of the operation of the tabling procedure, the current committee determined to defer review of the recommended procedure until March 2003, that is, two years after the Premier first tabled material in accordance with the former committee's recommendations.

## 1.2 THIS COMMITTEE'S REVIEW PROCESS

In conducting this review of the procedure relating to the tabling of treaty information in the Queensland Parliament, the committee has:

- researched developments in the treaty making process since LCARC report no 22;
- considered Sessional Orders relevant to the tabling of treaty information;
- sought the views of the Premier as to certain aspects of the treaty making process and the procedure whereby he tables treaty information; and
- sought the views of the Clerk of the Parliament as to any administrative difficulties encountered by the Table Office due to the Premier tabling treaty information.

## 2. STATE INVOLVEMENT IN TREATY MAKING

The treaty making process and the importance of state parliaments participating in this process is discussed in detail in the former committee's position paper *The role of the Queensland Parliament in Treaty Making* and its follow up report no 22.<sup>3</sup> The committee refers readers to these two documents for background information.

A development of note since the tabling of report no 22 is a recent change to Commonwealth Government practice whereby treaties 'of major political, economic or social significance which are likely to attract considerable public interest'<sup>4</sup> are tabled in the Commonwealth Parliament for a minimum of 20 sitting days before binding action is taken, an increase from the previous practice of 15 sitting days.<sup>5</sup>

<sup>2</sup> Department of the Premier and Cabinet, *2000-2001 Annual Report*, Brisbane, 2001; Department of the Premier and Cabinet, *Annual Report 2001-2002*, Brisbane, 2002.

<sup>3</sup> Legal, Constitutional and Administrative Review Committee, position paper, 25 November 1999, Goprint, Brisbane; and report no 22, n 1.

<sup>4</sup> *Signed and Delivered: Treaties and Treaty Making: An Official's Handbook* (second edition), published 20 September 2002, and available at <[http://www.dfat.gov.au/treaties/making/treaties\\_handbook.pdf](http://www.dfat.gov.au/treaties/making/treaties_handbook.pdf)>.

<sup>5</sup> Announced by Hon Alexander Downer MP on 20 August 2002 at the launch of the Australian Treaties Database. See <[http://www.foreignminister.gov.au/speeches/2002/020820\\_fa\\_treaties.html](http://www.foreignminister.gov.au/speeches/2002/020820_fa_treaties.html)>.

### **3. SESSIONAL ORDERS**

Since his ministerial response to LCARC report no 22, the Premier has periodically tabled in the Queensland Parliament correspondence from JSCOT advising of proposed international treaty actions which have been tabled in both Houses of the Commonwealth Parliament along with the relevant NIAs and any other relevant material. The Premier has tabled treaties information in the Queensland Parliament on 14 occasions since the tabling procedure was put in place.

A procedural difficulty was encountered in the tabling of treaties information by the Premier because there was no contemporaneous change to Sessional Orders as recommended by the former LCARC enabling the tabling of treaties information when Parliament is not sitting. Consequently, treaties information could not be tabled until the next sitting day after it was received. In some cases, the Premier was tabling information relating to particular treaties after the date for submissions to JSCOT on those treaties had closed.

The committee raised this matter with the Leader of the House, the Hon Anna Bligh MP. Subsequently, on 19 June 2002 the Legislative Assembly adopted a Sessional Order allowing a minister or the Governor to table any paper or report concerning the affairs of the State when the House is not sitting by providing the report or paper to the Clerk of the Parliament.<sup>6</sup> Papers or reports so provided are deemed to be tabled in the House on the day they are received by the Clerk of the Parliament. This Sessional Order has thus enabled the Premier to table treaties information when the Assembly is not sitting.

Even since this change to Sessional Orders, on some occasions the Premier has tabled treaties information after the closing date for submissions to be made to JSCOT. Of course, the timeframe for close of submissions to JSCOT depends on the sitting schedule of the Commonwealth Parliament. Until recently, the Commonwealth Government's practice was that all treaties were tabled in the Commonwealth Parliament for a minimum of 15 sitting days before binding treaty action was taken, during which time they would be reviewed by JSCOT. The recent change in practice whereby certain treaties must be tabled for a minimum of 20 sitting days might assist in providing more realistic timeframes for Queenslanders to make submissions regarding treaty information tabled in the Queensland Parliament.

### **4. THE PREMIER'S COMMENTS**

On 19 February 2003 the committee wrote to the Premier seeking his advice on, among other matters, the adequacy of the tabling procedure adopted as a result of the former LCARC's recommendations in report no 22.

The Premier advised as follows.

- In late 2002 officers of the Department of the Premier and Cabinet negotiated with the JSCOT secretariat to have correspondence that provides notification of a new inquiry to be faxed to the Department to expedite the tabling process.
- Despite the relatively small number of working days available between the receipt of JSCOT advice of treaties tabled and JSCOT's closing date for submissions, in the majority of instances the Premier has tabled the treaty information in the Queensland Parliament before the closing date for submissions to JSCOT.
- Since the tabling of the former committee's report in April 2000 there have been a number of improvements in the public availability of treaty information. Among other matters, treaty texts,

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<sup>6</sup> This Sessional Order is titled 'Papers forwarded by a Minister or the Governor during recess deemed tabled'.

NIA's and regulatory impact statements associated with treaty actions proposed by the Commonwealth Government are now posted on the JSCOT website usually within a day of being tabled in both Houses of the Commonwealth Parliament. Electronic access to information about treaties has also been enhanced through the Department of Foreign Affairs' Australian Treaties Database which provides a summary of key treaty action dates and links to the treaty text and other material relevant to the treaty.

## 5. THE CLERK'S COMMENTS

On 13 May 2003 the committee wrote to the Clerk of the Queensland Parliament seeking the Clerk's advice as to:

- any administrative difficulties encountered by the Table Office due to the Premier tabling treaty information;
- any recommendations for improving the process from the Table Office perspective; and
- anecdotally, the level of interest shown in the treaty information tabled and where any such interest is sourced.

In response, the Clerk advised that:

- he is not aware of any administrative difficulties with regard to the Premier tabling treaty information and does not have any recommendations for improving the process;
- while the Table Office does not keep records of requests for tabled documents, anecdotally on average approximately 15 to 20 Members of Parliament would usually request copies of the tabled treaties information; and
- copies of the tabled treaties information are automatically distributed to the Office of the Leader of the Opposition, the Office of the Leader of the Liberal Party, *The Courier-Mail* and ABC Radio 612 Brisbane.

## 6. CONCLUSION

The Premier noted in his response to the committee that the tabling of treaties information in the Queensland Parliament is not the most efficient means for increasing members' or public awareness of proposed treaty actions. This is particularly so given recent improvements in electronic access to treaty material. However, as the Premier also recognised, the procedure does provide '*a valuable assurance mechanism*'.

The Clerk of the Parliament confirmed that treaties information is sought by a number of Members of Parliament when it is tabled, and that the procedure carries with it little administrative burden.

In light of these comments, and in the absence of any evident difficulties with existing arrangements, the committee believes that the current tabling procedure should continue. While a vast amount of information regarding proposed treaty actions is available electronically, the current procedure means that the subject matter of proposed treaties is brought to the attention of those who might be interested in it.

Likewise, the committee believes that there is merit in the Premier continuing to include in his departmental annual reports information about: (a) any substantive issues for Queensland arising out of particular treaties during the reporting period; and (b) the adequacy of the treaty making and consultation process from Queensland's perspective. This mechanism places issues and concerns with the treaties process on the public record.

The former committee recommended that the Premier be *required* to table treaties information in the Queensland Parliament and annually report to the Parliament on certain treaty issues. In light of the fact that the Premier is complying with both recommendations of the former committee, and information provided to the Premier by JSCOT is done by administrative arrangement, this committee sees no need for a formal requirement as such at this stage.

This committee will continue to monitor the procedure for tabling treaty information in the Queensland Parliament and conduct a further review of the procedure if necessary.

However, one issue does require attention for the existing arrangements to continue beyond this Parliament. The Sessional Order which enables the tabling of treaties information during recess relates only to this Parliament. Thus, there should be some mechanism to allow the tabling of treaties information during recess to continue past this Parliament. The most appropriate course of action is for the current Sessional Order to be incorporated into a Standing Order.

## **7. RECOMMENDATIONS**

### **Recommendation 1**

**The committee recommends continuation of the current procedure whereby the Premier:**

- **tables in the Legislative Assembly, as and when they are received, advices from the Commonwealth Parliament's Joint Standing Committee on Treaties concerning proposed treaty actions under negotiation and tabled in both Houses of the Commonwealth Parliament together with the National Interest Analyses which relate to each of the proposed treaty actions under review;**
- **reports at least annually to the Queensland Parliament on: (a) any substantive issues for Queensland arising out of particular treaties during the reporting period; and (b) the adequacy of the treaty making and consultation process from Queensland's perspective.**

### **Recommendation 2**

**The committee recommends that the Standing Orders Committee of the Legislative Assembly consider adopting a new Standing Order in the same terms as the current Sessional Order dated 19 June 2002 and titled 'Papers forwarded by a Minister or the Governor during recess deemed tabled'.**

Karen Struthers MP  
**Chair**

## **LCARC MEMBERSHIP – 50<sup>TH</sup> PARLIAMENT**

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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/committees/legalrev.htm](http://www.parliament.qld.gov.au/committees/legalrev.htm)>.

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## REPORTS

	<b>DATE TABLED</b>
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
25. Annual report 1999-00	19 July 2000
26. The <i>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

		<b>DATE TABLED</b>
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

### **PAPERS**

	<b>DATE TABLED</b>
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
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