

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

HANDS ON PARLIAMENT

**A parliamentary committee inquiry into Aboriginal and Torres Strait
Islander peoples' participation in Queensland's democratic processes**

SEPTEMBER 2003

Report No 42

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

50TH PARLIAMENT

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

	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
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

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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

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
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

CHAIR'S FOREWORD

One of the most significant messages from Aboriginal and Torres Strait Islander people put to the committee during this inquiry is that: 'We are not simply a minority group - we are the original inhabitants of this country'. As original inhabitants, Indigenous people established the first systems of government. Yet, in more than 130 years of Westminster-style government in Queensland, there has only been one Aboriginal elected representative in the Queensland State Parliament - Mr Eric Deeral. There has not yet been a Torres Strait Islander representative in State Parliament.

Many Aboriginal and Torres Strait Islander individuals and organisations are politically active and experienced in participating in decision-making and other democratic processes. Major advances in Indigenous rights and quality of life issues have been achieved through the tireless lobbying by Indigenous elders and activists. However, this activity has not translated into Indigenous people being elected to Parliament or local councils in sufficiently representative numbers.

Aboriginal and Torres Strait Islander peoples must be further involved in processes which result in policies and legislation of direct relevance to them, particularly regarding issues that affect their day to day lives, such as housing shortages, poor health, domestic violence, crime and unemployment.

For this to occur, Aboriginal and Torres Strait Islander peoples need to be actively engaged in all levels of government as a matter of priority. This includes support for Indigenous women. Indigenous women have played an important leadership role through efforts to, for example, keep families and communities strong by curtailing violence and substance abuse. Yet, it was acknowledged that few women have sought, or gained roles as elected representatives.

The committee's aim in this report is to recommend achievable and workable strategies to increase Aboriginal and Torres Strait Islander peoples' participation in various aspects of the democratic process. Underpinning these strategies is the strong view put to the committee that Aboriginal and Torres Strait Islander people must be supported to participate in existing processes and that separate measures run the risk of being tokenistic and divisive.

These strategies focus on:

- acknowledging Aboriginal and Torres Strait Islander peoples as the first peoples of this country;
- encouraging political parties to actively recruit, encourage and support Aboriginal and Torres Strait Islander people in various aspects of party processes;
- enhancing civics and voter education;
- enhancing employment, training and leadership development opportunities and programs for Aboriginal and Torres Strait Islander people in democratic institutions and processes;
- enhancing Aboriginal and Torres Strait Islander peoples' participation in local government; and
- enhancing Aboriginal and Torres Strait Islander peoples' direct input into policy, legislative and consultative processes.

The committee recommends that the effect of the strategies contained in this report be evaluated after three state electoral cycles or after nine years, whichever is the later. In this way, governments, political parties and Indigenous and non-Indigenous people will be accountable for making democratic processes inclusive of Aboriginal and Torres Strait Islander peoples.

On behalf of the committee, I thank the many people who made valuable contributions to the inquiry by providing submissions and/or participating directly in the committee's meetings. In particular, the committee thanks those who co-hosted and represented traditional owners at the public meetings. The committee's understanding of Aboriginal and Torres Strait Islander cultures, and of ways forward, has been greatly enriched.

I would like to give special thanks to Mr Eric Deeral for his support for this inquiry and Mrs Heather Bonner for allowing the committee to use a photograph of her late husband – former Senator Neville Bonner.

The committee is also grateful for the information provided by a number of New Zealand individuals and agencies.

The committee is pleased that its inquiry resulted in an act of immediate symbolic recognition of Aboriginal and Torres Strait Islander peoples within the parliamentary precinct. With the handing down of this report, a Wall of Reconciliation will be launched in the Parliamentary Annexe. The first artwork to appear on the Wall of Reconciliation will be *Celestial Gathering* by Ms Cynthia Vogler. This artwork has appeared on all of the committee's publications relating to this inquiry. The committee thanks Ms Vogler for allowing the use of her artwork and is proud to present *Celestial Gathering* as a gift to the Parliament. I would like to thank the Hon Ray Hollis MP, Speaker of the Parliament, for his assistance and support in bringing the Wall of Reconciliation to fruition, and Mr Neil Laurie, Clerk of the Parliament, for his support for the concept.

Importantly, I would like to commend the outstanding efforts of the LCARC research team: Research Director, Kerry Newton; Principal Research Officer, Sarah Lim; former Principal Research Officer, Veronica Rogers; Executive Assistants, Tania Jackman and Tamara Vitale; and Project Officer, Angela Ruska. The secretariat set, and met, very high standards in the conduct of their research and written work. I would also like to thank Carissa Griggs of the Parliamentary Service for her assistance with the layout of the publications relating to the inquiry.

This inquiry benefited greatly from the involvement of Angela Ruska who was seconded to the committee from the Department of Aboriginal and Torres Strait Islander Policy. I understand that Angela is the first Indigenous person employed in a policy or administrative role within the Queensland Parliament. The recommendations in this report aim to pave the way for more Indigenous people to be involved in democratic processes generally, and Parliament specifically.

I also commend the efforts of committee members in achieving a consensus report on this important issue.

In matters of reconciliation, great leadership and vision is required to make progress. Mr Bill Lowah, respected Torres Strait Islander elder, made the following comment to the committee:

Parliament should not only be a place where Acts of Parliament are proclaimed, but also a place where acts of courage and vision are performed.

I commend this report to the Parliament and ask that all members demonstrate such courage and vision in considering the issues and recommendations made by the committee.

It is time for Aboriginal and Torres Strait Islander people to have a more prominent place within democratic processes. It is time for more Aboriginal and Torres Strait Islander people to get involved and get their 'hands on' elected roles in local and state government in Queensland.

[Original Signed]

Karen Struthers MP
Chair

3 September 2003

GLOSSARY OF TERMS

ACC	Aboriginal Coordinating Council
AEC	Australian Electoral Commission
ALP	Australian Labor Party
APTSIRC	Aboriginal People and Torres Strait Islander Reference Committee
ATSIAB	Aboriginal and Torres Strait Islander Advisory Board
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEIS	Aboriginal and Torres Strait Islander Electoral Information Service
CAR	Council for Aboriginal Reconciliation
DATSIP	Department of Aboriginal and Torres Strait Islander Policy
DOGIT	Deed of Grant in Trust
EARC	Electoral and Administrative Review Commission
ECQ	Electoral Commission Queensland
FLP	fundamental legislative principle
ICC	Island Coordinating Council
LCARC	Legal, Constitutional and Administrative Review Committee
MCEETYA	Ministerial Council for Education, Employment, Training and Youth Affairs
MMP	mixed-member proportional (electoral system)
QCRC	Queensland Constitutional Review Commission
SLC	Scrutiny of Legislation Committee
SOSE	Studies of Society and Environment
SYAC	State Youth Advisory Council
TSRA	Torres Strait Regional Authority

SUMMARY OF RECOMMENDATIONS

It is clear from the committee's research and consultation that there is a need for increased participation by Aboriginal and Torres Strait Islander peoples in all levels of government and the various processes which feed into those levels.

In this report the committee recommends a range of achievable and workable strategies to enhance the participation of Aboriginal and Torres Strait Islander people in Queensland's democratic processes. These strategies centre around:

- acknowledging Aboriginal and Torres Strait Islander peoples as the first peoples of this country;
- encouraging political parties to actively recruit, encourage and support Aboriginal and Torres Strait Islander people in various aspects of party processes;
- enhancing civics and voter education;
- enhancing employment, training and leadership development opportunities and programs for Aboriginal and Torres Strait Islander people in democratic institutions and processes;
- enhancing Aboriginal and Torres Strait Islander peoples' participation in local government; and
- enhancing Aboriginal and Torres Strait Islander peoples' direct input into policy, legislative and consultative processes.

As a whole, these strategies represent a package which can bring about significant reform.

The committee acknowledges that while it is imperative that governments, political parties and others adopt both the spirit and the letter of the recommendations which follow, greater participation will only be achieved if Aboriginal and Torres Strait Islander peoples further accept personal and collective responsibility for working towards overcoming the social barriers that currently prevent participation and for embracing the opportunities created.

RECOMMENDATION 1 – MONITORING AND EVALUATION OF RECOMMENDATIONS 8

The Legal, Constitutional and Administrative Review Committee, or its appropriate successor, should:

- monitor the implementation and effectiveness of the strategies recommended in this report to enhance the participation of Aboriginal and Torres Strait Islander peoples in Queensland's democratic processes; and
- after three state electoral cycles or nine years, whichever is the later, conduct an evaluation of the effect of these strategies on Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes to determine the extent to which these strategies have enhanced participation and whether any further action is required.

RECOMMENDATION 2 – FORMAL RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES 21

As a step towards constitutional recognition of Aboriginal and Torres Strait Islander peoples, the Legal, Constitutional and Administrative Review Committee should consider the issue of a preamble for the *Constitution of Queensland 2001* and, in particular, inclusion in that preamble of due recognition of Aboriginal and Torres Strait Islander peoples.

Given the need to conduct wide public consultation regarding this issue, the Queensland Government should appropriately resource the committee to effectively carry out this task.

RECOMMENDATION 3 – POLITICAL PARTIES.....25

Political parties have the potential to play a key role in improving Aboriginal and Torres Strait Islander peoples' participation in the political process including representation at all levels of government. It is therefore important that the leaders of all Queensland political parties encourage their party to adopt and implement an Aboriginal and Torres Strait Islander peoples' political participation action plan based on the committee's model plan to increase Aboriginal and Torres Strait Islander peoples' participation in the political process. The specific actions, which are detailed further in table 1, entail:

- recruiting Aboriginal and Torres Strait Islander members;
- preselecting Aboriginal and Torres Strait Islander candidates, particularly to seats where they have a strong likelihood of winning;
- encouraging Aboriginal and Torres Strait Islander members' involvement in policy development and decision-making;
- providing support mechanisms and processes to assist Aboriginal and Torres Strait Islander people within the party;
- ensuring culturally appropriate party processes; and
- monitoring party progress to ascertain the extent to which Aboriginal and Torres Strait Islander people are being recruited, encouraged and supported within the party.

The evaluation to be undertaken after three state electoral cycles or nine years, whichever is the later (see recommendation 1), should examine measures that political parties have taken to improve Aboriginal and Torres Strait Islander peoples' participation in their processes, the success of those measures and whether there is a need to take further action.

RECOMMENDATION 4 – ENHANCED AND INCLUSIVE CIVICS EDUCATION.....29

Given the strong link between education about democratic processes and participation in those processes, the Minister for Education should review the nature and extent of civics and citizenship education for all students in Queensland schools and consider whether more can be done to:

- ensure that civics education is taught to all students in Queensland schools;
- increase the effectiveness of the manner in which civics and citizenship education is taught to Aboriginal and Torres Strait Islander students;
- ensure that civics and citizenship education includes an Indigenous perspective and teaching about Aboriginal and Torres Strait Islander peoples' experiences of civics and citizenship; and
- ensure that all teachers (both pre-service and existing) undertake training in Aboriginal and Torres Strait Islander studies.

RECOMMENDATION 5 – TESTING INCLUSIVENESS IN CIVICS EDUCATION.....29

To enhance accountability for the teaching of civics in the context of an inclusive history, the Minister for Education should request the Ministerial Council for Education, Employment, Training and Youth Affairs to expand the national civics test to test knowledge of Aboriginal and Torres Strait Islander peoples' perspectives of citizenship and Aboriginal and Torres Strait Islander governance.

RECOMMENDATION 6 – PARLIAMENTARY EDUCATION SERVICES31

To enhance and encourage the involvement, interest and participation of Aboriginal and Torres Strait Islander people, particularly youth, in parliamentary processes, Parliamentary Education Services should:

- review its programs and educational material to ensure that they are inclusive of Aboriginal and Torres Strait Islander peoples; and

- consider ways in which Aboriginal and Torres Strait Islander citizens might be further engaged in parliamentary education, for example, through smaller scale parliamentary activities conducted in regional and remote areas, and by developing parliamentary resource kits in conjunction with Education Queensland for inclusion in civics education teaching.

The Queensland Government should provide additional funding to the Parliamentary Service for use by Parliamentary Education Services to develop and implement relevant programs and material.

RECOMMENDATION 7 – YOUTH PARTICIPATION IN LOCAL GOVERNMENT PROCESSES31

To enhance and encourage the involvement, interest and participation of Aboriginal and Torres Strait Islander youth in local government, the Minister for Local Government and Planning, in conjunction with the Local Government Association of Queensland, should:

- encourage all local governments and Deed of Grant in Trust (DOGIT) community councils to establish some form of youth advisory mechanism (such as a youth council, youth advisory board and/or youth reference group), and ensure that those mechanisms are inclusive of Aboriginal and Torres Strait Islander youth; and
- consider ways in which Aboriginal and Torres Strait Islander youth might be further educated about local government, for example, by developing local government resource kits in conjunction with Education Queensland for inclusion in civics education teaching.

RECOMMENDATION 8 – AUSTRALIAN ELECTORAL COMMISSION VOTER EDUCATION ACTIVITIES32

The Attorney-General should raise with the federal Special Minister of State the need to reinstate funding to the Australian Electoral Commission to carry out activities aimed at encouraging enrolment and electoral education in Aboriginal and Torres Strait Islander communities and to Aboriginal and Torres Strait Islander people living in urban areas.

RECOMMENDATION 9 – ELECTORAL COMMISSION QUEENSLAND VOTER EDUCATION ACTIVITIES32

The Electoral Commission Queensland should continue enrolment and electoral education campaigns targeted to Aboriginal and Torres Strait Islander peoples. The Queensland Government should provide any necessary funding to ensure the sustainability of such campaigns.

RECOMMENDATION 10 – EMPLOYMENT AND TRAINING IN DEMOCRATIC INSTITUTIONS AND PROCESSES35

Increased, effective participation of Aboriginal and Torres Strait Islander peoples in democratic institutions and processes might be achieved through specific employment and training strategies in such institutions and processes. To this end:

- (a) the Speaker of the Queensland Parliament should review the Parliamentary Service's employment and training policies to ensure that those policies encourage the employment and training of Aboriginal and Torres Strait Islander people in the Parliamentary Service, including in electorate offices;
- (b) the Queensland Electoral Commissioner should review the Electoral Commission Queensland's employment and training policies to ensure that those policies encourage the employment and training of Aboriginal and Torres Strait Islander people; and
- (c) the Minister for Local Government and Planning should request all local governments to:
 - (i) review their employment and training policies to ensure that those policies encourage the employment of Aboriginal and Torres Strait Islander people; and
 - (ii) report back to the Minister regarding the results of their review.

- RECOMMENDATION 11 – LEADERSHIP TRAINING35**
- The committee commends the leadership training activities that Indigenous people have been involved in the development of, for example, the Cape York Institute. To enhance Aboriginal and Torres Strait Islander peoples’ involvement in democratic institutions and processes, the committee encourages the inclusion of content regarding civics, democracy and the political process in such leadership activities.
- RECOMMENDATION 12 – ENHANCING LOCAL GOVERNMENT PARTICIPATION.....40**
- To enhance Aboriginal and Torres Strait Islander peoples’ participation in local government, the Minister for Local Government and Planning, in conjunction with the Local Government Association of Queensland, the Aboriginal Coordinating Council and the Island Coordinating Council, should examine the development and implementation of specific strategies and programs to encourage more Aboriginal and Torres Strait Islander people to stand for election to local government. In particular, these agencies should consider establishing:
- an Aboriginal and Torres Strait Islander mentoring program; and
 - a Local Government Aboriginal and Torres Strait Islander Network.
- RECOMMENDATION 13 – EVALUATION OF PARTICIPATION IN LOCAL GOVERNMENT.....40**
- The participation of Aboriginal and Torres Strait Islander peoples in local government should be considered as part of the evaluation of Aboriginal and Torres Strait Islander peoples’ participation in democratic processes to be conducted after three state electoral cycles or nine years, whichever is the later: see recommendation 1.
- RECOMMENDATION 14 – THE ROLE OF ATSIC AND EFFICIENT SERVICE DELIVERY 44**
- Once the current review of the Aboriginal and Torres Strait Islander Commission (ATSIC) is complete, the Queensland Government should examine the role of ATSIC in relation to state matters.
- In conducting this examination, the Government should also consider the wider issue of efficiencies in service delivery for Aboriginal and Torres Strait Islander peoples across the levels of government.
- RECOMMENDATION 15 – INDIGENOUS COMMUNITY CABINETS45**
- To enhance the direct input of Aboriginal and Torres Strait Islander peoples to government and, therefore, democratic processes, the Premier should convene two Indigenous Community Cabinets each year for Aboriginal and Torres Strait Islander peoples.
- RECOMMENDATION 16 – THE ROLE OF COMMUNITY LEADERS45**
- The committee appreciates that government consultation with Aboriginal and Torres Strait Islander communities is not necessarily undertaken in a way which is culturally appropriate. However, wherever possible, Aboriginal and Torres Strait Islander leaders should provide information to their communities and take an inclusive approach to engaging community members in consultation.
- RECOMMENDATION 17 – GOVERNMENTS’ APPRECIATION OF CULTURAL DIFFERENCES..46**
- In consulting with Aboriginal and Torres Strait Islander peoples, governments should, to the greatest extent possible, adapt processes and timeframes to ensure that cultural differences are appreciated and respected.
- RECOMMENDATION 18 – FUNDAMENTAL LEGISLATIVE PRINCIPLES47**
- The Premier, as the minister responsible for the *Legislative Standards Act 1992* (Qld), should introduce an amendment to s 4(3)(j) of that Act so that the ‘fundamental legislative principle’ example in that subparagraph requires that legislation ‘*has sufficient regard to Aboriginal tradition, Island custom and any particular effect the legislation might have on Aboriginal or Torres Strait Islander peoples*’.

RECOMMENDATION 19 – LCARC’S AREA OF RESPONSIBILITY48

The Premier, as the minister responsible for the *Parliament of Queensland Act 2001* (Qld), should introduce an amendment to s 89(a) of that Act so that the Legal, Constitutional and Administrative Review Committee’s area of responsibility about legal reform includes considering whether Queensland law has sufficient regard to Aboriginal tradition, Island custom and any particular effect the law might have on Aboriginal or Torres Strait Islander peoples.

RECOMMENDATION 20 – LCARC’S AGENDA.....48

When setting its inquiry agenda, the Legal, Constitutional and Administrative Review Committee should more actively consider its area of responsibility regarding whether Queensland law has sufficient regard to Aboriginal tradition, Island custom and any particular effect the law might have on Aboriginal or Torres Strait Islander peoples.

RECOMMENDATION 21 – PARLIAMENTARY INDIGENOUS LIAISON OFFICERS49

The Queensland Government should provide the Parliamentary Service with additional funding to appoint two Parliamentary Indigenous Liaison Officers within the Parliamentary Service to perform a range of advisory, education and protocol functions as they relate to Aboriginal and Torres Strait Islander peoples including:

- assisting the Scrutiny of Legislation Committee and Legal, Constitutional and Administrative Review Committee with their jurisdiction regarding Aboriginal tradition and Island custom (as expanded in accordance with recommendations 18 and 19);
- assisting other parliamentary committees and parliamentary entities with issues that might be of interest to, or affect, Aboriginal and Torres Strait Islander peoples;
- advising members of Parliament generally regarding the impact of policy and legislation on Aboriginal and Torres Strait Islander peoples;
- providing, or arranging the provision of, cultural awareness training to Members of Parliament (including as part of the new members’ induction program) and parliamentary staff;
- performing a liaison role between the Parliament, its committees and members and Aboriginal and/or Torres Strait Islander agencies where necessary;
- assisting relevant sub-outputs of the Parliamentary Service (particularly Human Resource Management) with the implementation of programs aimed at increasing the employment of Aboriginal and Torres Strait Islander people within the Parliamentary Service including electorate offices (see chapter 7 regarding employment and training);
- assisting Parliamentary Education Services in its programs and activities aimed at Aboriginal and Torres Strait Islander people (see chapter 6 regarding civics education); and
- providing protocol advice as it affects the Parliament, for example, welcome to country, acknowledgment of traditional owners, observance of ceremony and protocol for Aboriginal and Torres Strait Islander flags.

RECOMMENDATION 22 – ABORIGINAL AND/OR TORRES STRAIT ISLANDER ASSEMBLY52

Given the minimal support expressed during public consultation for a separate Aboriginal and/or Torres Strait Islander Assembly, such an Assembly should not be established in Queensland at this stage.

RECOMMENDATION 23 – GREATER AUTONOMY IN THE TORRES STRAIT.....52

The Queensland Government should ensure ongoing discussion with the Federal Government and Torres Strait Islanders (both homeland and mainland) and other residents of the Torres Strait about greater autonomy in the Torres Strait. Such discussion should examine what powers, roles and responsibilities might be further devolved from State to Torres Strait regional level to enhance autonomy in the Torres Strait.

RECOMMENDATION 24 – DEDICATED SEATS.....56

Given the degree of opposition to dedicated seats expressed during public consultation, dedicated seats for Aboriginal and Torres Strait Islander peoples should not be established in Queensland either at the state or local government level at this stage.

However, the need for dedicated seats may be one of the issues revisited if the representation of Aboriginal and Torres Strait Islander peoples in democratic processes has not improved after three state electoral cycles or nine years, whichever is the later: see recommendation 1.

RECOMMENDATION 25 – QUEENSLAND’S ELECTORAL SYSTEM.....59

The question of whether Queensland’s current electoral system, based on single representative electoral districts, is the most effective system to represent the diverse interests of the Queensland community, including the interests of Aboriginal and Torres Strait Islander peoples, should be revisited as part of the evaluation of the effect of strategies on Aboriginal and Torres Strait Islander peoples’ participation in Queensland’s democratic processes: see recommendation 1.

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PART 1

SETTING THE CONTEXT

1. INTRODUCTION

1.1 REASON FOR INQUIRY

The Legal, Constitutional and Administrative Review Committee ('LCARC' or 'the committee') is a seven member multi-party committee of the Queensland Parliament with a range of law reform and other responsibilities. The committee is established under the *Parliament of Queensland Act 2001*.¹

On 29 February 2000, the Premier tabled in the Queensland Parliament the report of the Queensland Constitutional Review Commission ('the QCRC') titled *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*.² The Premier stated that he tabled the report for 'consideration and reporting' by LCARC.³

In its report, the QCRC noted interest in, and support for, the possibility of having special representation of Aboriginal and Torres Strait Islander communities in the Legislative Assembly.⁴ While it did not propose how this might occur, the QCRC recommended that the LCARC of the 50th Parliament 'conduct an inquiry into the possibility of special representation for Aborigines and for Torres Strait Islanders'.⁵

In August 2002, the committee resolved to commence an inquiry in accordance with the QCRC's recommendation.⁶ However, the committee was concerned that its inquiry not be confined to Indigenous people's representation in State Parliament but rather also consider Indigenous people's participation in all levels of government and the various processes which feed into those levels. Thus, the committee expanded the scope of its inquiry beyond the QCRC's recommendation to consider the participation of Aboriginal and Torres Strait Islander peoples in democratic processes in Queensland, including the possibility of special representation for Aboriginal and Torres Strait Islander peoples.

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

1.2 CONTEXT OF INQUIRY

LCARC is a committee of the Queensland Parliament and thus operates independently from the Government in considering issues within its areas of responsibility. With its multi-party membership, the committee has explored from a state level perspective a wide range of options which might enhance Indigenous peoples' participation in democratic processes.

At the outset, the committee recognised that its inquiry would raise issues which need to be considered in the broader context of long-term aims of Aboriginal and Torres Strait Islander peoples for formal recognition of their unique place as the first peoples of Queensland and Australia.

The committee also acknowledged that Indigenous people's lives are often affected by issues which, on a day-to-day level, are a higher priority to both individuals and organisations than those under review by the committee. Issues such as housing, health, violence, criminal justice and employment pose real and immediate concerns for many Indigenous people. The constant struggle to deal with these issues is seen by

¹ Section 80.

² Goprint, Brisbane, February 2000. Available at: <www.constitution.qld.gov.au>.

³ Hon P D Beattie MP, Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 29 February 2000 at 45-46.

⁴ Note 2 at 42.

⁵ Note 2 at 91, recommendation 5.6.

⁶ This inquiry represents stage 3 of a wider constitutional reform inquiry being conducted by the committee. Information regarding stage 1 (concerning specific content issues of the Queensland Constitution) and stage 2 (concerning entrenchment of the Queensland Constitution) is available from the committee's website.

many as the most significant impediment to Aboriginal and Torres Strait Islander peoples' participation in the political process.

There are currently a number of State Government initiatives aimed at addressing these issues and to which Indigenous people have made a significant commitment. *The Ten-Year Partnership* is a Queensland Government framework to work with Aboriginal and Torres Strait Islander peoples to improve standards of living over the next ten years.⁷ Other initiatives include *Meeting Challenges*, *Making Choices* which is aimed at decreasing alcohol misuse in Indigenous communities and addressing other social and economic priorities,⁸ and *Cape York Partnerships* which is designed to address issues surrounding welfare dependency through a partnerships approach. A major emphasis of this program is the need to develop viable business activities to improve economic and social outcomes for people living in the Cape York region.⁹

Other matters of significance on the Indigenous community agenda throughout the inquiry period included the Department of Aboriginal and Torres Strait Islander Policy's Green Paper on community governance¹⁰ and the Queensland Government's wages and savings reparations offer.

While the committee acknowledges the primacy of these other issues, the committee is persuaded by the argument that the greater involvement of Aboriginal and Torres Strait Islander peoples in democratic processes will ultimately advance the economic, cultural and social status of Aboriginal and Torres Strait Islander peoples.

1.3 INQUIRY PROCESS

Initial meetings: The committee began preliminary work on its inquiry in October 2002 by a series of teleconference and face-to-face meetings with a range of prominent Indigenous persons. The aim of these meetings was to ascertain how the committee might best conduct an inclusive and participatory inquiry. Various members of the committee met with:¹¹

- Ms Jackie Huggins—Deputy Director, Aboriginal and Torres Strait Islander Studies Unit, University of Queensland; QCRC commissioner;
- Mr Steve Mam—Community Elder and Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Councillor for South East Queensland; and Mr Bill Lowah;
- Dr Bob Anderson—then Chair of the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB); former Chair of the State Reconciliation Committee and former Executive Member of the Indigenous Advisory Council; and Ms Ros Kneebone—then Acting Senior Executive Officer of ATSIAB;
- then Commissioner Jenny Pryor—ATSIC Commissioner for Queensland North;
- Commissioner Ray Robinson—then ATSIC Deputy Chairperson and Commissioner for Queensland South Zone; and
- Mr Eric Deeral—State Member for Cook from 1974 to 1977.

⁷ There are eight key areas to be addressed under the Ten Year Partnership: justice; family violence; reconciliation; human services; service delivery; economic development; community governance; and land heritage and natural resources. See 'About the Ten Year Partnership', Information sheet 1. Available at: <www.indigenous.qld.gov.au/index.cfm/fuseaction/partnerships.ten_year>.

⁸ Queensland Government, *Meeting Challenges, Making Choices: The Queensland Government's response to the Cape York Justice Study*, April 2002.

⁹ 'Cape York Partnerships: Some practical ideas', An open letter from Premier Peter Beattie MP to the Indigenous peoples of Cape York. Available at: <<http://www.premiers.qld.gov.au/library/other/default/cape.htm>>.

¹⁰ Department of Aboriginal and Torres Strait Islander Policy, *Making choices about community governance: Green Paper – Review of Indigenous Community Governance*, March 2003.

¹¹ The committee also acknowledges the assistance of Ms Kerry Charlton.

Issues paper and other publications: The committee released an issues paper on 12 December 2002 to stimulate public input into its inquiry.¹² This paper set out the background to the inquiry and some possible barriers to Indigenous peoples' participation in democratic processes, and outlined five strategies which might assist in enhancing Indigenous peoples' participation. These strategies concerned:

- enhancing existing processes;
- direct input to Parliament;
- an Aboriginal and Torres Strait Islander Assembly;
- dedicated seats in the Parliament; and
- a change to the electoral system.

The committee invited submissions on these strategies (either written or on audio tape) and asked people to suggest other strategies which they considered might enhance participation.

Subsequently, the committee released a discussion group kit aimed at facilitating small group discussion by interested persons in the community.

The committee provided copies of its issues paper and a one-page inquiry brochure to over 700 agencies and individuals with a request that they further distribute these documents to any persons that might be interested in the committee's inquiry.

The committee had an initial closing date for receipt of submissions of 28 March 2003. This was extended to 30 June 2003 to provide a greater opportunity for people to provide their views to the committee. The committee tabled a summary of consultation on 30 June 2003 along with submissions received to 26 June 2003. The committee invited further comment on that summary and the submissions until 31 July 2003.

In total the committee received 56 written submissions.¹³ Submissions which the committee has authorised for publication can be viewed at the Bills and Papers Office, Parliament House, Brisbane.

The committee also wrote to a range of agencies and individuals in New Zealand requesting information from that jurisdiction about the role of political parties, dedicated seats for Maori people in the New Zealand Parliament and the mixed-member proportional (MMP) electoral system.

Face-to-face consultation: Between March 2003 and July 2003 the committee engaged in an extensive program of face-to-face consultation through meetings with key agencies and individuals, and public meetings throughout Queensland.

Various members of the committee met with:

- ATSIAB;
- the State Policy Council of ATSIC;
- the Aboriginal Coordinating Council (ACC);
- the Queensland Electoral Commissioner, Mr Bob Longland and Deputy Electoral Commissioner, Ms Trudy Aurisch;
- the Torres Strait Regional Authority (TSRA);
- Mr John Ah Kit MLA, Member for Arnhem (NT), Minister for Community Development, Housing, Local Government, Sport and Recreation, Regional Development and Minister assisting the Chief Minister on Indigenous Affairs;

¹² *Hands on Parliament: A parliamentary committee inquiry in Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic process*, Goprint, Brisbane. Available at: <www.parliament.qld.gov.au/Committees/LCARC/LCARCHandsonParl.htm>.

¹³ See appendix A for a list of submitters.

- the State Youth Advisory Council (SYAC);
- representatives of the Australian Labor Party (ALP), the Queensland Nationals, One Nation and the Democrats;¹⁴
- Ms Jan Burnswoods MLC, chair of the Standing Committee on Social Issues of the NSW Legislative Council which in November 1998 reported on an inquiry titled '*Enhancing Aboriginal political representation*';¹⁵ and
- Ms Linda Burney MP, Member of the NSW Legislative Assembly and Mr Warren Mundine, Deputy Mayor of Dubbo.

The committee conducted public meetings in Ipswich, South Brisbane, Deception Bay, Cleveland, Toowoomba, Thursday Island, Cairns, the Gold Coast, Roma, Charleville, Rockhampton, Mackay, Mt Isa, Townsville, Cherbourg and Logan.¹⁶ Attendance at meetings averaged between ten and twelve people.

Copies of the public meeting schedule and invitations to attend the public meetings were sent to over 700 agencies and individuals. Public meetings were advertised in local media (including Indigenous media) and local organisations were contacted and asked to advise clients and community members of the meetings.

The committee was disappointed at the generally low level of attendance at its public meetings. The committee understands the enormous pressure that Indigenous organisations are under to contribute to government inquiries in addition to performing their day-to-day functions. However, meeting attendees often advised the committee that they had only just become aware of the committee's inquiry. Some advised the committee of their concern that material regarding the committee's inquiry had not been passed on to them by relevant Indigenous organisations.

The consultation conducted by the committee forms the basis of the recommendations in this report.

1.4 THIS REPORT

1.4.1 Consultation – broad themes

In the course of consultation, two main but opposing themes emerged as central to discussions regarding strategies to enhance Aboriginal and Torres Strait Islander peoples' participation in democratic processes.

On one hand, it was widely argued that no special measures should be put in place for Aboriginal and Torres Strait Islander peoples. The main basis for this argument was that anything which might be perceived as special treatment for Indigenous peoples will only cause further division in the community. It was also argued that special measures risk being seen as tokenistic, or might detract from Indigenous people participating in existing processes.

People who put forward these arguments generally advocated enhancing existing processes, such as civics and voter education, to 'level the playing field'.

On the other hand, the committee was presented with the view that special measures are necessary to overcome the barriers presented by issues such as racism.

It was also considered that, as Aboriginal and Torres Strait Islander peoples are the first peoples of Queensland and have been disadvantaged by the system of government imposed on them, special measures will help to rectify social injustice.

¹⁴ A member of the Queensland Greens attended the public meeting at South Brisbane.

¹⁵ New South Wales Legislative Council Standing Committee on Social Issues, *Enhancing Aboriginal Political Representation – Inquiry into dedicated seats in the New South Wales Parliament*, Sydney, November 1998.

¹⁶ See appendix B for details of public meeting dates.

The committee has considered these two main themes in examining the various strategies suggested to it. The recommendations in this report aim to demonstrate respect for both of these views and promote a greater sense of unity in the Queensland community.

1.4.2 Recommendations – broad themes

The Council for Aboriginal Reconciliation (CAR) interpreted ‘reconciliation’ as: ‘...*the achievement of a united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all*’.¹⁷ The recommendations in this report are designed to respect and advance these concepts.

The recommendations in this report are also designed to be achievable and workable. The committee acknowledges long-term aspirations of many Aboriginal and Torres Strait Islander peoples including formal recognition and the right to self-determination. Some recommendations can be implemented immediately, so that their effect might be felt in the short term. Other recommendations complement these long-term aims.

The committee’s recommendations centre around:

- acknowledging Aboriginal and Torres Strait Islander peoples as the first peoples of this country;
- encouraging political parties to actively recruit, encourage and support Aboriginal and Torres Strait Islander people in various aspects of party processes;
- enhancing civics and voter education;
- enhancing employment, training and leadership development opportunities and programs for Aboriginal and Torres Strait Islander people in democratic institutions and processes;
- enhancing Aboriginal and Torres Strait Islander peoples’ participation in local government; and
- enhancing Aboriginal and Torres Strait Islander peoples’ direct input into policy, legislative and consultative processes.

1.4.3 Format

This report comprises three parts.

Part 1 sets the context for the inquiry including, in chapter 2, discussion of the case for increasing participation of Indigenous peoples in democratic processes and, in chapter 3, examination of the factors which have limited Aboriginal and Torres Strait Islander peoples’ participation in democratic processes.

Part 2 contains strategies for overcoming some of the factors discussed in chapter 3 and increasing participation. This part expands on the five strategies set out in the committee’s issues paper.

Part 3 explains the process following the tabling of the committee’s report in Parliament and discusses ways in which people can take personal and collective responsibility for making improvements to levels of participation.

¹⁷ Clause 3 of the draft Reconciliation Bill 2001 in the Council for Aboriginal Reconciliation, *Final Report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament*, December 2000 at 167 and reflected in the *Australian Declaration Towards Reconciliation*, reprinted on the inside front cover of Council for Aboriginal Reconciliation, *Recognising Aboriginal and Torres Strait Islander Rights – Ways to implement the National Strategy to Recognise Aboriginal and Torres Strait Islander Rights, one of four National Strategies on the Roadmap for Reconciliation*, May 2000.

2. THE CASE FOR INCREASED PARTICIPATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN DEMOCRATIC PROCESSES

Aboriginal and Torres Strait Islander people are the original inhabitants of our great Australian nation. Aboriginal and Torres Strait Islander peoples set up the original systems of government and currently comprise 3% of the State's population.¹⁸ Yet in more than 130 years of Westminster-style government in Queensland, there has only been one Aboriginal elected representative in our State Parliament—Mr Eric Deeral who was the Member for Cook from 1974 to 1977. There has not been a Torres Strait Islander representative in the State Parliament.

Anecdotally, there have been similar levels of under-representation of Aboriginal and Torres Strait Islander peoples at the local government level.

A strong message from participants in the committee's consultation is that Aboriginal and Torres Strait Islander peoples must be further empowered to influence government decisions that affect their lives. This needs to occur through Indigenous people's participation in all levels of government and the various processes which feed into those levels. As one submitter to the committee stated:

*The issue of participation in a democracy and in government ought to be examined in terms of recognising and empowering a people with a legitimate claim to a significant voice in how decisions which affect the land from which they have been dispossessed are made...*¹⁹

Conversely, governments have a responsibility to engage with Indigenous peoples about issues which affect them and their position in Australian society. The Council for Aboriginal Reconciliation (CAR) made the following relevant observation.

*It is necessary for all governments in Australia to ensure that Aboriginal and Torres Strait Islander peoples have equal rights to effectively participate in public life and that no decisions directly relating to their rights and interests are taken without their agreement. This means governments must engage in effective negotiations with representatives of Aboriginal and Torres Strait Islander peoples before making decisions or passing legislation which may fundamentally interfere with their rights to lead lives of dignity, to preserve their culture, to share equitably in the benefits of national growth and to play their part in the government of the country.*²⁰

The committee recognises that many advances in areas of particular significance to Indigenous people are as a direct result of tireless lobbying by Indigenous activists.

Similarly, governments have implemented a number of initiatives aimed at addressing issues of real and immediate concern to many Aboriginal and Torres Strait Islander people.

However, on a broad scale there are significant areas in which Indigenous people are not sufficiently involved in processes for developing policy, legislation and the provision of services of direct relevance to them. Very few Indigenous people have run as candidates in local or state elections and efforts to establish Indigenous political parties, such as the Australian Indigenous Peoples' Party, have not been sustained. In particular, there is a need for increased recognition of, and leadership opportunity available to, Indigenous women and the important role they play in their communities.²¹ As recently noted in the current review of ATSIIC:

4.25....Indigenous women are prominently engaged in the community in non-stop efforts to promote and achieve better health and education for their children, and in struggling to keep families,

¹⁸ The 2001 census figures show that 112,772 persons—3.1% of the State's population—identified as being of Aboriginal or Torres Strait Islander origin: Office of Economic and Statistical Research, *Census 2001 Bulletin No 2: Aboriginal and Torres Strait Islander Queenslanders*, May 2003.

¹⁹ Submission no 1.

²⁰ *Recognising Aboriginal and Torres Strait Islander Rights*, n 17 at 15.

²¹ This comment was made at the public meeting at Townsville.

communities and Indigenous culture strong by attempting to deal with issues such as substance abuse.

4.26 Indigenous women have an irreplaceable perspective to contribute and if that perspective is missing or seriously diminished in the leadership levels of ATSIC for whatever reason, then the cause of the advancement of Indigenous Australians through ATSIC is poorer as a consequence.²²

These observations apply equally to all democratic processes.

Against this background, the focal point of the committee's inquiry was considering ways that Aboriginal and Torres Strait Islander peoples can be best equipped to be involved in democratic processes. Two considerations underpinned the committee's public consultation.

First, the committee needed to identify factors which Indigenous people saw as barriers to their participation in democratic processes, and establish any other reasons contributing to non-participation. These factors are discussed in chapter 3.

Secondly, taking into account those factors, the committee needed to identify strategies to enhance participation. Specific strategies are discussed in chapters 4 to 12.

The strategies recommended in this report are designed to be achievable and workable and represent a package which, as a whole, can bring about significant reform. They represent the continuation of a process rather than an end to one. While implementation and continual assessment is ultimately a matter for the Queensland Government and Aboriginal and Torres Strait Islander peoples, this committee is committed to playing an on-going role.

Once implemented, these strategies will need to be periodically assessed to ensure that they are having their intended impact. This committee, or its appropriate successor, should conduct an evaluation of Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes after three state electoral cycles or nine years, whichever is the later. This period—which would span at least two local government electoral cycles—should enable a full assessment of the effectiveness of strategies recommended in this report in light of other relevant developments.

Throughout this report the committee refers to particular issues which should also form part of this evaluation.

Recommendation 1 – Monitoring and evaluation of recommendations

The Legal, Constitutional and Administrative Review Committee, or its appropriate successor, should:

- **monitor the implementation and effectiveness of the strategies recommended in this report to enhance the participation of Aboriginal and Torres Strait Islander peoples in Queensland's democratic processes; and**
- **after three state electoral cycles or nine years, whichever is the later, conduct an evaluation of the effect of these strategies on Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes to determine the extent to which these strategies have enhanced participation and whether any further action is required.**

²² Hon J Hannaford, Hon B Collins, and Ms J Huggins AM (Review panel members), *Review of the Aboriginal and Torres Strait Islander Commission: Public Discussion Paper*, June 2003 at paras 4.25-4.26. Available at: <www.atsicreview.gov.au/discussion.htm>.

3. FACTORS AFFECTING PARTICIPATION

3.1 INTRODUCTION

Various factors have limited Aboriginal and Torres Strait Islander peoples' participation in democratic processes. These factors fit broadly under five categories:

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

In chapters 4 to 12 many of these factors and strategies to deal with them are discussed in detail.

This chapter also draws on these factors to identify some overarching issues which set the context for the committee's consideration of specific strategies for change. These issues have been raised in consultation as matters which shape Indigenous people's lives in Australia and influence their view of, and how they interact with, governments, Westminster institutions, politicians and democratic processes generally.

The discussion below does not attempt to be definitive or comprehensive. Rather, the committee wishes to acknowledge certain matters as fundamental to many Aboriginal and Torres Strait Islander people, particularly in any discussion about participation in government processes.

3.2 CONSTITUTIONAL EXCLUSION AND SUBSEQUENT LACK OF RECOGNITION

It was a general theme in consultation that the lack of recognition of Aboriginal and Torres Strait Islander peoples as the original inhabitants within the constitutions of the Commonwealth and Queensland, is a barrier to the more active inclusion and participation of Aboriginal and Torres Strait Islander peoples in democratic processes. For example, the TSRA submitted that:

*Any substantive scheme of participation in the democratic process requires both constitutional and legislative recognition of the status of Torres Strait Islanders and Aboriginal people in the political, legislative and government system.*²³

Until 1967, the Commonwealth Constitution contained grossly discriminatory provisions. While these provisions have been removed, there has been no consequent recognition of Aboriginal and Torres Strait Islander peoples as the first peoples of the nation in either the Commonwealth or the Queensland Constitutions.

Prior to 1967, the Commonwealth Constitution provided that:

s 51 The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:—

...(xxvi) The people of any race, other than the Aboriginal race in any state, for whom it is deemed necessary to make special laws.

²³ Submission no 39.

Further, s 127 provided that:

In reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

By federal referendum in 1967, over 90% of Australians voted to remove the words ‘*other than the Aboriginal race in any state*’ from s 51(xxvi) and to repeal s 127. The effect was that the Commonwealth could now make laws with respect to Aboriginal people, concurrently with the states, and that Aboriginal people were to be counted in the census and therefore recognised as citizens.

There is some misconception that the referendum gave Aboriginal people the right to vote. Eligibility to vote in Commonwealth elections was granted in 1962. In Queensland, the right to vote was granted in 1965.

A number of participants in the committee’s inquiry questioned how Indigenous people could be expected to take a more active role in democratic processes and run for election when they had historically been excluded from voting, from being included in the census and from other key areas of constitutional recognition and democratic participation.²⁴

The federal referendum of 1967 was acknowledged by numerous participants in the inquiry as a watershed in the development of Indigenous peoples’ rights and recognition. Many participants in the inquiry and contemporary commentators have however expressed disappointment and frustration at the pace of progress. Professor Larissa Behrendt articulates this position in stating that:

*...since the 1967 referendum, it has become increasingly evident that formal structures and institutions within Australia have not changed enough to equalise – let alone reverse – the socio-economic impact of colonisation and past government policies and practices.*²⁵

Participants in the inquiry, particularly those from elected bodies, spoke of the many reports and inquiries that have sought to advance the rights of Aboriginal and Torres Strait Islander peoples and their inclusion in democratic processes, but expressed frustration at ongoing challenges to achieving these goals. Examples put to the committee included: the need for a treaty between Indigenous peoples and government;²⁶ recognition of sovereignty, including meaningful preambles to the Commonwealth and State Constitutions;²⁷ and establishment of the Torres Strait as a self-governing territory.²⁸

Formal recognition of Aboriginal and Torres Strait Islander peoples is discussed further in chapter 4.

3.3 SYMBOLIC RECOGNITION

The factors outlined in this chapter detail some of the injustices that have been suffered by Aboriginal and Torres Strait Islander peoples in Australia since the arrival of Europeans. In this report the committee addresses practical measures to right some of the injustice that has manifested in under-representation in democratic processes.

In consultation, people also raised with the committee the need for symbolic recognition of Aboriginal and Torres Strait Islander peoples’ place in Australian society, particularly in discussions of history and questioning the sincerity of governments in attempts at reconciliation.²⁹ Symbolic recognition can take

²⁴ For example, public meetings at Charleville and Mt Isa.

²⁵ L Behrendt, *Achieving Social Justice – Indigenous rights and Australia’s future*, The Federation Press, Sydney, 2003 at 13.

²⁶ Public meetings at South Brisbane and Charleville.

²⁷ Public meeting at South Brisbane; meeting with the ACC.

²⁸ Public meeting at Thursday Island; meeting with the TSRA.

²⁹ For example, public meetings at South Brisbane, Cleveland, Toowoomba and Charleville; meeting with the ACC.

many forms, such as the flying of Aboriginal and Torres Strait Islander flags, observance of protocols and memorials marking places of past injustices.³⁰

Behrendt writes:

*These small reminders, acknowledgements and displays of respect seek to incorporate Indigenous experience, history and presence into the Australian psyche.*³¹

The most significant form of symbolic recognition raised during consultation was a national apology. Such an apology might recognise '*past injustices and the effect that they continue to have on Indigenous people.*'³² To date, a national apology has not occurred.

The committee notes the Queensland Parliament's symbolic recognition of Aboriginal and Torres Strait Islander peoples in Queensland in the form of an apology for past policies under which Indigenous children were forcibly separated from their families. The apology was made on 26 May 1999 and recognised the '*critical importance to indigenous Australians and the wider community of a continuing reconciliation process, based on an understanding of, and frank apologies for, what has gone wrong in the past and total commitment to equal respect in the future.*'³³

3.4 SELF-DETERMINATION AND SOVEREIGNTY

Self-determination and sovereignty are terms used in discussions about the place of Aboriginal and Torres Strait Islander peoples in Australian society. The terms are used to mean different things by different people. Behrendt draws out some of the '*obvious and recurring threads tied together in the notions of the recognition of sovereignty and the exercise of self-determination*' as follows.³⁴

- The recognition of past injustices and truth including the failure to recognise Indigenous sovereignty and laws, dispossession and government policies and the legacy that Indigenous people live with today.
- Autonomy and decision-making powers which consists of a claim for control over decision-making that affects people's day-to-day lives through decentralised forms of government and institutions and community-based self-government and decision-making that empowers the individual.
- Property rights and compensation which includes recognition of prior ownership, extension of native title rights recognised under common law and recognition of the need for land as an economic base for dispossessed communities. These rights extend to hunting, fishing, water and sea rights and, '*where land is lost there is a demand for compensation.*'
- Protection of cultural practices and customary laws which takes in the need for Indigenous people to live their lives in the way that they want to through space for enjoyment of a cultural lifestyle and the recognition of customary law.
- Equal protection of rights, that is, human rights that all other Australians are entitled to have and have protected.

The notion of Indigenous people as sovereign derives from the fact that Indigenous people have never ceded their land and continue to feel separate from other Australians.³⁵ It is this notion of sovereignty that a number of participants to the inquiry argued ought to be incorporated into the Commonwealth Constitution. Some argued that a treaty between the Australian Government and Indigenous peoples was necessary for effective participation and inclusion in democratic processes in this State.

³⁰ Behrendt, n 25 at 133.

³¹ Note 25 at 134.

³² Note 25 at 133.

³³ Hon P D Beattie MP, Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 26 May 1999 at 1947.

³⁴ Note 25 at 106-115.

³⁵ Note 25 at 95.

In its submission to the inquiry, ATSIC referred to some of its earlier documents where it had asserted that the right of Aboriginal peoples and Torres Strait Islanders to self-determination in government policy and service provision is tied to Indigenous peoples' realisation of economic and social equality.³⁶ The TSRA also submitted that:

*The Aboriginal and Torres Strait Islander Commission Act, under which the TSRA is constituted, has as its objects to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them and promote self-management and self-sufficiency among them.*³⁷

The committee acknowledges the extensive work that has been done by Indigenous people and organisations, government agencies and others, to enhance and advance self-determination and recognition of Indigenous peoples' rights.

The concept of self-determination and participation in Westminster democratic processes are irreconcilable for some people. As noted above, for many Aboriginal and Torres Strait Islander people sovereignty has never been ceded³⁸ and participation '*in the various constructs of the Westminster system of government is seen as legitimising the colonial state and its institutions and is therefore avoided.*'³⁹ For others, '*(p)articipation in politics is a central pillar in notions of democracy and an important aspect in the right to self-determination.*'⁴⁰

The committee acknowledges the long-term aims of sovereignty and self-determination of Indigenous peoples.

3.5 HISTORICAL LEGACY OF LEGISLATION GOVERNING INDIGENOUS PEOPLES

There was a general theme in consultation that the legacy of legislation governing Indigenous peoples has had a significant impact on Indigenous peoples' desire to participate in democratic processes.⁴¹ For example, Legal Aid Queensland submitted:

*...the legacy of community disempowerment and dependence left by historical government policies underpins the barriers to Indigenous people actively participating in the democratic process.*⁴²

A brief discussion of the controls imposed by the Queensland Government on Indigenous peoples provides some context to the legacy with which Indigenous peoples in Queensland live.⁴³

As early as 1865, the *Industrial and Reformatory Schools Act 1865* allowed the removal and detention of Aboriginal or 'half-caste' children to industrial schools. The *Aboriginals Protection and Restriction of the Sale of Opium Act 1897* allowed the removal of Aboriginal people to reserves and controlled their employment, payment of wages, ability to marry, and management of property through the office of Protector of Aboriginals.

Transitional provisions of the *Torres Strait Islanders Act 1939* indicate that Islanders were also subject to the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897*. In its submission, the Aboriginal Coordinating Council states:

This Policy [of making people "live under the Act"] was designed to completely disenfranchise the Indigenous people from being seen as a group of people who should have political rights. The

³⁶ Submission no 47.

³⁷ Submission no 39.

³⁸ Public meeting at South Brisbane.

³⁹ Submission no 47.

⁴⁰ Behrendt, n 25 at 128.

⁴¹ For example, public meeting at Toowoomba.

⁴² Submission no 11.

⁴³ See also K Frankland, *A brief history of government administration of Aboriginal and Torres Strait Islander peoples in Queensland*, 1994.

*overwhelming effect of this legislation reflected the comprehensiveness of government regulations which controlled all aspects of the lives of Indigenous people 'living under the Act' ie to full dispossession including political dispossession. This historical fact is significant in explaining the current situation.*⁴⁴

Policies were in place around Australia under which Indigenous people were controlled by the government, and pursuant to which children were forcibly removed from their families, and families and individuals were forcibly removed from their traditional country and communities.

Since these times, there has been a gradual decrease in the control of Indigenous peoples' lives. In Queensland, the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984* increased the powers of Aboriginal and Island Councils respectively to govern the areas which were previously reserves. This devolution of power makes the community council the local government authority for the area, although there is still some debate over whether community councils enjoy equal status with other local governments: see the discussion in chapter 8.

Indigenous peoples were prevented from voting in Queensland by the *Elections Act 1872*. They were not permitted to vote in Queensland until the passage of the *Elections Act Amendment Act 1965*.

The committee acknowledges that past government laws and practices act as a barrier to Aboriginal and Torres Strait Islander peoples' participation in democratic processes, both at a federal and state level. The committee acknowledges that some people might not want to participate in political and legal systems 'which legitimised their dispossession and disenfranchisement'.⁴⁵

3.6 LIVING WITH CONTEMPORARY AND TRADITIONAL GOVERNANCE STRUCTURES

Contributors to the inquiry argued that traditional governance is relevant to this inquiry in two aspects. First, it is important to recognise that systems of governance were in place when Europeans came to Australia and that these systems still govern the lives of many Indigenous people. Second, it is important to recognise that the Westminster system and its liberal democratic framework are at odds with traditional systems of governance.

Throughout consultation it has been made clear to the committee that Indigenous people live in both Indigenous and non-Indigenous worlds. Aboriginal and Torres Strait Islander peoples were once independent, self-governing entities in possession of lands now making up Queensland (and Australia). Comments made to the committee during consultation make it clear that traditional governance is still relevant and fundamental to Aboriginal and Torres Strait Islander peoples and the way many Indigenous peoples live their lives.⁴⁶ It was also made clear throughout consultation that Aboriginal and Torres Strait Islander elders are integral to traditional governance and contemporary society.⁴⁷

Traditional governance is explained further in the following information which was provided by Ms Angela Ruska, Project Officer.⁴⁸

⁴⁴ Submission no 50.

⁴⁵ Submission no 1.

⁴⁶ Public meetings at South Brisbane and Deception Bay; meeting with the TSRA.

⁴⁷ For example, public meeting at South Brisbane.

⁴⁸ Ms Ruska wishes to acknowledge Ms Kerry Charlton and Mr Steve Mam for their assistance in compiling this information.

‘To know the country is to know the story of how it came into being, and that story also carries the knowledge of how the human owners of that country came into being.’⁴⁹

This is why creation beliefs are integral to Aboriginal and Torres Strait Islander peoples’ identity, kinship and lore, and why Elders are so important to Indigenous peoples.

Aboriginal and Torres Strait Islander Elders, in a traditional sense, were the people responsible for ensuring the longevity of their cultures by maintaining cultural lore, practice and traditions as derived from the creation beliefs. They were respected for their knowledge, experience and wisdom.

Due to past government policies, many traditional cultural practices which included clearly defined roles for each member of Aboriginal and Torres Strait Islander society, have deteriorated and the role of Elders in a traditional sense, in over-all community decision-making has been somewhat superseded by government bureaucracy.

Nevertheless, Elders continue to command respect among Aboriginal and Torres Strait Islander peoples. However, for Aboriginal and Torres Strait Islander peoples to achieve in today’s society, Indigenous governance styles have evolved to suit the dominant culture but still endeavor to adhere to and be inclusive of traditional Indigenous values. Instead of Elders in the traditional sense, the ‘decision-makers’ today are often younger people fluent and active in western democracy who endeavour to make decisions that value and include the involvement of Elders and the collective opinions of their communities.

Whilst Indigenous decision-makers who carry the mantle of ‘spokespersons’ or ‘representatives’ of Indigenous peoples are perceived by the broader community to carry a mandate and the ability to make decisions independent of their communities, their communities perceive their representatives and spokespersons as facilitators, conduits, communicators and interpreters whose responsibility it is inform them and act on their collective views.

The committee acknowledges the incongruity between traditional and Westminster systems of government and that some Indigenous people consider participation in liberal democratic processes would be a concession of sovereignty⁵⁰ and so choose not to participate.

A related concern which was raised with the committee is that Indigenous peoples’ participation in democratic processes is inherently limited because liberal democracy and Westminster institutions are considered to be culturally inappropriate by many Indigenous people. Difficulties arise for reasons including the following:

- liberal democracy is based on the individual while traditional governance is based on the collective, with a particular emphasis on family;⁵¹
- Aboriginal and Torres Strait Islander people may speak only for their own country;⁵² and
- political parties are considered by some to be hostile and culturally inappropriate.⁵³

It was argued that for these and other reasons, Aboriginal and Torres Strait Islander people are culturally alienated from democratic processes.⁵⁴

⁴⁹ D Bird Rose, *The Nourishing Terrains of Aboriginal Australia*, Australian Heritage Commission, Canberra, 1995.

⁵⁰ Public meeting at South Brisbane.

⁵¹ See, for example, submission no 17.

⁵² Public meetings at South Brisbane, Mt Isa and Logan.

⁵³ Public meeting at Deception Bay.

⁵⁴ Public meetings at South Brisbane and Charleville. See also, for example, submission nos 1, 17 and 18.

The committee has been criticised for basing its inquiry in a liberal democratic framework and thereby necessarily limiting solutions to this framework.⁵⁵ While this criticism cannot be ignored, it is arguable that Indigenous peoples' participation in democratic processes is necessary to effect meaningful change. Conversely, there is scope for governments in Australia to be engaging Indigenous peoples more appropriately in decisions that affect them.⁵⁶

3.7 SOCIAL ISSUES AS A BARRIER TO PARTICIPATION: INDIVIDUAL AND COLLECTIVE RESPONSIBILITY NEEDED

Throughout consultation, the committee was reminded that many Aboriginal Torres Strait Islander people live in poverty and experience a quality of life that is well below that of many non-Indigenous Australians. There was strong agreement among submitters that this poverty is the result of a history of discrimination and oppression. Its consequence is that politics and political aspirations are generally far removed from the daily lives of Aboriginal and Torres Strait Islander peoples.

The widespread oppression and disadvantage that many Indigenous people have endured has meant that the daily quest to meet basic human survival needs take priority.⁵⁷ Poor health and educational outcomes have underpinned this inequality and limited Indigenous peoples' capacity to engage in the political process.⁵⁸ A number of contributors said that improved coordination of government action across departments is needed to achieve better outcomes on these daily survival needs.⁵⁹ Similarly, the committee was told that geographical remoteness and lack of access to transport is a barrier to participation in democratic institutions and processes.⁶⁰

There are often calls from the non-Indigenous community for Indigenous people to 'take responsibility for themselves'. In consultation, there was general acknowledgment from Aboriginal and Torres Strait Islander people that they need to take personal and collective responsibility for their participation in democratic processes.⁶¹

The committee applauds the positive steps being taken in Aboriginal and Torres Strait Islander communities which demonstrate how Indigenous people are dealing with social issues at a community level. For example, through community justice groups some communities have developed alcohol management plans to help deal with alcoholism and other social problems such as domestic violence, which often flow from alcohol abuse. Further, community justice groups are able to effectively deal with other justice issues.⁶² These programs are having a flow-on effect by, for example, reducing school truancy and health issues.⁶³ Systems are being put into place at a community level which ensures local problems are dealt with by making people accountable to their local community.

The committee accepts that its inquiry is addressing only one aspect of Indigenous disadvantage. The inquiry is aimed at improving the position for Aboriginal and Torres Strait Islander people wishing to participate in democratic processes which, in turn, will assist in achieving better outcomes and overcoming disadvantage suffered by Aboriginal and Torres Strait Islander people. The committee recognises that all

⁵⁵ See, for example, submission nos 1 and 17.

⁵⁶ See the comments of the Council for Aboriginal Reconciliation, *Recognising Aboriginal and Torres Strait Islander Rights*, n 17 at 15.

⁵⁷ Public meeting at Toowoomba; meeting with the ATSIAB. See also, for example, submission nos 18, 24, 25, 50 and 51.

⁵⁸ Submission no 47.

⁵⁹ This is discussed further in section 9.3.1.

⁶⁰ Public meeting at Cleveland; submission no 50.

⁶¹ Public meetings at Ipswich and South Brisbane. Activist Noel Pearson has commented about taking personal responsibility: see, for example, 'What Cape York Communities can do to help themselves', 15 June 2001 at: <<http://www.onlineopinion.com.au/2001/Jun01/Pearson.htm>>.

⁶² See *Meeting Challenges, Making Choices*, n 8.

⁶³ Ministerial Media Statement by the Hon Peter Beattie MP, Premier and Minister for Trade, 27 July 2003.

people must take responsibility for their own political participation. The recommendations in this inquiry are aimed at equipping people to pursue their rights to participate as active citizens.

3.8 IMPACT OF RACISM

Numerous contributors voiced their view that major parties are unwilling or reluctant to recruit and support 'black' candidates as they are not likely to attract sufficient 'white' votes.⁶⁴ At the heart of this view is that racism permeates our culture and community.⁶⁵

ATSIC made the following comment in its submission:

*The legacy of institutional racism and personal experiences of discrimination are [contributors] to Indigenous peoples' under representation in the Queensland Parliament.*⁶⁶

Racism has been reflected in past government policies and was acceptable in significant parts of the community. Racism still exists in today's society, demonstrated by factors such as the lack of Indigenous people in the media,⁶⁷ portrayals of Indigenous people in news reporting⁶⁸ and even in some of the views that were presented to this inquiry.

The committee acknowledges the impact that racism continues to have on the lives of Aboriginal and Torres Strait Islander peoples and that it may influence people's desire to participate in democratic processes, particularly in putting themselves forward to run for an elected position.

⁶⁴ See, for example, submission nos 3, 25 and 38.

⁶⁵ Discussed in public meetings at Ipswich, South Brisbane, Deception Bay, Toowoomba, Cairns and Charleville. See also, for example, submission nos 3, 31, 34, 35, 37 and 41.

⁶⁶ Submission no 47.

⁶⁷ Raised in the public meeting at Cleveland.

⁶⁸ Raised in the public meeting at Nerang.

PART 2

STRATEGIES TO ENHANCE PARTICIPATION

4. RECOGNISING THE FIRST PEOPLES OF QUEENSLAND

4.1 BACKGROUND

A large amount of work has been done over many years to advance the formal recognition of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia. As was put very strongly to the committee during the course of its consultation, such recognition is generally seen as pivotal to reconciliation and Indigenous peoples' greater participation in democratic processes.

Formal recognition is usually discussed in terms of constitutional recognition. This could be achieved in several ways and is relevant at both the state and commonwealth level. Constitutional recognition of Indigenous peoples might take the form of:

- a statement in the preamble to the Commonwealth and/or Queensland Constitutions;
- an amendment to existing provisions of the Commonwealth and/or Queensland Constitutions; and/or
- insertion of new provisions in the Commonwealth and/or Queensland Constitutions.

A preamble to a constitution generally acts as an introduction and is symbolic, inspirational or aspirational in nature. Matters which might be included in a constitutional preamble include the source, authority and history of the constitution, the system of government it establishes, and the principles or values it espouses. A preamble might also seek to be unifying and promote a shared commitment to the constitution.⁶⁹

The legal effect of a constitutional preamble is generally limited to assisting courts interpret other provisions of the constitution where their meaning is unclear.⁷⁰

There have been a number of recent, strong calls at the commonwealth and state levels to provide for constitutional recognition of Aboriginal and Torres Strait Islander peoples. However, to date no recommendations relating to the recognition of Indigenous people in the Commonwealth or Queensland Constitutions have been implemented.

Commonwealth: The Commonwealth Constitutional Convention held in February 1998 resolved that the Commonwealth Constitution should include a preamble and that the preamble should contain certain elements including an acknowledgment of the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders. The Convention also resolved that further consideration should be given to including in the preamble recognition that Aboriginal people and Torres Strait Islanders have continuing rights by virtue of their status as Australia's Indigenous peoples.⁷¹

The republic referendum of November 1999 included a proposed new preamble to the Commonwealth Constitution. While it was intended that this preamble would have no legal effect and not be used to interpret the Constitution or any other law,⁷² it was to include a statement that:

*We the Australian people commit ourselves to this Constitution:
proud that our national unity has been forged by Australians from many ancestries;
...honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship
with their lands and for their ancient and continuing cultures which enrich the life of our country;
...*⁷³

⁶⁹ Constitutional Centenary Foundation, *1999 Referendum: A new preamble*, 1999.

⁷⁰ *Wacando v Commonwealth* (1981) 148 CLR 1.

⁷¹ Constitutional Convention, *Report of the Constitutional Convention: Volume 1—Report of Proceedings*, CanPrint Communications Pty Limited, Canberra, 1998 at 46-47.

⁷² Constitution Alteration (Preamble) Bill 1999 (Cth), clause 4 which sought to insert a new s 125A into the Constitution. See criticisms of the proposed s 125A by Behrendt, n 25 at 143.

⁷³ Constitution Alteration (Preamble) Bill 1999 (Cth), schedule.

The proposed preamble was widely criticised by Indigenous people, particularly for its failure to acknowledge Indigenous ‘custodianship of land’.⁷⁴

For a range of reasons,⁷⁵ Australians voted resoundingly to reject inclusion of this preamble in the Commonwealth Constitution.⁷⁶

In May 2000, the Council for Aboriginal Reconciliation (CAR) recommended that the Commonwealth Parliament initiate and support a referendum to:⁷⁷

- (i) *provide a new preamble to the Constitution which, among other things, recognises Aboriginal and Torres Strait Islander peoples as the original owners and custodians, and acknowledges the history of dispossession that many have suffered since colonisation;*
- (ii) *entrench the Australian Declaration Towards Reconciliation;*⁷⁸
- (iii) *amend section 51(26) of the Constitution to authorise the Commonwealth to make special laws only for the benefit of any particular race;*⁷⁹ and
- (iv) *remove section 25 of the Constitution,⁸⁰ and insert a new section making it unlawful to adversely discriminate on the grounds of race.*

This recommendation has not been implemented.

Queensland: The *Constitution of Queensland 2001* (‘the Queensland Constitution’) does not contain a preamble and no provision of the Queensland Constitution gives specific recognition to Aboriginal and Torres Strait Islander peoples.

Some consideration has been given to the issue of constitutional recognition of Indigenous people, particularly with regard to the issue of a preamble for the Queensland Constitution.

The Queensland Constitutional Convention held in Gladstone in June 1999 resolved that each state’s constitution should include a preamble which should, among other matters, acknowledge the custodianship of Indigenous peoples, and equality before the law.⁸¹

In its February 2000 report, the Queensland Constitutional Review Commission also recommended that the Queensland Constitution contain a preamble and that this preamble should include the following:

...In a spirit of reconciliation, we recognise the contribution of both Aboriginal and Torres Strait Islander peoples as the original occupants and custodians of this land.

⁷⁴ ATSIC, *Annual Report 1999-2000*, Canberra, 2000 at 34. See also M Kingston, ‘Howard keen to reconcile’, *The Sydney Morning Herald*, 9 November 1999 at 8; I McPhedran, ‘Preamble soundly rejected’, *The Courier-Mail*, 8 November 1999 at 22. Behrendt, n 25 at 143.

⁷⁵ The QCRC addressed in its report a number of matters that it felt were relevant to defeat of the federal preamble. These matters included a lack of reflection of Indigenous people’s connection with the land: QCRC report n 2 at 30.

⁷⁶ The preamble referendum was defeated in all states. On a national level, the ‘no’ vote was 60.66%. In Queensland, 67.2% of electors voted ‘no’ to the proposed preamble: <www.aec.gov.au/_content/how/newsfiles/news87.htm>.

⁷⁷ *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 21.

⁷⁸ Presented at Corroboree 2000 on 27 May 2000 by the Council for Aboriginal Reconciliation, reprinted on the inside front cover of *Recognising Aboriginal and Torres Strait Islander rights*, n 17.

⁷⁹ Currently, this provision empowers the Commonwealth Parliament to make laws with respect to ‘the people of any race, for whom it is deemed necessary to make special laws’. However, the CAR pointed out that in its current form this provision could be used to ‘discriminate in a negative manner’: *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 21.

⁸⁰ The CAR made the following comments regarding this provision: ‘Section 25 is intended to discourage discrimination but recognises the possibility that a State might exclude people from voting on the grounds of race. Such a provision is inappropriate for any democratic nation...’: *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 20.

⁸¹ Queensland Constitutional Convention, *Communique*. Available at: <www.constitution.qld.gov.au/communique.htm>. See also the QCRC’s report, n 2 at 29-30.

*We declare that we respect the equality of all persons under the law, regardless of class, faith, gender, origin or race and recognise the contribution they make to the State of Queensland....*⁸²

Successive LCARCs have been progressively reviewing all of the QCRC's recommendations, although no committee has yet considered the QCRC's recommendation regarding a preamble for the Queensland Constitution.

4.2 CONSULTATION

The committee was presented with a strong message during consultation that further steps to enhance Aboriginal and Torres Strait Islander peoples' participation in democratic processes in Queensland would be limited without due constitutional recognition of Indigenous peoples.⁸³ In particular, it was felt that recognition should be given to prior Indigenous ownership of land and sea, and the existence of Indigenous rule of law.

It was suggested to the committee that constitutional recognition might be reflected in a preamble to the Queensland Constitution. In this regard, Behrendt captures the view put to the committee that:

...recognition of a new relationship between Indigenous and non-Indigenous nations in a preamble to the Constitution would be an effective way of enshrining this concept of nation-building...

... a constitutional preamble should provide:

- *a symbolic recognition of sovereignty and prior occupation and ownership;*
- *a redefinition of the relationship that Indigenous people have with Australia; and*
- *the granting of better rights protection.*⁸⁴

Amendment to substantive provisions of the Queensland Constitution was also suggested to the committee during consultation. For example, the Centre of Public Law UNSW⁸⁵ submitted that consideration should be given to inserting a prohibition on racial discrimination in the Queensland Constitution on the basis that such a provision would have an important symbolic and practical effect. The Centre considered that, symbolically, such a provision would send a message that Queensland is committed to the principles of reconciliation and non-discrimination on the basis of race. The practical effects of such a prohibition would be greater when that provision is 'entrenched' so that it is not capable of amendment by ordinary legislation.

4.3 COMMITTEE POSITION

As a committee of a state Parliament, the issue of a preamble for, and other amendments to, the Commonwealth Constitution are beyond the scope of this committee's jurisdiction.

The question of amendments to Queensland's Constitution to give constitutional recognition to Aboriginal and Torres Strait Islander people is a matter within this committee's jurisdiction. As a step in this process, consideration should be given to a preamble for the Queensland Constitution.

The issue of a preamble for the Queensland Constitution is before this committee as part of its review of the QCRC's recommendations. It is likely that the terms of any preamble will require further public consultation to that conducted by the QCRC given that the QCRC considered a wide range of issues of which the preamble was only one.

⁸² Note 2 at 90, recommendation 3.2. The QCRC based this wording on the Council for Aboriginal Reconciliation's *Draft Document for Reconciliation*: n 2 at 30.

⁸³ South Brisbane public meeting; meetings with the ACC and the TSRA. See also the comments of the Hon Matt Foley MP made during debate on the Constitution of Queensland 2001 and the Parliament of Queensland Bill 2001, Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 27 November 2001 at 3815.

⁸⁴ Note 25 at 143-144.

⁸⁵ Submission no 30.

The LCARC will need to be appropriately resourced to effectively carry out this task.

Other provisions regarding Aboriginal and Torres Strait Islander peoples might also be inserted into the Queensland Constitution. For example, as was suggested to the committee, the Constitution might include a prohibition on racial discrimination. It would be more appropriate for these issues to be included in any future consideration of the issue of a bill of rights for Queensland. While in 1993 EARC recommended that Queensland adopt a bill of rights, in 1998 this committee's predecessor recommended that Queensland should not adopt a bill of rights in any form.⁸⁶

The preamble inquiry might consider issues which demonstrate the desirability of constitutional provisions regarding Aboriginal and Torres Strait Islander people.

Quite apart from the issue of constitutional recognition, it is important that steps are taken to heighten community awareness of the status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia. In this regard, the CAR recommended that:

*Commonwealth, State and Territory governments develop information materials for use in schools and more generally that promote understanding and recognition of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia.*⁸⁷

It was also clear from the committee's consultation that non-Indigenous people's knowledge of and respect for the history, culture and values of Indigenous people is important to Aboriginal and Torres Strait Islander peoples' participation in democratic processes. It was put to the committee that without such knowledge and respect, non-Indigenous people are likely to hold misconceptions about Indigenous people and would generally not support an Indigenous candidate running for Parliament.⁸⁸

The committee makes a number of recommendations in this report which should contribute to increasing wider community knowledge of, and respect for, the histories, cultures and values of Aboriginal and Torres Strait Islander peoples.

The committee's review of the preamble should also include consideration of a strategy to educate the broader Queensland community about recognising the State's first people.

Recommendation 2 – Formal recognition of Aboriginal and Torres Strait Islander peoples

As a step towards constitutional recognition of Aboriginal and Torres Strait Islander peoples, the Legal, Constitutional and Administrative Review Committee should consider the issue of a preamble for the *Constitution of Queensland 2001* and, in particular, inclusion in that preamble of due recognition of Aboriginal and Torres Strait Islander peoples.

Given the need to conduct wide public consultation regarding this issue, the Queensland Government should appropriately resource the committee to effectively carry out this task.

⁸⁶ EARC, *Report on review of the preservation and enhancement of individuals' rights and freedoms*, Goprint, Brisbane, August 1993; LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?*, report no 12, Goprint, Brisbane, November 1998. The QCRC decided that its review would not re-open the issues of a bill of rights for Queensland: QCRC, *Issues Paper for the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*, Brisbane, July 1999 at vi.

⁸⁷ *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 22.

⁸⁸ Public meeting at Cairns.

5. PROMOTING A MORE ACTIVE ROLE FOR POLITICAL PARTIES

5.1 BACKGROUND

The role that political parties can play in increasing the political participation of Aboriginal and Torres Strait Islander people has been recognised by a number of recent inquiries.

- In 1990, Queensland's Electoral and Administrative Review Commission (EARC) stated that: *'The major political parties could give more attention to encouraging members of Indigenous communities to seek party endorsement as part of a wider obligation to ensure that the people's representatives share to the maximum extent their interests and objectives'*.⁸⁹
- In 1998, the NSW Parliament's Standing Committee on Social Issues noted that political parties in NSW could exercise a role in improving Aboriginal people's participation as members and candidates. The majority of members of that committee concluded that every political party represented in the NSW Parliament should be asked to develop an action plan by March 2000 detailing the steps the party might take to encourage Aboriginal participation. These members further concluded that each party could be invited to make an annual report to the NSW Parliament on the progress of their action plan.⁹⁰
- In 2000, the Council for Aboriginal Reconciliation (CAR) urged all political parties to introduce measures to increase the involvement and representation of Aboriginal and Torres Strait Islander peoples in their discussion and selection processes and ultimately in the Parliaments. The CAR recommended, among other matters, that: *'Local governments and political parties seek the advice and assistance of Aboriginal and Torres Strait Islander peoples to support nomination of Aboriginal and Torres Strait Islander peoples to stand for election, particularly in areas with significant Aboriginal and Torres Strait Islander populations'*.⁹¹

The Electoral Commission Queensland (ECQ) does not record whether candidates or voters identify as an Aboriginal or Torres Strait Islander person. However, the committee is aware of some Indigenous candidates who have run in recent elections for the Queensland Parliament. The Australian Indigenous Peoples' Party fielded 10 'independent' candidates in the 1992 state election.⁹² The highest percentage of the vote recorded by these candidates was 9.2%, with most receiving in the vicinity of 2-3%.⁹³ In the 2001 state election, the National Party ran an Indigenous candidate in the seat of Cook. The candidate, Mr Lloyd Hollingsworth, won 15.53% of the vote.⁹⁴

As part of its inquiry process, this committee invited representatives from the registered political parties in Queensland to meet with it to discuss what steps they have taken to encourage Aboriginal and Torres Strait Islander peoples to be involved in the party. The committee subsequently met with representatives from the ALP, the Queensland Nationals, One Nation and the Democrats. A representative from the Queensland Greens attended the public meeting held at South Brisbane.

The major parties in Queensland have preselected few Aboriginal and Torres Strait Islander candidates, particularly to seats where there is a strong likelihood of winning. However, a number of parties have taken positive steps to improve Aboriginal and Torres Strait Islander peoples' participation in their processes. For example, the ALP submitted that it is committed to increasing the involvement of Indigenous people in the political process and supporting initiatives that lead to increased access to elected positions. In particular, the ALP has established and enshrined within its party rules an Aboriginal People and Torres Strait

⁸⁹ EARC, *Report on Legislative Assembly electoral system*, Goprint, Brisbane, November 1990 at para 8.30.

⁹⁰ Note 15 at 107.

⁹¹ *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 16.

⁹² As the Indigenous Peoples' Party did not meet the membership threshold required for registration with the Electoral Commission, the party's name did not appear on ballot papers: M Sibelle, 'Indigenous Peoples Party fields candidates in Queensland'. Available at: <www.greenleft.org.au/back/1992/70/70p3.htm>.

⁹³ M Sibelle, 'Good vote for alternatives in Queensland'. Available at: <www.greenleft.org.au/back/1992/73/73p3c.htm>.

⁹⁴ Data available through the Electoral Commission Queensland website: <www.ecq.qld.gov.au>.

Islander Reference Committee (APTSIRC), the membership of which is open to all Aboriginal and Torres Strait Islander members of the party. The objects of this committee include promoting the organisation of Aboriginal People and Torres Strait Islanders in the party. The APTSIRC has access to all party policy committees, and its executive's responsibilities include encouraging Aboriginal People and Torres Strait Islanders to stand for office at all levels.⁹⁵

The ALP Rules also enable Aboriginal and Torres Strait Islander members to form Aboriginal People and/or Torres Strait Islander branches.⁹⁶

The Queensland Nationals stated that they also encourage the participation of Aboriginal and Torres Strait Islander peoples in party policy-making and decision-making processes. Indigenous people have held positions at all levels within the party and the party has supported a number of Indigenous candidates including Queensland's only Indigenous state MP, Mr Eric Deeral.⁹⁷ The party encourages its parliamentary members to employ Indigenous electorate officers and advisors.

The Democrats have no formal structure to encourage Indigenous peoples into the party. However, the party is generally seen as proactive in Indigenous issues and has a current serving Indigenous Senator (Aden Ridgeway). As part of its reconciliation policy, the Australian Democrats state that they are committed to increased political representation of Aboriginal and Torres Strait Islander peoples.

One Nation does not advocate 'preferential treatment' for any particular group in society and believes that everyone should be treated on an equal basis. In accordance with this philosophy, One Nation believes that parties should be free to pre-select, and allocate seats, on the basis of merit and electors should have every opportunity to select from the best possible candidates.⁹⁸ One Nation has stood Indigenous candidates in Western Australia and the Northern Territory.⁹⁹

5.2 CONSULTATION

A clear message put to the committee during its consultation was that political parties could do much more to encourage and support Aboriginal and Torres Strait Islander people to be involved in party processes and run as candidates, particularly in seats where there is a strong likelihood of winning.¹⁰⁰ Many contributors felt that action by the parties was the single most important way to increase participation without the risk of separation and division.

Suggested specific mechanisms which parties could implement included the following.

- An initiative similar to 'Emily's list' which provides financial, training and mentoring support to women seeking election to government. Emily's list could be adapted—for example, into a 'Bonner list' or a 'Deeral list'—to focus on recruiting and supporting Aboriginal and Torres Strait Islander people into seats in Parliament.¹⁰¹

⁹⁵ Sections 24C.01, 24C.02 and 24C.07 of the ALP Rules. Three representatives of APTSIRC are non-voting delegates with speaking rights at the party's state conference, and the APTSIRC chair is a member of the Administrative Committee with speaking but not voting rights: sections 4.05 and 5.04 respectively of the ALP Rules.

⁹⁶ Sections 15.05 and 24C.03 of the ALP Rules.

⁹⁷ The Queensland Nationals advised that the Party also stood Indigenous candidates in the 1983, 1989 and 2001 state elections: correspondence to the committee dated 27 May 2003 and 29 May 2003 and meeting with the committee on 29 May 2003.

⁹⁸ Correspondence to the committee dated 28 May 2003 and meeting with the committee on 29 May 2003.

⁹⁹ Submission no 10.

¹⁰⁰ Public meetings at Ipswich, South Brisbane, Deception Bay, Toowoomba, Cairns, Nerang, Rockhampton, Mt Isa and Logan; meetings with the TSRA and the ACC. See also, for example, submission nos 3, 7, 18, 25, 32, 40, 48, 50 and 53.

¹⁰¹ Public meetings at Cleveland and Mt Isa; submission no 47.

- An affirmative action or equity program to attract Aboriginal and Torres Strait Islander party members and candidates for election.¹⁰²
- A party ‘quota’ requirement relating to the number of Indigenous candidates preselected.¹⁰³
- Special support programs such as mentoring programs which enable the identification of interested and talented people who are then given guidance and support.¹⁰⁴
- Internal party reviews to ascertain barriers, obstacles and opportunities for Indigenous people to progress within the party.¹⁰⁵
- Standards in party policy statements about ‘*proposed items affecting Indigenous people and how Indigenous people can comment to the parties about those items*’.¹⁰⁶
- The employment of Indigenous people as party organisers to encourage active participation.¹⁰⁷
- Cross-cultural training.¹⁰⁸

These mechanisms could all be implemented administratively.¹⁰⁹

The point was also made during the committee’s consultation that some Indigenous people might not wish to join political parties. Reasons for this included: it might be perceived as a concession of sovereignty;¹¹⁰ disillusionment with the political process;¹¹¹ a reticence to join or stand for a particular party;¹¹² racism;¹¹³ and past experiences with political parties.¹¹⁴

The committee was also told that a significant barrier to Indigenous people standing for election is resources, particularly those needed to run a campaign.¹¹⁵

In consultation it was suggested that to avoid conflict with party politics, Aboriginal and Torres Strait Islander peoples may consider (re)establishing their own political parties.¹¹⁶ A number of participants also advocated Aboriginal and Torres Strait Islander peoples standing as independent candidates but noted the difficulty in gaining support as an Independent.¹¹⁷

5.3 COMMITTEE POSITION

Political parties have the potential to play a key role in improving Indigenous peoples’ participation in democratic processes generally and increasing Indigenous peoples’ representation at all levels of government specifically. Through more active involvement in political parties, Indigenous people can have a greater voice in policy development particularly regarding issues of importance to them.

¹⁰² Public meeting at Cairns; submission no 18.

¹⁰³ Public meeting at Ipswich. The Leader of the Opposition opposed the notion of a quota as ‘*nothing but a band aid solution for a flawed pre-selection process*’: submission no 54.

¹⁰⁴ Public meetings at Cairns, Rockhampton and Logan. See also, for example, submission nos 40 and 47.

¹⁰⁵ Submission no 47.

¹⁰⁶ Submission no 4.

¹⁰⁷ Submission no 7.

¹⁰⁸ Submission no 25.

¹⁰⁹ At the public meeting at South Brisbane it was submitted that parties should not be required by law to preselect Indigenous candidates.

¹¹⁰ Submission no 6.

¹¹¹ Submission no 16.

¹¹² Public meetings at Ipswich, Cairns and Townsville; meeting with the TSRA.

¹¹³ Public meeting at Ipswich.

¹¹⁴ Public meeting at Cairns.

¹¹⁵ Public meetings at Cairns, Rockhampton, Townsville and Logan; meeting with the TSRA; submission no 47.

¹¹⁶ Public meeting at Townsville. See also submission nos 50 and 51. Mr R L Carr also submitted that ‘*there is nothing to stop Indigenous people forming their own party and contesting the polls*’: submission no 53.

¹¹⁷ For example, public meeting at Ipswich.

Thus, all political parties in Queensland should aim to actively recruit, encourage, and support Aboriginal and Torres Strait Islander people in various aspects of party processes. In particular, parties need to take steps to encourage Aboriginal and Torres Strait Islander people to: join their party; seek employed and elected positions within the party; participate in party policy development and decision-making; and stand as candidates for election to all levels of government, particularly in seats where the candidate has a strong likelihood of winning.

As noted above, some parties are taking positive steps to enhance the participation of Aboriginal and Torres Strait Islander people. However, no parties have developed a comprehensive strategy in this regard. A number of parties indicated to the committee that they would be keen to receive suggestions as to how they might better involve Indigenous people in their processes.

The committee has used feedback from its public consultation to develop a model action plan aimed at enhancing Indigenous peoples' participation in the political process: see table 1. The committee encourages all political parties in Queensland to adopt an action plan, based on this model, as part of an on-going commitment to increasing Aboriginal and Torres Strait Islander peoples' participation in party processes.

The evaluation to be undertaken after three state electoral cycles or nine years whichever is the later (see recommendation 1) should examine measures that political parties have taken to improve Aboriginal and Torres Strait Islander peoples' participation in their processes, the success of those measures and whether there is a need to take further action. This evaluation might also explore the option of linking certain public funding of political parties with initiatives aimed at increasing the participation of Aboriginal and Torres Strait Islander people.¹¹⁸

Recommendation 3 – Political parties

Political parties have the potential to play a key role in improving Aboriginal and Torres Strait Islander peoples' participation in the political process including representation at all levels of government. It is therefore important that the leaders of all Queensland political parties encourage their party to adopt and implement an Aboriginal and Torres Strait Islander peoples' political participation action plan based on the committee's model plan to increase Aboriginal and Torres Strait Islander peoples' participation in the political process. The specific actions, which are detailed further in table 1, entail:

- **recruiting Aboriginal and Torres Strait Islander members;**
- **preselecting Aboriginal and Torres Strait Islander candidates, particularly to seats where they have a strong likelihood of winning;**
- **encouraging Aboriginal and Torres Strait Islander members' involvement in policy development and decision-making;**
- **providing support mechanisms and processes to assist Aboriginal and Torres Strait Islander people within the party;**
- **ensuring culturally appropriate party processes; and**
- **monitoring party progress to ascertain the extent to which Aboriginal and Torres Strait Islander people are being recruited, encouraged and supported within the party.**

The evaluation to be undertaken after three state electoral cycles or nine years, whichever is the later (see recommendation 1), should examine measures that political parties have taken to improve Aboriginal and Torres Strait Islander peoples' participation in their processes, the success of those measures and whether there is a need to take further action.

¹¹⁸ Submission no 55. The *Election Funding Act 1981* (NSW) establishes a Political Education Fund. Parties receive payments from this fund in respect of expenditure incurred for political education purposes: see ss 97B and 97C.

Table 1: Model Aboriginal and Torres Strait Islander peoples' political participation plan for implementation by political parties

ACTION 1 Recruiting Aboriginal and Torres Strait Islander members

Political parties have a responsibility to ensure that Parliament reflects the diversity in society, including representatives from the Aboriginal and Torres Strait Islander communities. This requires political parties to not only actively recruit Aboriginal and Torres Strait Islander people but also target under-represented groups within these communities, namely, youth and women.

ACTION 2 Preselecting Aboriginal and Torres Strait Islander candidates

Political parties should implement and support initiatives aimed at increasing Aboriginal and Torres Strait Islander peoples' access to elected positions both within the party and in State Parliament. This should include training about: how to get preselected; how to run an effective campaign; and how to finance a campaign.

Parties should put in place mechanisms to identify suitable Indigenous candidates and assist those candidates' preselection to seats where they have a strong likelihood of winning.

ACTION 3 Encouraging involvement in policy development and decision-making

Elected positions are only one avenue by which Aboriginal and Torres Strait Islander people might engage in the political process. Political parties should also ensure that Indigenous people are encouraged in other aspects of the process through involvement in bodies within the party responsible for policy development and decision-making.

Parliamentary members should encourage Aboriginal and Torres Strait Islander people to apply for positions such as electorate officers and ministerial advisors to enable Indigenous people to develop a greater understanding of the parliamentary process and to provide a platform from which they are well-placed to consider a political career.

ACTION 4 Providing support

Parties should examine the merits of establishing specific positions and entities within their party structure to promote and assist Aboriginal and Torres Strait Islander people within the party, for example, an equity officer to advance the interests of equity target groups within the party.¹¹⁹

An entity with a specific focus on Aboriginal and Torres Strait Islander people could enable Indigenous members' access to policy development and decision-making across the whole party. To be effective, such entities need to be sufficiently resourced. Entities with Indigenous membership are more likely to be a support base for Indigenous people.

Mentoring programs, whereby a person who has substantial experience in a particular area provides advice and practical support to an Indigenous person with aspirations in that particular area, would also assist.

ACTION 5 Ensuring culturally appropriate processes

For political parties to be accessible to, and inclusive of, Aboriginal and Torres Strait Islander peoples, party processes should be appropriate for Indigenous people. This will have an impact on matters such as how parties consult with Indigenous people both internally and externally to the party, and an appreciation of different styles of decision-making. Parties should also be cognisant of appropriate observance of ceremony and respect for Indigenous leaders. For example, there should be an acknowledgment of country at opening of significant party events such as state conferences.¹²⁰

Parties should offer cross-cultural awareness training to members, employees and elected representatives.

ACTION 6 Monitoring progress

Parties should conduct annual reviews to ascertain the extent to which Aboriginal and Torres Strait Islander people are being recruited, encouraged and supported within the party. In particular, such reviews should attempt to identify any barriers to participation and opportunities for Indigenous people to progress within the party.

These reviews might be performed by the entity established within the party to promote and assist Indigenous people (see Action 4). At the very least, any such organisation must be consulted as part of a review process.

The results of these annual reviews should be reported to the party membership and made publicly available.

¹¹⁹ For example, the ALP (Queensland) has appointed such an officer: submission no 55.

¹²⁰ The ALP Rules prescribe the terms of an Acknowledgment of Country to be given at the commencement of each state conference (rule 4.34) and also require that an Acknowledgment of Country is given at the commencement of each regional conference (rule 23.08).

6. IMPROVING UNDERSTANDING OF DEMOCRATIC PROCESSES

6.1 INTRODUCTION

A strong message throughout the committee's consultation was that one of the most realistic and effective means of increasing Aboriginal and Torres Strait Islander peoples' interest and participation in democratic processes is education about those processes and how to contribute to them.¹²¹ In particular, the committee was told that there are two key areas in which more emphasis on educating Indigenous people needs to occur:

- civics education which includes education about citizenship, and the operation of government and democratic processes and institutions. Civics education of Indigenous youth is particularly important as 40.7% of Indigenous people are 0-15 years old;¹²² and
- voter education which includes programs to encourage people's awareness of, and involvement in, electoral events.

In this chapter the committee discusses how civics and voter education should be enhanced to encourage the greater participation of Aboriginal and Torres Strait Islander peoples in democratic processes.

6.2 CIVICS EDUCATION – SCHOOLS

Currently, civics and citizenship studies are available to Queensland school students through the following avenues.¹²³

- The *Studies of Society and Environment 1 to 10 Syllabus* (SOSE) sets out a broad framework for civics and citizenship studies for schools and teachers to adopt to their own content. The Queensland Studies Authority has developed a range of modules for implementing the syllabus.
- The Discovering Democracy Project is a federally funded project providing a range of resources for teaching civics and for professional development. The materials are linked to the SOSE syllabus through the work of Discovering Democracy Queensland.
- A range of specific activities which students can be involved in including youth parliaments (discussed in section 6.3), school councils, National Schools Constitutional Conventions and visits to Parliaments. Indigenous students are specifically encouraged to participate in some of these specific activities.¹²⁴

However, a number of factors impact on how many students undertake civics education and what course content is delivered to students. All Education Queensland schools are required to have implemented the SOSE syllabus by July 2004.¹²⁵ Non-state schools are not required to implement SOSE but collaborative development of the syllabus has ensured their wide take up of SOSE. Further, schools and teachers have a wide discretion in determining teaching content within the broad framework provided by the SOSE syllabus.

¹²¹ Public meetings at Ipswich, South Brisbane, Deception Bay, Cleveland, Toowoomba, Nerang, Roma, Charleville, Rockhampton and Townsville. See also, for example, submission nos 4, 6, 9, 10, 12, 14, 16, 24, 25, 31, 32, 33, 36, 37, 40, 42, 44, 47, 48, 50, 52, 54 and 56. People wanted to see increased education about specific matters such as how to become involved in political parties, how to run for Parliament or local government, how to approach Members of Parliament and how to lobby Ministers.

¹²² Office of Economic and Statistical Research, n 18.

¹²³ The committee has obtained the information about civics education in schools through correspondence and meetings with officers of Education Queensland, and information provided by the Minister for Education.

¹²⁴ For example, Education Queensland advises that 18 of the 20 participants from Queensland who attend the National Schools Constitutional Conventions in Canberra every year are elected from zone conventions. The other two participants are Indigenous students who are selected by Education Queensland.

¹²⁵ This can be by way of a discrete subject, or integrated with history, geography or civics.

As noted above, there was a strong view put to the committee that civics education should be enhanced. The committee agrees with the view advocated by some that civics education should be made compulsory for all students in Queensland schools.¹²⁶

Two other important factors must be addressed if Aboriginal and Torres Strait Islander students are to be effectively engaged in civics education.

First, relevant curriculum should include an Indigenous perspective on citizenship including teaching of Indigenous peoples' experience under existing democratic processes and traditional systems of governance. This needs to occur in the context of a broader focus on Aboriginal and Torres Strait Islander histories and cultures and Australian history generally in the syllabus, along with European history and culture.

The SOSE syllabus includes studies in cultural diversity and components relating to recognising different perspectives. However, individual schools and teachers have a great deal of discretion in how these broad outcomes are taught. Schools are not directed as to content and, therefore, it seems that studies of culture need not address Aboriginal and Torres Strait Islander cultures.

Teaching civics in a local context would more actively engage students and incorporate aspects of Aboriginal and Torres Strait Islander cultures and histories.¹²⁷ Localising content might be achieved by: involving students in local government processes; interactions with state and federal MPs in the area; liaising with Aboriginal or Island Community Councils (where relevant) and ATSIC Regional Councils; and seeking interaction with Elders groups and other Indigenous community organisations to develop relevant, current and informative materials. These strategies might also enhance teacher knowledge and confidence, which is essential to effective teaching, and may encourage more teachers and schools to take up the subject.

Secondly, teachers need to be able to effectively communicate with Indigenous students and be educated in Aboriginal and Torres Strait Islander cultures so that they are confident in teaching Indigenous students and are able to make their classroom environment generally inclusive.¹²⁸

Currently, there is professional development through school-based (non-standardised) training and programs such as *Partners for Success* and the Indigenous Education Training Alliance. These programs are mainly applied to schools and teachers in areas with a high Aboriginal and Torres Strait Islander population to better the learning outcomes for Indigenous students and Indigenous employees within Education Queensland.

Education Queensland advised the committee that the Queensland University of Technology, the Australian Catholic University and the University of Southern Queensland have now introduced compulsory Indigenous studies in their teacher training. Education Queensland advises that Indigenous studies in pre-service training usually includes Indigenous culture, history, traditions and experience. Most other universities embed Indigenous studies within teacher training courses and offer distinct Indigenous studies subjects as electives.

The committee agrees that Indigenous culture studies in pre-service teacher training is important. Likewise, programs should be put in place so that all current teachers are provided with training in Indigenous studies.

Education Queensland advises that it is currently negotiating with the Board of Teacher Registration to make Indigenous studies a prerequisite for employment with Education Queensland.

Education Queensland is taking positive steps to enhance the effectiveness of civics teaching in schools through the evolution of an inclusive syllabus and enhancing teacher professional development.

¹²⁶ Public meetings at Rockhampton and Townsville. See also, for example, submission nos 10 and 47.

¹²⁷ Letter from Minister for Education to the committee dated 9 July 2003.

¹²⁸ Public meeting at Toowoomba. See also, for example, submission no 35.

The Ministerial Council for Education, Employment, Training and Youth Affairs (MCEETYA) has this year commenced national testing in civics and citizenship education. To enhance accountability for the teaching of civics in the context of an inclusive history, the MCEETYA test should be expanded to test knowledge of civics from an Indigenous perspective including knowledge of Indigenous systems of governance.

Recommendation 4 – Enhanced and inclusive civics education

Given the strong link between education about democratic processes and participation in those processes, the Minister for Education should review the nature and extent of civics and citizenship education for all students in Queensland schools and consider whether more can be done to:

- **ensure that civics education is taught to all students in Queensland schools;**
- **increase the effectiveness of the manner in which civics and citizenship education is taught to Aboriginal and Torres Strait Islander students;**
- **ensure that civics and citizenship education includes an Indigenous perspective and teaching about Aboriginal and Torres Strait Islander peoples’ experiences of civics and citizenship; and**
- **ensure that all teachers (both pre-service and existing) undertake training in Aboriginal and Torres Strait Islander studies.**

Recommendation 5 – Testing inclusiveness in civics education

To enhance accountability for the teaching of civics in the context of an inclusive history, the Minister for Education should request the Ministerial Council for Education, Employment, Training and Youth Affairs to expand the national civics test to test knowledge of Aboriginal and Torres Strait Islander peoples’ perspectives of citizenship and Aboriginal and Torres Strait Islander governance.

6.3 CIVICS EDUCATION – EXTRA CURRICULAR ACTIVITIES

There are various extracurricular activities which encourage the involvement, interest and participation of young people, including Aboriginal and Torres Strait Islander people, in democratic processes. These activities include the following.

- **Youth Parliaments.** Youth Parliaments provide an opportunity for ‘youth members’ to come together to debate issues and mock bills. Several youth parliaments are held each year in the Queensland Parliament. The Youth Parliament organised by the YMCA is open to young people up to the age of 25 years. Queensland’s Parliamentary Education Services also operates youth parliaments for school students, usually legal studies students in their senior years. Parliamentary Education Services arranged the first regional youth parliament in Townsville after the sitting of the Regional Parliament in September 2002 and aims to hold two metropolitan youth parliaments and two regional youth parliaments each year.
- **Youth local councils.**¹²⁹ Over half of Queensland’s local governments now have at least one or more youth advisory mechanisms, such as youth councils, youth advisory boards or youth reference groups.¹³⁰ The Local Government Association of Queensland has a Youth Policy and Development Advisor who assists with implementation of these mechanisms and encourages councils to engage in inclusive processes and embrace diversity. While Indigenous youth are encouraged to participate in these mechanisms, it has been recognised that local government structures are not always relevant to Aboriginal and Torres Strait Islander people. For this reason, alternative mechanisms have been

¹²⁹ Supported at public meetings at Ipswich and Roma. See also chapter 8 for a discussion about general participation in local governments.

¹³⁰ The committee thanks Ms Robyn Robertson, the Youth Policy and Development Advisor of the Local Government Association of Queensland, for the information she provided to the committee.

established to allow Indigenous youth to participate, such as through discussion of issues in settings other than formal meetings. The *Which Way You Mob?* Indigenous Youth Project is operated by the Aboriginal Coordinating Council and allows young people to participate in local governance in Deed of Grant in Trust (DOGIT) communities.¹³¹

- **State Youth Advisory Council (SYAC).** The SYAC was established in 2000 under the State Government's Youth Participation Strategy to bring together young people from around Queensland to provide advice to the Minister for Youth on matters relating to young people. The SYAC is made up of youth from culturally diverse backgrounds.

Activities aimed at involving youth in democratic processes are important to increase awareness, interest and participation in such processes. The committee applauds the initiatives noted above and recognises that there are other strategies to engage youth and encourage youth participation.

The committee also heard many positive comments regarding funding provided by Education Queensland to enable students from North Queensland schools to attend the Regional Parliament in Townsville and to participate in the regional youth parliament.

However, the committee believes that there is scope to enhance and expand upon current activities, and introduce strategies to increase the involvement of Indigenous youth in these activities. The committee agrees with the message from consultation that there should not be separate activities for Indigenous students but that young Aboriginal and Torres Strait Islander people should be encouraged and supported to participate in all youth activities.¹³²

The organisers of youth parliaments should encourage participation by Aboriginal and Torres Strait Islander youth. Parliamentary Education Services could arrange activities on a smaller scale than youth parliaments to be run by an education officer in regional and remote schools. Activities might include simulated parliamentary committee meetings or hearings. Students could be involved as MPs, staff and witnesses on mock inquiry issues relevant to their local area.

Parliamentary Education Services and the Department of Local Government and Planning/the Local Government Association of Queensland respectively could develop State Parliament and local government resource kits about democratic processes. Kits developed in conjunction with Education Queensland could be incorporated into the SOSE syllabus.

Appropriate funding should be available for the long term support of current and any new programs.

It was also suggested to the committee that a Youth ATSIC could be established.¹³³ While this suggestion is outside the committee's jurisdiction, the involvement of youth in ATSIC and TSRA processes would be an effective way to ensure that the views of young people are heard and would encourage participation in decision-making processes.

There is also a need to ensure that people can readily establish what programs and activities are in place. Relevant information should be distributed through the Department of Aboriginal and Torres Strait Islander Policy (DATSIP) networks, Education Queensland, the Office of Youth Affairs and other government agencies, and advertised in relevant media and agency publications. Links to programs offered by the State Government and other agencies should be consolidated on a website, perhaps the Office of Youth Affairs website, *Generate*.

¹³¹ For more information see the LGAQ website at: <www.lgaq.asn.au/youngpeople> and the *Which Way You Mob?* website at: <www.whichway.accq.org.au>.

¹³² Public meetings at Ipswich and Roma.

¹³³ Suggested in submission no 2.

Recommendation 6 – Parliamentary Education Services

To enhance and encourage the involvement, interest and participation of Aboriginal and Torres Strait Islander people, particularly youth, in parliamentary processes, Parliamentary Education Services should:

- review its programs and educational material to ensure that they are inclusive of Aboriginal and Torres Strait Islander peoples; and
- consider ways in which Aboriginal and Torres Strait Islander citizens might be further engaged in parliamentary education, for example, through smaller scale parliamentary activities conducted in regional and remote areas, and by developing parliamentary resource kits in conjunction with Education Queensland for inclusion in civics education teaching.

The Queensland Government should provide additional funding to the Parliamentary Service for use by Parliamentary Education Services to develop and implement relevant programs and material.

Recommendation 7 – Youth participation in local government processes

To enhance and encourage the involvement, interest and participation of Aboriginal and Torres Strait Islander youth in local government, the Minister for Local Government and Planning, in conjunction with the Local Government Association of Queensland, should:

- encourage all local governments and Deed of Grant in Trust (DOGIT) community councils to establish some form of youth advisory mechanism (such as a youth council, youth advisory board and/or youth reference group), and ensure that those mechanisms are inclusive of Aboriginal and Torres Strait Islander youth; and
- consider ways in which Aboriginal and Torres Strait Islander youth might be further educated about local government, for example, by developing local government resource kits in conjunction with Education Queensland for inclusion in civics education teaching.

6.4 VOTER EDUCATION

During consultation, lack of voter education and apathy towards voting were cited as reasons which contribute to a lack of Aboriginal and Torres Strait Islander peoples' participation in democratic processes.¹³⁴ There was a general view that there should be increased voter education for adults¹³⁵ and that it is appropriate to have voter education targeted towards Indigenous peoples to increase the effectiveness of communication and to allow for issues such as remoteness.¹³⁶

The Council for Aboriginal Reconciliation (CAR) similarly noted the importance of voter education and recommended that the Commonwealth Government continue to promote Aboriginal and Torres Strait Islander voter education programs through the Australian Electoral Commission (AEC) and other relevant organisations.¹³⁷

Specific suggestions made to the committee in consultation were that: there should be sufficient time built into the electoral process to allow electoral information to be disseminated across the State;¹³⁸ educational brochures should be distributed through ABstudy or other government mailouts;¹³⁹ and that any electoral

¹³⁴ Public meetings at South Brisbane, Cleveland, Toowoomba, Cairns, Nerang, Roma and Rockhampton. See also, for example, submission nos 14, 16, 34, 35 and 37.

¹³⁵ See, for example, submission nos 3, 9, 24, 31, 33, 36, 37, 40, 42, 44, 47 and 50.

¹³⁶ Public meetings at Ipswich, South Brisbane and Cairns. See also, for example, submission nos 3, 14, 32, 34, 36, 37, 42 and 44.

¹³⁷ *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 16.

¹³⁸ Submission no 4.

¹³⁹ Public meeting at South Brisbane.

program tailored to Aboriginal and Torres Strait Islander peoples needs to involve Indigenous people in its development.¹⁴⁰

One of the functions of the ECQ is to ‘*promote public awareness of electoral matters through education and information programs and in other ways.*’¹⁴¹ The AEC has a similar function.¹⁴² Both of these agencies have taken steps to increase the number of Aboriginal and Torres Strait Islander voters.

In particular, there was support in consultation for reinstatement of the AEC’s Aboriginal and Torres Strait Islander Electoral Information Service (ATSIEIS), the funding for which ceased in 1996.¹⁴³ In Queensland, this program involved four Indigenous field officers travelling throughout the State running continual education activities in remote communities. This Service was generally considered to be an effective method of raising awareness of electoral issues and ensuring people were on the roll and informed about how to vote.¹⁴⁴

The AEC has continued some targeted activities. For example, in the 2001 election, the Remote Area Information Program operated for six weeks where mainly Indigenous people were employed to visit remote Indigenous communities to explain the electoral system. Also, advertisements about the election were translated into 14 Indigenous languages.¹⁴⁵

The Queensland Electoral Commissioner advised that a variety of approaches have been used by the ECQ to target Aboriginal and Torres Strait Islander peoples in electoral education programs but that these have usually been event specific (for example, ATSIC elections).¹⁴⁶ The ECQ is currently running an awareness campaign principally aimed at encouraging enrolment with several groups being targeted, including Aboriginal and Torres Strait Islander peoples. This campaign involves the use of well-known personalities in press and radio advertisements.

The committee applauds the steps being taken by the AEC and the ECQ regarding voter education targeted to Aboriginal and Torres Strait Islander peoples. However, given the emphasis that was placed on enhancing voter education in the committee’s consultation, the committee is keen to see further steps being taken in this area. In particular, the committee supports the reinstatement of ATSIEIS.

Recommendation 8 – Australian Electoral Commission voter education activities

The Attorney-General should raise with the federal Special Minister of State the need to reinstate funding to the Australian Electoral Commission to carry out activities aimed at encouraging enrolment and electoral education in Aboriginal and Torres Strait Islander communities and to Aboriginal and Torres Strait Islander people living in urban areas.

Recommendation 9 – Electoral Commission Queensland voter education activities

The Electoral Commission Queensland should continue enrolment and electoral education campaigns targeted to Aboriginal and Torres Strait Islander peoples. The Queensland Government should provide any necessary funding to ensure the sustainability of such campaigns.

¹⁴⁰ Submission no 47.

¹⁴¹ *Electoral Act 1992* (Qld), s 8

¹⁴² *Commonwealth Electoral Act 1918* (Cth), s 7.

¹⁴³ Public meeting at South Brisbane. See also, for example, submission no 6.

¹⁴⁴ Meeting with the Queensland Electoral Commissioner on 1 April 2003; public meeting at South Brisbane. See also the Joint Standing Committee on Electoral Matters, *The 1996 Federal Election*, June 1997 at 44.

¹⁴⁵ AEC, *Election 2001 Public Information Campaign*. Available at: <www.aec.gov.au/_content/When/past/2001/bts/11camp.pdf>. The AEC has also participated in events such as the Indigenous Careers Expo in Brisbane in which people were provided with information about general elections and ATSIC elections. See: <www.gidya.com.au>.

¹⁴⁶ Submission no 8.

7. IMPROVING EMPLOYMENT AND TRAINING OPPORTUNITIES

7.1 BACKGROUND

Employment and training opportunities for Aboriginal and Torres Strait Islander peoples in various areas of public administration are valuable for enhancing individuals' participation and interest in democratic processes.

A number of general strategies aimed at improving training and employment outcomes for Indigenous peoples exist in Queensland. For example, under the Public Sector Employment Program a target of at least five per cent of trainees employed in Queensland Government departments, statutory authorities, local government authorities and Aboriginal and Torres Strait Islander Community Councils are to be Indigenous. Currently, 17.6 per cent of all trainees employed through this program are Indigenous. The Cape York Training Strategy empowers local Aboriginal and Torres Strait Islander peoples with decision-making abilities about vocational education and training, and the Aboriginal and Torres Strait Islander Public Sector Employment Development Unit (known as the Wal-Meta Unit) works with government agencies in developing agency-specific recruitment and retention strategies.¹⁴⁷

Various Commonwealth initiatives are also relevant. For example, under the National Indigenous Cadetship Project cadets undertaking tertiary studies receive an allowance while studying and do a twelve week paid work placement each year. The aim is for cadets to gain full-time employment in their sponsoring agency once they complete their studies. The NSW Legislative Assembly currently employs a cadet under this scheme who, on completion of her university studies, will have a permanent position in the organisation.¹⁴⁸ Some Queensland Government agencies are also involved in this program and are to be commended for their participation.¹⁴⁹

The Commonwealth Parliament runs a fellowship program. In 2002, this involved six Indigenous community leaders spending a week in the Commonwealth Parliament to experience its operation and meet with Members of Parliament.¹⁵⁰

Leadership training in schools, places of employment and community organisations is a particularly important means of skilling people to become community leaders and role models. Appropriate leadership development for Aboriginal and Torres Strait Islander people is recognised in the discussion paper on the review of ATSIC as being important in enhancing governance and accountability.¹⁵¹

The Queensland Government runs many general leadership development programs and has also recently announced a leadership program for Aboriginal and Torres Strait Islander peoples of up to 35 years of age.¹⁵²

In addition to government programs, leadership programs are coming from within the Indigenous community. For example, the Australian Indigenous Leadership Centre chaired by Mr Mick Dodson was established to:

- foster the development of leadership ability and skills of Indigenous peoples;
- conduct educational and experiential courses and seminars in leadership and professional development;

¹⁴⁷ For more information about each of these strategies see *Kaulder Jibbijah*. Available at: <www.det.qld.gov.au/publications/jibbijah/index.htm>.

¹⁴⁸ Covering letter from Mr Russell Grove, Clerk of the NSW Legislative Assembly, dated 24 March 2003 to submission no 14.

¹⁴⁹ <<https://nicp.dewr.gov.au/default.asp?CurrentEmployersListPage=>>>.

¹⁵⁰ Federal Parliament, *About the House*, September – October 2002 at 35.

¹⁵¹ ATSIC review discussion paper, n 22 at 27-28.

¹⁵² Media release by the Premier and Minister for Trade dated 26 May 2003 titled '*Beattie Government ensures reconciliation remains on the business agenda*'.

- develop materials for education and training in leadership;
- promote Indigenous leadership skills and ability; and
- create forums for Indigenous people to share ideas, experience and skills.¹⁵³

A further example is the establishment of the Cape York Institute, a five year research and teaching partnership between Indigenous Cape York organisations, the Queensland and Commonwealth Governments and Griffith University. This Indigenous leadership and research institute will be based in Cairns. Staff members will include activist Noel Pearson and the Institute will provide new pathways to education that promotes self-confidence and drive.¹⁵⁴

The importance of leadership development for Aboriginal and Torres Strait Islander women in particular was recognised in the ATSIC review discussion paper in the following terms:

4.25....Indigenous women are prominently engaged in the community in non-stop efforts to promote and achieve better health and education for their children, and in struggling to keep families, communities and Indigenous culture strong by attempting to deal with issues such as substance abuse.

*4.26 Indigenous women have an irreplaceable perspective to contribute and if that perspective is missing or seriously diminished in the leadership levels of ATSIC for whatever reason, then the cause of the advancement of Indigenous Australians through ATSIC is poorer as a consequence.*¹⁵⁵

Strong and effective leadership can have a significant benefit to entire communities.

7.2 CONSULTATION

In consultation there was general support for developing employment and training opportunities for Indigenous people in democratic institutions and various aspects of democratic processes. Suggested institutions in which such opportunities might be made available included the Parliamentary Service and electorate offices, state and federal electoral commissions, and the public service generally.¹⁵⁶ Mentoring through political parties was also raised: see further the discussion in chapter 5.

The need for leadership training was also identified in consultation.¹⁵⁷ Apart from general leadership training, it was suggested to the committee that there should be training for people in certain positions, such as ATSIC councillors, on their roles and responsibilities.¹⁵⁸

7.3 COMMITTEE POSITION

Encouraging the involvement of Aboriginal and Torres Strait Islander peoples in democratic institutions and processes through employment and training strategies (such as work experience, cadetships and mentoring programs) will assist in enhancing knowledge, confidence and interest in such institutions and processes. In turn, this should translate into increased and effective participation.

Suitable employment and training programs must be available to Aboriginal and Torres Strait Islander peoples across Commonwealth and State government agencies and through other entities involved in democratic processes, such as the Parliamentary Service including electorate offices, the ECQ, local governments, and political parties. Information about such programs needs to be readily accessible, preferably through a central access point.

¹⁵³ <www.aiatsis.gov.au/ailc/whatIs.htm>.

¹⁵⁴ Information from Griffith University's Vice-Chancellor's newsletter, 28 August 2003.

¹⁵⁵ ATSIC discussion paper, n 22 at paras 4.25-4.26.

¹⁵⁶ Public meetings at Cairns, Rockhampton and Mt Isa. See also, for example, submission nos 37, 41, 42 and 44.

¹⁵⁷ Submission no 50.

¹⁵⁸ Public meetings at Cairns and Nerang. See also, for example, submission no 51.

Most Queensland Government agencies have an Indigenous employment policy or at least an equal employment opportunity management plan as required by the *Equal Opportunity in Public Employment Act 1992* (Qld). The Queensland Parliamentary Service,¹⁵⁹ which provides administrative and support services to members of the Legislative Assembly and parliamentary committees, does not currently have an Indigenous employment policy and is not required by law to implement an equal employment opportunity management plan. Despite there not being a legal requirement for the Parliamentary Service to have an equal employment opportunity management plan, it would seem appropriate that such a plan be implemented and that this plan include Aboriginal and Torres Strait Islander people's employment within the Parliamentary Service.

There is also scope for the Queensland Parliament to examine whether it can provide greater opportunities for Indigenous peoples in terms of cadetships, internships and work experience. The current internship program offered by the Queensland Parliament caters for approximately 20 students each year. Acceptance is dependent on a high level of academic achievement.

Further, there is a need to ensure that leadership programs which are culturally appropriate for Aboriginal and Torres Strait Islander peoples are designed and implemented in the various democratic institutions and processes. Such programs should target a range of Indigenous people, including youth and women, and aim to contribute to building skills and confidence so that people might take on leadership roles in democratic institutions and processes. Organisations should be proactive in identifying and encouraging suitable people to participate in such programs.

Recommendation 10 – Employment and training in democratic institutions and processes

Increased, effective participation of Aboriginal and Torres Strait Islander peoples in democratic institutions and processes might be achieved through specific employment and training strategies in such institutions and processes. To this end:

- (a) the Speaker of the Queensland Parliament should review the Parliamentary Service's employment and training policies to ensure that those policies encourage the employment and training of Aboriginal and Torres Strait Islander people in the Parliamentary Service, including in electorate offices;**
- (b) the Queensland Electoral Commissioner should review the Electoral Commission Queensland's employment and training policies to ensure that those policies encourage the employment and training of Aboriginal and Torres Strait Islander people; and**
- (c) the Minister for Local Government and Planning should request all local governments to: (i) review their employment and training policies to ensure that those policies encourage the employment of Aboriginal and Torres Strait Islander people; and (ii) report back to the Minister regarding the results of their review.**

Recommendation 11 – Leadership training

The committee commends the leadership training activities that Indigenous people have been involved in the development of, for example, the Cape York Institute. To enhance Aboriginal and Torres Strait Islander peoples' involvement in democratic institutions and processes, the committee encourages the inclusion of content regarding civics, democracy and the political process in such leadership activities.

¹⁵⁹ The functions of the Parliamentary Service are set out in the *Parliamentary Service Act 1988* (Qld), s 24.

8. ENHANCING PARTICIPATION IN LOCAL GOVERNMENT

8.1 BACKGROUND

A number of consultation participants expressed to the committee the importance of Indigenous peoples' participation in local government¹⁶⁰ and the need for local authorities to support Aboriginal and Torres Strait Islander people into local government.¹⁶¹ The reasons for this view included the following.

- With few exceptions, local governments in Queensland are not political party based. The opportunity therefore to run as an 'independent' candidate is more appealing to Indigenous people given a general dissatisfaction with political parties.¹⁶²
- Given the cultural association between people and place that underpins Aboriginal and Torres Strait Islander peoples' approach to representation and decision-making,¹⁶³ and the principle that people may speak only for their own country,¹⁶⁴ local government perhaps provides a meaningful and accessible avenue for Indigenous people to be involved in democratic processes.
- While local government experience is invaluable in its own right, it also provides a foundation for other positions including as a representative in State Parliament.¹⁶⁵ For example, a number of current Members of the Queensland Parliament have previously served on local councils.

The importance of the local level of government is pointed out by Behrendt in her discussion of models for regional autonomy. She notes the comments of Mr Darryl Pearce:

*...[with] control of local government, Aboriginal people can control water, sewerage, roads, etc – all the municipal services...With control of local government in place, Aboriginal people can work towards self-government on a greater scale.*¹⁶⁶

Further, the CAR urged both local governments and Aboriginal and Torres Strait Islander peoples to build on recent trends within Aboriginal Land Councils for Aboriginal and Torres Strait Islander peoples to seek election to local councils and to take an active part in local government.¹⁶⁷

For all of these reasons, it is appropriate that participation in local government be made as accessible as possible for Aboriginal and Torres Strait Islander peoples. In this chapter the committee examines mechanisms to enhance Indigenous peoples' participation in local government processes. In other parts of this report the committee recommends additional action relating to local government, namely: enhancing employment and training opportunities for Indigenous people in local governments (recommendation 10); and establishing youth advisory mechanisms in all local government areas (recommendation 7).

8.2 PARTICIPATION IN LOCAL GOVERNMENT

There are a number of avenues through which Indigenous people can learn about how to stand for local government. For example, the Queensland Department of Local Government and Planning has sponsored Australia's first and only tertiary course for prospective councillors.¹⁶⁸ ATSIC also produces a book titled

¹⁶⁰ Public meetings at South Brisbane and Deception Bay. See also, for example, submission nos 22 and 47.

¹⁶¹ See, for example, submission nos 45, 47 and 50.

¹⁶² See chapter 5 for a discussion on political parties.

¹⁶³ Public meeting at Cleveland. See also the discussion by Behrendt, n 25 at 33.

¹⁶⁴ Public meetings at South Brisbane, Mt Isa and Logan.

¹⁶⁵ The importance of local government as a learning ground for politics was raised at public meetings at Cleveland and Cairns. See also, for example, submission nos 16, 22, 41, 47 and 50.

¹⁶⁶ Behrendt, n 25 at 163.

¹⁶⁷ *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 16.

¹⁶⁸ The *Councillors as Leaders in Local Communities* course is offered at the Open Learning Institute of TAFE and comprises of studies of the legislative framework within which local governments operate, corporate and financial management and leadership and community engagement. The course costs \$150: Ministerial Media Statement by the Hon Nita Cunningham MP, Minister for Local Government and Planning, 1 July 2003.

*Making the decision to get involved in local government.*¹⁶⁹ While targeted to ATSIC Regional Councillors, this book provides guidance about how to move into local government and outlines what can be expected in campaigning for a seat in local government.

However, there is scope for implementing in Queensland dedicated programs aimed at increasing Aboriginal and Torres Strait Islander peoples' representation at local government level. In particular, programs such as those operating in NSW (discussed below) provide good models on which to base Queensland initiatives. Anecdotally, two per cent of the elected arm of NSW local government—which roughly equates to the Indigenous proportion of the State's population—is Indigenous.

In 1997, the Aboriginal Mentoring Program in NSW was piloted in one council to encourage Aboriginal people to run for office at local government elections and to educate the Aboriginal community on the local government process and the importance of Aboriginal input to local government.¹⁷⁰ The mentoring program has since been implemented by many other councils. An evaluation of the program was conducted in 2000. At that time, 23 councils had adopted in the program. For the 16 councils that had elections during the evaluation period, 27 Aboriginal people had participated in the program. Of these, 11 stood for election and two were elected.¹⁷¹ The program continues around the state.

In 1987, the Local Government Aboriginal Network of NSW was set up as a forum for discussing local government issues that affect Aboriginal communities. The network is made up of Aboriginal liaison officers working in local government and Aboriginal people who have been elected as councillors. It provides support and information for network members. In 1987 there were four Indigenous people in local government. The network is aiming to have Indigenous people in 50 local government seats after the next local government election.

In recommendation 1 the committee recommends that there be an evaluation of Aboriginal and Torres Strait Islander peoples' participation in democratic processes after three state electoral cycles or nine years, whichever is the later. This evaluation should consider whether there have been improvements in participation in local government processes.

8.3 ABORIGINAL AND ISLAND COMMUNITY COUNCILS

Indigenous people living on DOGIT communities have the opportunity to be involved as a councillor in the Aboriginal or Island community council which governs their area. The DOGIT communities are former government and mission-run communities. Under the *Community Services (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 1984*, local governments are established in these areas so that there is a form of self-government. A person is generally qualified to be elected to an Aboriginal or Island council if she or he is an Islander or Aboriginal person, has lived in the Aboriginal council area for at least six months or Island council area for at least two years and is entitled to vote in the local council election.¹⁷²

Community councils operating on DOGIT communities go some way to recognising principles of self-determination.

¹⁶⁹ ATSIC, *Local Government Handbook*, 2001.

¹⁷⁰ Department of Local Government (NSW), *Evaluation of Aboriginal Mentoring Program Report*, May 2000 at ii.

¹⁷¹ Note 170 at ii.

¹⁷² *Community Services (Aborigines) Regulation 1998* (Qld), s 10 and *Community Services (Torres Strait) Regulation 1998* (Qld), s 10.

Community council model: Many reports and studies have questioned the appropriateness of the community council model of governance under the Community Services legislation. For example, as noted in the *Green Paper on the Review of Indigenous Community Governance*, the Cape York Justice Study found that ‘*Aboriginal councils established under the community service legislation have not been able to improve the quality of life for Aboriginal communities*’.¹⁷³

In response to these concerns, the Government has commenced a review of community governance, and released a Green Paper in March 2003.¹⁷⁴ This review is examining other models for community governance and involves extensive consultation with stakeholders throughout Queensland.

Relationship between local governments and community councils: Community councils are intended to be the local government authority for the area in which they operate.¹⁷⁵ Aboriginal and Island community councils collect rates on land within the area as well as perform other local government responsibilities.

Persons living on community council areas are not entitled to vote in any other local government elections. This has been criticised on the basis that community councils do not have usual local government status and therefore the current system disenfranchises people living on DOGIT communities.¹⁷⁶

When the Community Services (Aborigines) Bill and the Community Services (Torres Strait) Bill were introduced into the Queensland Parliament in 1984, the opposition of the day expressed concern about the system of local government elections and voting that the bills established. It was argued that voting rights were being separated and that this was unjust because the community councils were not equal in status to other local authorities.¹⁷⁷

In its submission to the committee the ACC stated:

*Community Councils were given public responsibility but neutered in their authority to control their own resources. The restrictions contained in the Act was not and is not the self management we see in the mainstream; it was and is not local government; it is a continuation of government by bureaucrats.*¹⁷⁸

It is clear that DOGIT councils have additional functions to other local authorities. In its 1991 review of community governance, the Legislation Review Committee noted that, in practice, Aboriginal councils take on a much wider role than that of the delivery of local government services in that their function takes in ‘*almost every aspect of the functioning of their communities*’.¹⁷⁹ The Cape York Justice Study also noted that the breadth of functional responsibilities undertaken by community councils is greater than that undertaken by other local governments.¹⁸⁰

In addition to these fundamental differences between community councils and other local governments, the issues which the respective councils have to deal with are often interrelated, for example, road maintenance and water supply. For this reason, it might be important for people living in the community council area to be able to participate in the broader local government area within which the community council is situated.

¹⁷³ Note 10 at 5.

¹⁷⁴ Note that the current review is only examining Aboriginal community governance and not Island community governance.

¹⁷⁵ The Queensland Supreme Court held this to be the case in *Re Woorabinda Aboriginal Council* [1995] 1 Qd R 692.

¹⁷⁶ See, for example, T Koch, ‘Saturday View – Dedicated seats of democracy’, *The Courier-Mail*, 5 April 2003. This issue was also raised at the public meeting at South Brisbane.

¹⁷⁷ See, for example, the speeches of Ms Anne Warner MP, Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 12 April 1984 at 2908-2909 and Mr R Scott MP at 2941.

¹⁷⁸ Submission no 50.

¹⁷⁹ Department of Aboriginal and Torres Strait Islander Policy, n 10 at 10.

¹⁸⁰ Note the comparison of functions set out in the *Cape York Justice Study*, Volume 2, November 2001 at 248.

Further, the fact that a person living in a community council area cannot run for election in the broader local government area restricts opportunities for those people to actively participate in this level of government and other opportunities which it might present.

The committee has made inquiries of DATSIP about whether the relationship between local governments and community councils will be examined as part of the current review of community governance. The committee wrote to the Minister, the Hon Judy Spence MP, asking her to give consideration to incorporating this issue as part of the current review. The Minister responded to the committee by letter dated 7 August 2003 as follows:

The loss of voting rights for the shire or city council did not disenfranchise the residents of the trust areas as they gained voting rights for the Aboriginal council ie the new local authority for the area. If residents of DOGIT communities had retained voting rights in neighbouring shire or city council areas they would have had voting rights for two local authority areas – making them eligible to vote for a shire or city council from which they did not receive local government services...[W]here an Aboriginal or Island council has been established as the local authority for a DOGIT area, there is no justification for residents to retain the right to stand for a city or shire council which no longer serves their area.

While the Green Paper, Making Choices about Community Governance, did not directly address this issue, it did consider the option of bringing Aboriginal councils under the Local Government Act 1993, thereby removing the current differentiation between local authorities in DOGIT and non-DOGIT areas. It also considered the option of removing the local government status of Aboriginal councils, so that DOGIT communities revert to being part of the surrounding shire or city council area.

The committee now leaves this matter as one more appropriately dealt with by Indigenous people themselves through the Community Governance review.

8.4 LOCAL COUNCILS AND MAINLAND TORRES STRAIT ISLANDER

While the committee urges Aboriginal and Torres Strait Islander people to participate in all levels of government the committee understands that Torres Strait Islanders who live on the mainland could have a difficulty in running for elected positions. It was made clear to the committee in meetings at which mainland Torres Strait Islanders attended that, in observing the tradition that people should only speak for their own country, mainland Torres Strait Islanders do not feel it is appropriate for them to seek election to a position which represents a particular geographical area of the mainland they recognise as belonging to Aboriginal people.¹⁸¹ They also do not feel it is appropriate to seek a position which represents a particular area of the Torres Strait because they consider that the aspirations of homeland Torres Strait Islanders are different to those of mainland Torres Strait Islanders.¹⁸² It was suggested to the committee that there needs to be a treaty between Aboriginal peoples and Torres Strait Islanders to recognise that there is a place for Torres Strait Islanders on the mainland.¹⁸³

These issues are outside of the committee's jurisdiction but the committee would encourage any action which facilitates broader increased participation by Torres Strait Islanders in democratic processes.

¹⁸¹ Public meetings at Townsville and Logan.

¹⁸² Public meeting at Logan. Meeting participants did comment that issues relating to speaking for their own country were becoming less relevant for young Torres Strait Islanders born and living on the mainland.

¹⁸³ Public meeting at Logan.

Recommendation 12 – Enhancing local government participation

To enhance Aboriginal and Torres Strait Islander peoples' participation in local government, the Minister for Local Government and Planning, in conjunction with the Local Government Association of Queensland, the Aboriginal Coordinating Council and the Island Coordinating Council, should examine the development and implementation of specific strategies and programs to encourage more Aboriginal and Torres Strait Islander people to stand for election to local government. In particular, these agencies should consider establishing:

- an Aboriginal and Torres Strait Islander mentoring program; and
- a Local Government Aboriginal and Torres Strait Islander Network.

Recommendation 13 – Evaluation of participation in local government

The participation of Aboriginal and Torres Strait Islander peoples in local government should be considered as part of the evaluation of Aboriginal and Torres Strait Islander peoples' participation in democratic processes to be conducted after three state electoral cycles or nine years, whichever is the later: see recommendation 1.

9. ENHANCING DIRECT INPUT INTO POLICY AND LEGISLATIVE PROCESSES

9.1 BACKGROUND

There are a number of existing processes by which all members of the community including Aboriginal and Torres Strait Islander people can have direct input into Parliament. For example, all Queenslanders have access to Parliament through their state Member of Parliament, and have the ability to petition Parliament. Anyone may ask questions of a minister or another Member of Parliament by writing to them. Citizens can also participate in the development of legislation and policy through various consultative processes.

The committee raised in its issues paper—under the heading of strategy 2: Direct input into Parliament—some specific mechanisms by which the implications of legislation and government policy for Aboriginal and Torres Strait Islander peoples might be directly brought to Parliament’s attention. Possibilities discussed included establishing a parliamentary committee with additional membership drawn from the Indigenous community and giving a nominated representative body opportunities such as: asking questions (with or without notice) of ministers; speaking to Parliament on bills directly affecting Indigenous peoples’ interests; and providing reports to Parliament on matters of significance to Aboriginal and Torres Strait Islander peoples.¹⁸⁴

There are a number of existing Indigenous bodies which might have some role in providing a direct link with Parliament. These bodies are discussed in more detail in appendix C.

9.2 CONSULTATION

A general issue which emerged from discussion regarding this strategy was that the concept of direct input should not only focus on Parliament but extend to government policy-making and the processes which lead to the introduction of legislation in Parliament.

In addition, some contributors called on their Indigenous leaders to more actively involve them in consultative processes.¹⁸⁵ This was considered to be one way of enhancing all Indigenous people’s direct input to government. For instance, several public meeting participants felt that their Indigenous community leaders had not promoted the committee’s inquiry enough, nor encouraged participation by them as community members.

In response to models discussed in the committee’s issues paper, there was some support for giving a body representative of Aboriginal and Torres Strait Islander peoples a form of direct input into Parliament. Suggestions as to the form that input should take included enabling that body to: ask questions of ministers; speak to Parliament on bills affecting Indigenous interests; provide reports to Parliament on matters relevant to Indigenous peoples; and seek reports from the government on matters relevant to Indigenous peoples.¹⁸⁶ There was also some support for establishing a joint parliamentary/community committee.¹⁸⁷

A number of submitters expressed qualifications as to which representative bodies should perform such functions. Some felt that any representation should not be through ATSIC.¹⁸⁸ Throughout consultation, the committee was cautioned against using a voluntary, advisory or appointed committee as opposed to an elected body with full-time members. The point was also made that while the easiest option is to use

¹⁸⁴ Note 12 at 13-15.

¹⁸⁵ Public meeting at Cairns.

¹⁸⁶ Public meetings at Toowoomba and Townsville. See also, for example, submission nos 3, 7, 13, 14, 24, 31, 32, 33, 35, 36, 37, 44, 47, 48, 49 and 50.

¹⁸⁷ Public meeting at Nerang. See also, for example, submission nos 37, 47 and 50.

¹⁸⁸ Public meetings at Toowoomba, Rockhampton and South Brisbane. See also, for example, submission no 13.

existing organisations, such organisations might not be sufficiently representative¹⁸⁹ and each body has its own focus.¹⁹⁰

Suggested new bodies which might have direct input included a Queensland Indigenous Commission to act ‘as the Parliamentary watchdog on how the Indigenous people are treated’ and a Queensland parliamentary sub-committee on Indigenous affairs consisting of co-opted members from the various Indigenous organisations and having the opportunity to have direct input on all issues that have both direct and indirect material relevance on Indigenous issues.¹⁹¹

Those who opposed some form of direct input into Parliament by a representative body did so for reasons including:

- a lack of identified need;¹⁹²
- the concept is too unwieldy and ‘it is unlikely parliamentarians of today would give much time or allow Aboriginal ideas to interfere with their own’;¹⁹³
- it would be bordering on racial discrimination against non-Indigenous people;¹⁹⁴
- ‘a representative body based on race...is unacceptable, because such a body intentionally excludes the wider community from its constituency, while being granted influence over the governing of that wider community’;¹⁹⁵
- there are already too many bodies and the same people are always involved;¹⁹⁶ and
- a separate body would lead to duplication and separation.¹⁹⁷

A number of comments made during consultation concerned ATSIC. While there was generally support for a national body to represent the interests of Aboriginal and Torres Strait Islander peoples, a number of people who spoke to the committee expressed disillusionment with ATSIC and/or the personalities involved.¹⁹⁸ Comments included that ATSIC does not represent the majority of Aboriginal and Torres Strait Islander people.¹⁹⁹ It was also suggested that there should be increased recognition of mainland Torres Strait Islanders in ATSIC.²⁰⁰

The point was also made that voting in ATSIC elections is not compulsory.²⁰¹

9.3 COMMITTEE POSITION

Certain aspects of the existing policy-making and legislative process could be improved so that Aboriginal and Torres Strait Islander peoples have more involvement in decisions about legislation, policy and service provision that affect their lives. In particular, there should be consultation with Aboriginal and Torres Strait Islander people from an early stage in policy and legislative processes so that due regard is given to the implications of policy and legislation from an Indigenous perspective.

¹⁸⁹ Public meetings at Rockhampton, Cleveland and Nerang. See also, for example, submission nos 13, 14 and 51.

¹⁹⁰ Public meeting at Rockhampton.

¹⁹¹ Submission no 50. At the public meeting at Deception Bay it was also suggested that a separate representative body should be formed.

¹⁹² See, for example, submission nos 27 and 38.

¹⁹³ Submission no 5.

¹⁹⁴ Submission no 9.

¹⁹⁵ Submission no 10.

¹⁹⁶ Public meeting at Cairns.

¹⁹⁷ Public meeting at Nerang.

¹⁹⁸ Public meetings at Ipswich, Toowoomba, Deception Bay and Townsville. Similar comments were expressed to the ATSIC review: review discussion paper, n 22 at para 4.3.

¹⁹⁹ Public meeting at South Brisbane.

²⁰⁰ Public meeting at Logan.

²⁰¹ Public meetings at Ipswich, Toowoomba and Nerang.

9.3.1 ATSIC's role

The committee acknowledges the widespread dissatisfaction with ATSIC expressed to it during consultation,²⁰² but recognises that ATSIC provides a means by which Indigenous people can be involved in democratic processes.

The State Policy Council of ATSIC in its meeting with the committee stated that there needs to be formal, legislative recognition of ATSIC as an elected body at a state level.²⁰³ In particular, the council drew the committee's attention to s 9 of the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) which provides:

*The Minister may, in writing, approve the performance by the Commission of a function expressly conferred on the Commission by a law of a State or an internal Territory.*²⁰⁴

The committee is not aware of any legislation that has been put in place in any state that relies on section 9. However, the committee is aware of various partnership agreements and frameworks in place between ATSIC and various states and territories.²⁰⁵ For example, in Queensland there is a July 2002 *Commitment to Partnership* between the Queensland Government and the Queensland State Policy Council of ATSIC. The purpose of this commitment is to: '*set down a set of principles and an overarching framework for cooperation which will inform and support negotiations and agreements at the local and regional level between regional offices of ATSIC, regional offices of the Queensland Government and communities about services and programs*'.

In accordance with the Commonwealth Government's 2001 election commitment, a review panel is currently undertaking a general assessment of the roles and functions of ATSIC and how they are performed. The purpose of this review is to explore opportunities for more effective arrangements for ATSIC at all levels.²⁰⁶ The panel's assessment has involved consideration of the most appropriate arrangements for the delivery of Indigenous-based programs and Indigenous peoples' involvement and participation in government policy-making.²⁰⁷

The committee notes the following comment of the ATSIC review panel in its discussion paper:

*If ATSIC continues to succeed in taking on a greater role in advising State/Territory governments, the apparent duplication of representative Indigenous structures and Indigenous affairs bureaucracies could be addressed with consequent efficiencies. If ATSIC became the peak Indigenous representative structure advising the States/Territories, then their Indigenous affairs bureaucracies could be reduced, mainstreamed or disbanded.*²⁰⁸

The committee agrees that cooperative approaches are more effective in achieving outcomes for Indigenous peoples and that, as far as possible, there should be coordination of service provision across the local, state and federal levels.

The committee is committed to advancing the principles of self-determination on which ATSIC is founded and trusts that the current review of ATSIC will address the issues which have given rise to some of the misgivings presented to committee.

Given the current review of ATSIC, the committee is reluctant to make a recommendation about the role of ATSIC in state affairs. Once the review of ATSIC is complete, the Queensland Government should examine ATSIC's role in relation to state matters.

²⁰² Similar comments were expressed to the ATSIC review: review discussion paper, n 22 at para 4.3.

²⁰³ Meeting with ATSIC State Policy Council.

²⁰⁴ A similar provision exists regarding the Torres Strait Regional Authority: *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth), s 142B.

²⁰⁵ See the ATSIC review discussion paper, n 22 at paras 5.18-5.19.

²⁰⁶ Note 22 at 6.

²⁰⁷ Note 22 at 6.

²⁰⁸ ATSIC review discussion paper, n 22 at para 5.20.

Recommendation 14 – The role of ATSIC and efficient service delivery

Once the current review of the Aboriginal and Torres Strait Islander Commission (ATSIC) is complete, the Queensland Government should examine the role of ATSIC in relation to state matters.

In conducting this examination, the Government should also consider the wider issue of efficiencies in service delivery for Aboriginal and Torres Strait Islander peoples across the levels of government.

9.3.2 Enhancing consultative processes

One of the issues raised during the committee's consultation was that some Indigenous people are reluctant to participate in consultation or engagement processes instigated by government. There was a concern expressed that these processes need to be more responsive to Indigenous people and the views they are advancing.

The committee notes the consultative processes undertaken by the current government and, in particular, the Community Engagement Division of the Department of the Premier and Cabinet which ensures central leadership for improved government and community engagement.

The *Queensland Policy Handbook* stresses the importance of consultation both within the community and across government in policy development.²⁰⁹ The *Queensland Cabinet Handbook* also states that '(c)onsultation is a fundamental and mandatory part of the development of all Cabinet submissions'²¹⁰ and that consultation must be held with all relevant agencies or organisations affected by proposals including special interest groups. Cabinet submissions are required to include a brief summary of the nature and results of consultation undertaken.²¹¹

Various forums assist in bringing the processes of government closer to the people by facilitating direct input by all people. For example, community cabinet meetings enable individuals and community groups to meet with ministers and departmental heads either informally or to make formal deputations. Meetings are held at different locations around the state approximately every five weeks.²¹² Ministerial regional community forums also enable people to raise regional issues with government. Each forum is chaired by two cabinet ministers who meet with regional representatives called forum members. Forums are conducted in eight regions across the state.²¹³

Involvement in lobby groups and community organisations is an additional, important aspect of the democratic process which feeds into all levels of government.

As discussed in section 9.1, there are a number of existing processes by which all members of the community, including Indigenous people, can have direct input into Parliament.

ATSIC submitted that existing processes to influence government are not meaningful examples of partnerships between the state and Aboriginal peoples and Torres Strait Islanders, and that '*a new method of engagement between the state and Indigenous peoples needs to be developed that is based on mutual respect, real commitment and partnerships*'.²¹⁴

²⁰⁹ This handbook forms part of the *Governing Queensland* suite of documents and is available at: <www2.premiers.qld.gov.au/governingqld/policy/contents.htm>.

²¹⁰ At para 6.0. This handbook forms part of the *Governing Queensland* suite of documents and is available at: <www2.premiers.qld.gov.au/governingqld/cabinethandbook/foreword.htm>.

²¹¹ *Queensland Cabinet Handbook*, n 210 at para 5.5.4.

²¹² <www.thepremier.qld.gov.au/communitycabinet/index.htm>.

²¹³ <www.premiers.qld.gov.au/regional/minforums/process/how.asp>.

²¹⁴ Submission no 47 at 4.

ATSIC proposed establishment of a peak Indigenous representative body (with membership drawn from existing Indigenous bodies in partnership with ATSIC) to:

- provide direct input to Parliament on issues needing ‘*immediate attention and remedy*’; and
- work directly with a dedicated Cabinet and/or Parliamentary Standing Committee on Indigenous Social Issues to address long-term issues about reconciliation, self-determination and regional autonomy.

ATSIC favoured a cabinet committee over a parliamentary committee on the basis that: ‘*Cabinet holds the executive power of government and by working in partnerships with Ministers that have direct portfolio decision-making power, there is potential for real change to be effected in the policy directions of government about issues of importance for Aboriginal peoples and Torres Strait Islanders*’.²¹⁵

The committee agrees that there is much value in a direct link between Aboriginal and Torres Strait Islander peoples and cabinet. Community cabinets and ministerial regional community forums enable this to occur to some extent. However, community cabinets dedicated to hearing from the Indigenous community would enable a greater focus on issues as they affect Indigenous peoples. Two such cabinets could be held each year in areas around the state with a high Indigenous population.

Recommendation 15 – Indigenous Community Cabinets

To enhance the direct input of Aboriginal and Torres Strait Islander peoples to government and, therefore, democratic processes, the Premier should convene two Indigenous Community Cabinets each year for Aboriginal and Torres Strait Islander peoples.

9.3.3 The role of community leaders

The committee acknowledges the hard work of Indigenous community leaders and appreciates that they are often in a difficult position in having to present the views of their community to government. The committee also recognises that it is often difficult to engage people as they have other priorities in their lives which take precedence over participating in consultative processes.

During consultation, the point was made to the committee by participants that Indigenous leaders and representatives were, at times, not consulting them adequately to obtain their views.

This may be largely due to the fact that the imposition of Westminster processes on traditional governance requires Indigenous peoples to have ‘leaders’ to convey the views of the community to government and that these views are often required within short time frames or within other limitations imposed by governments.

However, given the strength with which these issues were raised in consultation, the committee encourages Indigenous leaders to provide information to their communities and, more effectively, take an inclusive approach to consultative processes so as to capture the views of their community.

Conversely, in consulting with Aboriginal and Torres Strait Islander peoples, governments must appreciate and respect cultural differences and, to the greatest extent possible, adapt processes to show an appreciation of, and respect for, these differences.

Recommendation 16 – The role of community leaders

The committee appreciates that government consultation with Aboriginal and Torres Strait Islander communities is not necessarily undertaken in a way which is culturally appropriate. However, wherever possible, Aboriginal and Torres Strait Islander leaders should provide information to their communities and take an inclusive approach to engaging community members in consultation.

²¹⁵ Submission no 47 at 6. ATSIC’s submission contains further detail regarding the model it proposes for Queensland.

Recommendation 17 – Governments’ appreciation of cultural differences

In consulting with Aboriginal and Torres Strait Islander peoples, governments should, to the greatest extent possible, adapt processes and timeframes to ensure that cultural differences are appreciated and respected.

9.3.4 The legislative process

All Queensland legislation is required to be drafted with due regard to certain ‘fundamental legislative principles’ (FLPs) which are set out in the *Legislative Standards Act 1992* (Qld).²¹⁶ While the FLPs are not absolute, any departure from them should be explained and justified.²¹⁷

The FLPs include requiring that legislation has sufficient regard to the ‘rights and liberties of individuals’. One of the examples of whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation ‘*has sufficient regard to Aboriginal tradition and Island custom*’.²¹⁸

It might be queried whether the phrase ‘Aboriginal tradition and Island custom’ is sufficiently broad.²¹⁹ Legislation which affects Aboriginal and Torres Strait Islander *peoples* might not necessarily infringe on tradition and custom. Some legislation has a disproportionate effect on Indigenous people. For example, mandatory sentencing legislation in relation to certain types of crimes such as property crimes has had a disproportionate effect on the imprisonment of Indigenous people.²²⁰ Therefore, the committee believes that it is more appropriate that legislation is required to ‘*have sufficient regard to Aboriginal tradition, Island custom and any particular effect the legislation might have on Aboriginal or Torres Strait Islander peoples*’.

Expanding the FLP example in this way will assist in ensuring that due regard is given to Aboriginal tradition and Island custom and any particular effect a proposal might have on Aboriginal and Torres Strait Islander peoples in the development of state legislation and local government laws.²²¹

A function of the Office of Queensland Parliamentary Counsel is to advise ministers and government agencies on the application of the FLPs to proposed legislation.²²² The *Queensland Cabinet Handbook* states that the Office should be consulted in the early stages of developing legislative proposals.²²³

Further, the Scrutiny of Legislation Committee of the Queensland Parliament (‘the SLC’) is required to consider the application of FLPs to bills and subordinate legislation.²²⁴ The SLC does this by examining all proposed legislation once it is introduced into the Parliament.

²¹⁶ This includes state legislation and subordinate legislation: *Legislative Standards Act 1992* (Qld), s 4. While local laws are exempt instruments, the Parliamentary Counsel can, and has, issued guidelines regarding drafting practices to be observed by persons in drafting exempt instruments. These guidelines cover the application of FLPs to exempt instruments: see the *Legislative Standards Act 1992* (Qld), ss 2 and 9 and Office of the Queensland Parliamentary Counsel, *Guidelines for drafting local laws and subordinate local laws*, 1 January 2000.

²¹⁷ EARC, *Report on Review of the Office of the Parliamentary Counsel*, Goprint, Brisbane, May 1991 at para 2.4. Explanatory notes to bills are required to address consistency with the FLPs: *Legislative Standards Act 1992* (Qld), s 22.

²¹⁸ *Legislative Standards Act 1992* (Qld), s 4(3)(j).

²¹⁹ While the phrase ‘Aboriginal tradition and Island custom’ is not defined in the *Legislative Standards Act*, guidance as to its meaning can be found in the 1991 EARC report which led to the introduction of the Act: EARC, n 217 at paras 2.57-2.58 and clause 4 of EARC’s draft bill in appendix H to that report. See also the comments made by the Parliamentary Committee for Electoral and Administrative Review in reviewing EARC’s report: *Office of the Parliamentary Counsel*, Goprint, Brisbane, July 1991 at paras 3.2.8 and 3.2.11.

²²⁰ See the discussion in Behrendt, n 25 at 25-26.

²²¹ See n 216.

²²² *Legislative Standards Act 1992* (Qld), s 7(g).

²²³ Note 210 at para 6.2.2.

²²⁴ *Parliament of Queensland Act 2001* (Qld), s 103.

The nature and resources of the SLC do not permit that committee to conduct a detailed examination of legislation which is intended to apply to the entire Queensland community with a view to identifying possible impacts on Aboriginal tradition and Island custom. In the case of legislation dealing with subject matter which by its nature may have some direct or indirect impact on Aboriginal and Torres Strait Islander peoples, the committee usually asks the sponsoring minister whether he or she is satisfied that there is no adverse impact. Apart from referring native title legislation to native title specialists, the committee has not referred other matters relating to this FLP example to an external advisor.²²⁵

The committee's recommendation 21 regarding the appointment of Parliamentary Indigenous Liaison Officers might assist the SLC in examining whether proposed legislation has sufficient regard to Aboriginal tradition, Island custom and any particular effect the legislation might have on Aboriginal or Torres Strait Islander peoples. The officers could also assist in providing cultural awareness training to members and staff of the committee.

Recommendation 18 – Fundamental legislative principles

The Premier, as the minister responsible for the *Legislative Standards Act 1992* (Qld), should introduce an amendment to s 4(3)(j) of that Act so that the 'fundamental legislative principle' example in that subparagraph requires that legislation '*has sufficient regard to Aboriginal tradition, Island custom and any particular effect the legislation might have on Aboriginal or Torres Strait Islander peoples*'.

9.3.5 Jurisdiction of LCARC

While LCARC's area of responsibility about legal reform includes '*recognition of Aboriginal tradition and Island custom under Queensland law*',²²⁶ successive committees have done little work in this regard. Like the SLC, this committee's resources are limited and its members and staff are generally unfamiliar with Aboriginal and Torres Strait Islander laws and customs.

It was suggested to the committee that a new parliamentary committee—a Queensland Aboriginal and Torres Strait Islander Committee—should be established.²²⁷ The committee does not believe that this is necessary at this stage. This committee's jurisdiction regarding legal reform is broad enough to encompass a range of issues as they affect Aboriginal and Torres Strait Islander peoples. However, to be consistent with recommendation 18 regarding a change to the FLP example, the committee's jurisdiction regarding 'legal reform' should be redrafted to include considering whether Queensland law has sufficient regard to Aboriginal tradition, Island custom and any particular effect the law might have on Aboriginal or Torres Strait Islander peoples.

Current and future LCARCs should more actively consider this area of responsibility when setting their inquiry agendas. Providing committee members and staff with adequate Aboriginal and Torres Strait Islander cultural awareness training so that issues in this area of responsibility can be more readily identified should assist: see recommendation 21.

The committee also has a role in monitoring the implementation and effectiveness of the strategies recommended in this report: see recommendation 1.

²²⁵ Letter from the Scrutiny of Legislation Committee to this committee dated 10 June 2003.

²²⁶ *Parliament of Queensland Act 2001* (Qld), s 89(a). This provision is somewhat narrower than that initially envisaged: see the report of the Parliamentary Committee for Electoral and Administrative Review, *Report on review of parliamentary committees*, Goprint, Brisbane, October 1993 at para 8.7.3.

²²⁷ Submission no 50 at 11. The South Australian Parliament has recently established an Aboriginal Lands Parliamentary Standing Committee whose functions include inquiring into matters '*concerning the health, housing, education, economic development, employment or training of Aboriginal people or any other matter concerning the welfare of Aboriginal people*': see the *Aboriginal Lands Parliamentary Standing Committee Act 2003* (SA), s 6(d).

Recommendation 19 – LCARC’s area of responsibility

The Premier, as the minister responsible for the *Parliament of Queensland Act 2001* (Qld), should introduce an amendment to s 89(a) of that Act so that the Legal, Constitutional and Administrative Review Committee’s area of responsibility about legal reform includes considering whether Queensland law has sufficient regard to Aboriginal tradition, Island custom and any particular effect the law might have on Aboriginal or Torres Strait Islander peoples.

Recommendation 20 – LCARC’s agenda

When setting its inquiry agenda, the Legal, Constitutional and Administrative Review Committee should more actively consider its area of responsibility regarding whether Queensland law has sufficient regard to Aboriginal tradition, Island custom and any particular effect the law might have on Aboriginal or Torres Strait Islander peoples.

9.3.6 Parliamentary Indigenous Liaison Officers

While the jurisdiction of the SLC and LCARC currently includes Aboriginal tradition and Island custom, as the above discussion reveals there is no direct avenue by which these committees can access advice relevant to fulfilling this jurisdiction. Appointing Parliamentary Indigenous Liaison Officers within the Parliamentary Service would have a number of advantages²²⁸ including:

- assisting the SLC and LCARC with their jurisdiction regarding Aboriginal tradition and Island custom (as expanded in accordance with recommendations 18 and 19);
- assisting other parliamentary committees and parliamentary entities with issues that might be of interest to, or affect, Aboriginal and Torres Strait Islander peoples;
- advising members of Parliament generally regarding the impact of policy and legislation on Aboriginal and Torres Strait Islander peoples;
- providing, or arranging the provision of, cultural awareness training to members of Parliament (including as part of the new members’ induction program) and parliamentary staff;
- performing a liaison role between the Parliament, its committees and members and Indigenous agencies where necessary;
- assisting relevant sub-outputs of the Parliamentary Service (particularly Human Resource Management) with the implementation of programs aimed at increasing the employment of Aboriginal and Torres Strait Islander people within the Parliamentary Service including electorate offices (see chapter 7 regarding employment and training);
- assisting Parliamentary Education Services in its programs and activities aimed at Aboriginal and Torres Strait Islander people (see chapter 6 regarding civics education); and
- providing protocol advice as it affects the Parliament, for example, welcome to country, acknowledgment of traditional owners, observance of ceremony and protocol for Aboriginal and Torres Strait Islander flags.

There would need to be at least two officers, one representative each from the Aboriginal and Torres Strait Islander community (say, equivalent to .5 FTE each), to be supported by a full-time executive assistant.

These officers should be able to move into other positions across the Parliamentary Service.

The Queensland Government should provide the Parliamentary Service with additional funding for these positions.

²²⁸ At the Mt Isa public meeting it was suggested that a group of Indigenous people could advise Members of Parliament.

Recommendation 21 – Parliamentary Indigenous Liaison Officers

The Queensland Government should provide the Parliamentary Service with additional funding to appoint two Parliamentary Indigenous Liaison Officers within the Parliamentary Service to perform a range of advisory, education and protocol functions as they relate to Aboriginal and Torres Strait Islander peoples including:

- **assisting the Scrutiny of Legislation Committee and Legal, Constitutional and Administrative Review Committee with their jurisdiction regarding Aboriginal tradition and Island custom (as expanded in accordance with recommendations 18 and 19);**
- **assisting other parliamentary committees and parliamentary entities with issues that might be of interest to, or affect, Aboriginal and Torres Strait Islander peoples;**
- **advising members of Parliament generally regarding the impact of policy and legislation on Aboriginal and Torres Strait Islander peoples;**
- **providing, or arranging the provision of, cultural awareness training to Members of Parliament (including as part of the new members' induction program) and parliamentary staff;**
- **performing a liaison role between the Parliament, its committees and members and Aboriginal and/or Torres Strait Islander agencies where necessary;**
- **assisting relevant sub-outputs of the Parliamentary Service (particularly Human Resource Management) with the implementation of programs aimed at increasing the employment of Aboriginal and Torres Strait Islander people within the Parliamentary Service including electorate offices (see chapter 7 regarding employment and training);**
- **assisting Parliamentary Education Services in its programs and activities aimed at Aboriginal and Torres Strait Islander people (see chapter 6 regarding civics education); and**
- **providing protocol advice as it affects the Parliament, for example, welcome to country, acknowledgment of traditional owners, observance of ceremony and protocol for Aboriginal and Torres Strait Islander flags.**

10. MINIMAL SUPPORT FOR AN ABORIGINAL AND TORRES STRAIT ISLANDER ASSEMBLY

10.1 BACKGROUND

In consultation there was minimal support for an Aboriginal and/or Torres Strait Islander Assembly, to operate in parallel with the Queensland Parliament.

Issues surrounding this strategy are: whether it would be an effective means of enhancing participation; how members of the assembly would be elected/selected; who would vote for members to the assembly; the role of the assembly; the assembly's relationship with the Queensland Parliament; and how to ensure that such an assembly would adequately represent both Aboriginal people and Torres Strait Islanders.²²⁹

10.2 CONSULTATION

There was no strong, consistent view put to the committee in consultation about whether there should be a separate Aboriginal and/or Torres Strait Islander Assembly. Those who did support an assembly presented a variety of views regarding how it would operate, including: how both Aboriginal people and Torres Strait Islander people could be represented;²³⁰ who would vote for members to the assembly;²³¹ whether voting should be compulsory;²³² and the role of the assembly.²³³

The concept received some support as a model which would enhance participation and representation and provide an appropriate forum for Indigenous peoples to participate in decision-making.²³⁴ Some people considered it to be a model which is familiar to Indigenous people in that it could be structured to suit Indigenous decision-making processes.²³⁵ Some who supported the concept of an assembly considered that the Queensland Parliament should be required to respond to issues raised by an Indigenous assembly.²³⁶

Numerous people expressed concern that creation of an assembly would cause further division between the Indigenous and non-Indigenous communities,²³⁷ and that there were problems with the workability of a separate assembly. Some people emphasised that there were already elected bodies in existence so the need for a further elected body was questionable.²³⁸ Others saw little value in a separate assembly,²³⁹ or were opposed to it for other reasons,²⁴⁰ including the risk that it could be tokenistic.

The risk of marginalisation of issues was a concern expressed by several people in consultation about the establishment of a separate assembly. For example, the State Policy Council of ATSIC submitted:

The responsibility to respond to Indigenous issues would be abdicated by the Legislative Assembly and deferred to the Aboriginal and Torres Strait Islander Assembly. This could marginalise the consideration of Indigenous issues by the Legislative Assembly which has a responsibility to address and remedy issues for all Queensland constituents, including Aboriginal peoples and Torres Strait Islanders. The real political power that could be given to this body is questionable as the Aboriginal and Torres Strait Islander Assembly would operate in parallel to the Legislative

²²⁹ For further discussion regarding an Aboriginal and Torres Strait Islander Assembly see the committee's issues paper, n 12 at 15-18.

²³⁰ Public meeting at Charleville. See also, for example, submission nos 24, 35, 44 and 49.

²³¹ Public meetings at Deception Bay and Charleville. See also, for example, submission nos 3 and 35.

²³² Public meeting at Charleville.

²³³ See, for example, submission nos 3, 31, 32, 33, 36, 37 and 44.

²³⁴ See, for example, submission nos 24, 25, 31, 32, 36, 37, 44 and 49.

²³⁵ Public meeting at Cleveland.

²³⁶ Public meeting at Cleveland.

²³⁷ Public meetings at Ipswich, Cairns and Nerang. See also, for example, submission nos 3, 14, 27 and 46.

²³⁸ Meeting with ATSIC State Policy Council. See also, for example, submission nos 9 and 47.

²³⁹ Public meetings at Cairns and Townsville. See also, for example, submission nos 5, 7, 13, 14 and 50.

²⁴⁰ Public meetings at South Brisbane, Nerang and Roma. See also, for example, submission nos 10, 12, 27, 38 and 47.

Assembly, however, it would lack the decision-making power to effect any real changes within the Parliament.

*The Assembly could also duplicate and detract from existing processes already in existence (for example, ATSIC and the Aboriginal Coordinating Council) and lead to confusion between the roles and responsibilities of the various bodies.*²⁴¹

10.3 A TORRES STRAIT ASSEMBLY

The concept of a separate assembly received much support in the Torres Strait. This support was in the context of the creation of an autonomous, territorial government.

The TSRA and participants in the public meeting on Thursday Island reasserted their desire for the people of the Torres Strait to a form of territorial government in recognition of their claim as original inhabitants. This goal has been raised and dealt with in numerous forums over the years.²⁴²

The TSRA members are putting this goal into practice for themselves in the self-appointed representative titles they have assumed (for example, the Member for Yam) and in the assembly-like manner in which they operate their meetings.

In its submission to the committee, the TSRA described the model provided by the Sami Assembly in Norway and noted that the Sami Assembly is underpinned by constitutional recognition of the Sami people. The TSRA stated:

*A Torres Strait Assembly would provide opportunities for formal structural arrangements to participate in Parliamentary and Government decision-making specifically to ensure that issues of direct concern to Torres Strait Islanders are given exposure and consideration, including at the time of conception, the implications of legislation and government policy.*²⁴³

The committee also recognises the desire of Torres Strait Islanders living on the mainland to have appropriate representation in the homeland as well as in the place where they live. It was put to the committee that a Torres Strait Assembly should include representation of Islanders living on the mainland,²⁴⁴ as well as greater representation of women.²⁴⁵

10.4 COMMITTEE POSITION

The committee cannot recommend creation of a separate assembly for Aboriginal and Torres Strait Islander peoples in the absence of widespread support for such a concept in consultation. There were stronger views put forward about active election of Indigenous people into Parliament than formation of a separate body.

The issue of self-government for the Torres Strait is beyond the scope of this inquiry. Rather, it is a matter for further dialogue between Torres Strait Islanders (both homeland and mainland) and other residents of the Torres Strait and the Commonwealth and Queensland Governments. However, the Queensland Government should examine what powers, roles and responsibilities might be further devolved from State to Torres Strait regional level to enhance autonomy in the Torres Strait.

²⁴¹ Submission no 47.

²⁴² The call for autonomy became an organised movement in the 1970s and 1980s. Various groups have mobilised, both within the Torres Strait and on the mainland, to lobby state and federal governments to address the desire for autonomous government in the Torres Strait. A significant inquiry was conducted by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs into greater autonomy for Torres Strait Islanders. The inquiry report, *Torres Strait Islanders: A new deal*, was handed down in August 1997 after a year long inquiry. The Federal Government and the then Queensland Government responded to the report. The report and response can be found at: <<http://www.aph.gov.au/house/committee/atsia/reports.htm>>.

²⁴³ Submission no 39.

²⁴⁴ Public meeting at Logan.

²⁴⁵ During the public meeting at Townsville some participants advocated that there should be more Torres Strait Island women representatives.

The committee acknowledges that there is also a call for self-governance by some Aboriginal people. The committee does not intend its discussion about autonomy in the Torres Strait to be taken as a view that the claim for autonomy in the Torres Strait is any more important than that for self-governance for Aboriginal people.

Recommendation 22 – Aboriginal and/or Torres Strait Islander Assembly

Given the minimal support expressed during public consultation for a separate Aboriginal and/or Torres Strait Islander Assembly, such an Assembly should not be established in Queensland at this stage.

Recommendation 23 – Greater autonomy in the Torres Strait

The Queensland Government should ensure ongoing discussion with the Federal Government and Torres Strait Islanders (both homeland and mainland) and other residents of the Torres Strait about greater autonomy in the Torres Strait. Such discussion should examine what powers, roles and responsibilities might be further devolved from State to Torres Strait regional level to enhance autonomy in the Torres Strait.

11. MIXED VIEWS ON DEDICATED SEATS

11.1 BACKGROUND

The issue of dedicated seats is not new in Australia. As early as 1938 the concept of separate Indigenous representation has been on the political agenda for Aboriginal and Torres Strait Islander peoples.²⁴⁶ In Queensland, EARC considered the concept of dedicated seats in its review of the electoral system in 1990.²⁴⁷

A system of dedicated seats would mean reserving a certain number of seats in the Legislative Assembly for Aboriginal people and Torres Strait Islanders.

As pointed out in the submission from the Gilbert and Tobin Centre of Public Law,²⁴⁸ dedicated seats have been considered by some to be a central component of the reconciliation process. The Council for Aboriginal Reconciliation recommended that Australian governments conduct parliamentary inquiries into options to address the lack of Aboriginal and Torres Strait Islander representation in their political systems.²⁴⁹ ATSIC has also recommended that there be reserved seats in State and Commonwealth Parliaments for Indigenous Australians.²⁵⁰

In considering the establishment of dedicated seats, there are many complex issues which need to be addressed, including: the number of dedicated seats; adequate representation for Aboriginal people and Torres Strait Islanders; voting methods; geographical representation; the role of members in dedicated seats and cultural protocols.

In its issues paper the committee set out some advantages and disadvantages to dedicated seats.²⁵¹

Since their inception in 1867, dedicated seats in New Zealand have ensured that Maori people have always been represented in the Parliament. The same concerns about dedicated seats put to the committee are held by some New Zealanders.²⁵²

Some people consider that New Zealand's system of dedicated seats is becoming irrelevant with the increasing number of Maori people being elected in general seats under the mixed-member proportional (MMP) electoral system.²⁵³ However, there are still a considerable number of people who support the continuation of dedicated seats by choosing to be on the Maori roll.²⁵⁴

There are some important points of distinction between New Zealand and Queensland, namely:

- relations between Maori and non-Maori are underpinned by a treaty;
- the proportion of Maori people in New Zealand is higher than the proportion of Indigenous peoples in Queensland; and
- Queensland is a larger geographical area with more remote parts.

²⁴⁶ CAR, *Going forward – social justice for the first Australians*, 1995 at: <www.austlii.edu.au/au/special/rsjproject/rsjlibrary/car/going_forward/22.html>.

²⁴⁷ EARC, n 89 at chapter 8. EARC considered that while it was important for there to be effective representation of Aboriginal and Torres Strait Islander people, the commission was not convinced that dedicated seats were the answer.

²⁴⁸ Submission no 30.

²⁴⁹ *Recognising Aboriginal and Torres Strait Islander rights*, n 17 at 16.

²⁵⁰ ATSIC, *Recognition, rights and reform: A report to government on native title social justice measures*, ACT, 1995 at para 4.27.

²⁵¹ Note 12 at 20-21.

²⁵² New Zealand House of Representatives MMP Review Committee, *Inquiry into the review of MMP*, 46th Parliament, August 2001 at 20-21 and in anecdotal evidence provided to the committee by relevant New Zealand agencies and individuals.

²⁵³ The MMP electoral system is discussed further in chapter 12.

²⁵⁴ See submissions presented to the MMP Review Committee, n 252 at 20.

11.2 CONSULTATION

Dedicated seats were the subject of much discussion in submissions and public meetings. It is a concept which appeared to be readily understood, perhaps because of the New Zealand experience, and evoked strong and divergent responses.

People who expressed support for dedicated seats raised arguments including: racism in the broader community and other disadvantages are insurmountable to election to a general seat;²⁵⁵ and dedicated seats are 'owed' to Indigenous people.²⁵⁶ Dedicated seats could be seen to right some past injustices²⁵⁷ and as an aid to shift the mindset of the broader community that 'black' people could not adequately represent the interests of all people in a general seat.²⁵⁸

Some people expressed the view that they were opposed to dedicated seats because they wanted to be elected through the usual process, and have the support of 'white votes and black votes'.²⁵⁹

On the other hand, concern was expressed that: dedicated seats would lead to further division in the community;²⁶⁰ having dedicated seats will marginalise 'Indigenous' issues;²⁶¹ and party politics might hamper the effectiveness of dedicated seats.²⁶² Others simply remained unconvinced of the value of dedicated seats.²⁶³

Some submitters were concerned that the creation of dedicated seats opposed democratic principles. Some people perceived dedicated seats as subjecting the majority to the minority and that this would '*destroy the concept of representative government in Queensland*'.²⁶⁴ Some people raised the point that if there were such measures for Aboriginal people and Torres Strait Islanders, there should also be similar measures for other minority or special interest groups.²⁶⁵ This view point does not take into consideration the unique status of Indigenous peoples as the first inhabitants of Queensland.

Other issues discussed included: whether there should be a separate Indigenous electoral roll,²⁶⁶ how problems with establishing Indigenous descent for candidacy and voting can be dealt with;²⁶⁷ whether Aboriginal and Torres Strait Islander people would be allowed to vote for members in dedicated seats and members in general seats;²⁶⁸ and whether non-Indigenous people could vote for candidates for Indigenous seats.²⁶⁹ Some people suggested that dedicated seats could be established for a set period as an interim measure.²⁷⁰ Suggestions as to the length of this period ranged up to 50 years. There was also a concern that a small number of dedicated seats would not give adequate representation to the many different groups that make up the Indigenous population in Queensland.²⁷¹ In a speech to the Australian Reconciliation Convention, Mr John Ah Kit MLA made the following comment in relation to dedicated seats generally:

²⁵⁵ Public meetings at Ipswich and Cherbourg.

²⁵⁶ Public meetings at Ipswich, South Brisbane and Toowoomba.

²⁵⁷ Public meeting at South Brisbane. See also, for example, submission no 25.

²⁵⁸ Public meetings at Cairns and Nerang; meeting with John Ah Kit MLA.

²⁵⁹ Public meetings at Cairns and Roma. See also, for example, submission no 14.

²⁶⁰ Public meetings at Ipswich, Nerang and Roma; meeting with ATSIC State Policy Council; meeting with John Ah Kit MLA. See also, for example, submission nos 49 and 54.

²⁶¹ Public meetings at Toowoomba and Rockhampton.

²⁶² Public meetings at Toowoomba and Deception Bay. See also, for example, submission no 16.

²⁶³ Meeting with the ACC; public meeting at Cairns. See also, for example, submission no 39.

²⁶⁴ See, for example, submission nos 9, 10, 23, 27 and 38.

²⁶⁵ See, for example, submission no 27.

²⁶⁶ Public meeting at Townsville. See also, for example, submission no 40.

²⁶⁷ Public meeting at Townsville. See also, for example, submission no 38.

²⁶⁸ Public meeting at Toowoomba. See also, for example, submission nos 3, 12, 16, 35 and 44.

²⁶⁹ Public meetings at Ipswich, Deception Bay, Nerang, Charleville and Townsville. See also, for example, submission nos 13, 25 and 32.

²⁷⁰ Public meetings at Ipswich, Cairns, Rockhampton, Townsville and Mt Isa.

²⁷¹ Public meetings at Cairns, Nerang and Mt Isa. See also, for example, submission no 41.

No matter how many reserved seats there might be—and realistically there would only ever be a token number—it would never be possible to elect people who could speak for all the indigenous nations of a particular state...

*...this leads to the most crucial flaw in the argument for reserved seats: the way in which it breaches the independence and sovereignty of indigenous Australian nations.*²⁷²

While a few people considered that members in dedicated seats should only be allowed to speak on 'Indigenous issues',²⁷³ there was a general view that members in dedicated seats should have equal speaking and voting rights as members in general seats.²⁷⁴

The need to avoid tokenism was raised by many people.²⁷⁵ In its submission to the committee ATSIC raised a further, related concern:

*Reform of Queensland's democratic institutions by the introduction of dedicated seats has some benefits as it may be perceived as a symbolic example of reconciliation and recognising the unique status and rights of Aboriginal peoples and Torres Strait Islanders in Queensland. However there is also potential for this strategy to be misused by Parliament and the government by claiming significant inroads to the realisation of equality rights for Indigenous Australians without due respect to undertaking much needed reforms across the operation of Australia's political and legal framework. Indigenous peoples' aspirations to have real self-management (leading to self-determination) needs to be formally recognised by the parliament and government and a new power-sharing relationship developed.*²⁷⁶

In its issues paper the committee discussed whether it would be necessary or desirable to hold a referendum on the issue of dedicated seats. While legally a referendum might not be required to introduce dedicated seats in Queensland,²⁷⁷ there were divergent views about whether a referendum was desirable on a policy or political basis. Some people argued that a referendum was not appropriate because the broader community was not in a position to be making judgments affecting Indigenous peoples.²⁷⁸

It was also suggested that there should be dedicated seats in local governments.²⁷⁹ Such a system might enhance Indigenous peoples' involvement in local issues and more closely reflect Indigenous people's connection with their local area. The issues and concerns raised above also apply to the concept of dedicated seats in local government.

11.3 COMMITTEE POSITION

In consultation, there was both strong support for, and strong opposition to, the concept of dedicated seats. Those who did support dedicated seats were divided on the practical matters surrounding their implementation and operation.

The committee is of the view that a system of dedicated seats cannot be supported at the state or local government level given the opposition to dedicated seats which currently exists in the Indigenous community. The committee is also concerned about the potentially divisive effect of dedicated seats.

²⁷² John Ah Kit MLA (Northern Territory), speech to Australian Reconciliation Convention, 26-28 May 1997 at: <www.austlii.edu.au/au/special/rsjproject/rsjlibrary/car/arc/book4/Pages/04pg01.htm>.

²⁷³ See, for example, submission nos 32 and 37.

²⁷⁴ Public meetings at Ipswich, Nerang, Charleville and Townsville; meeting with the TSRA. See also, for example, submission nos 3, 12, 16, 31, 35, 36, 40, 44 and 50.

²⁷⁵ Public meetings at South Brisbane, Deception Bay and Roma; meeting with the TSRA. See also, for example, submission nos 7, 30 and 50.

²⁷⁶ Submission nos 47.

²⁷⁷ See submission no 30 for a discussion of this issue.

²⁷⁸ See, for example, submission nos 12 and 14.

²⁷⁹ See, for example, submission nos 16 and 28.

However, the committee is aware of the ultimate benefit such a system might have to enhance the representation of Aboriginal and Torres Strait Islander peoples in democratic processes. Dedicated seats should be reconsidered if there is no improvement to the representation of Indigenous peoples in democratic processes as a result of the implementation of other recommendations contained in this report.

A period of three state electoral cycles or nine years, whichever is the later, should be sufficient to determine whether the participation of Aboriginal and Torres Strait Islander peoples has changed as a result of this inquiry and/or other measures. At this time, the issue of the need for dedicated seats may be revisited.

Recommendation 24 – Dedicated seats

Given the degree of opposition to dedicated seats expressed during public consultation, dedicated seats for Aboriginal and Torres Strait Islander peoples should not be established in Queensland either at the state or local government level at this stage.

However, the need for dedicated seats may be one of the issues revisited if the representation of Aboriginal and Torres Strait Islander peoples in democratic processes has not improved after three state electoral cycles or nine years, whichever is the later: see recommendation 1.

12. THE ELECTORAL SYSTEM

12.1 BACKGROUND

There are alternatives to Queensland's current electoral system to elect members of Parliament. Some of these systems might enable more effective representation of Aboriginal and Torres Strait Islander peoples and minority groups.

Queensland's electoral system was last reviewed by EARC in 1990.²⁸⁰ The current system, which largely reflects EARC's recommendations, provides for the election of single representatives for groups of citizens divided into geographically located electoral districts.²⁸¹ A system of single-member electoral districts is based on Westminster tradition. Underlying this tradition is the rationale that if one of the major parties is to win government it must represent a broad cross-section of community views and interests, and that although minority groups may not be directly represented, they should have some influence over at least one of the major parties.²⁸²

However, such a system does not necessarily achieve representation of the broad range of interests within society. In particular, there is a risk that the interests of certain groups will be under-represented, particularly if the group is geographically spread throughout the state.²⁸³

Proponents of proportional representation argue that such a voting system more effectively represents minority interests. Queensland could adopt some form of proportional representation where, using multi-member electoral districts, seats in the legislature are allocated as close as possible in proportion to votes received. Proportional representation is used in many upper houses in Australia including the Australian Senate.

A further alternative is a mixed-member proportional (MMP) system, such as used in New Zealand, which combines single-member electorates with proportional representation. In New Zealand voters get two votes—an electoral vote and a party vote. Some seats are decided by the electoral vote using the first past the post system (that is, the candidate with the most votes wins). The other seats are determined by the party vote. A party's share of the total seats in Parliament is proportional to the percentage of party votes it receives.

A 2001 review of the MMP electoral system in New Zealand concluded that the increased number of Maori, women and ethnic MPs could be directly attributed to the party vote aspect of MMP. The review further noted that the '*composition of the Parliament under an MMP electoral system now reflects more closely the nature of New Zealand society than any previous electoral system*'.²⁸⁴

Any changes to Queensland's electoral system would require detailed consideration by a further inquiry and would have much broader implications than the issues under review as part of this inquiry. However, as the committee discussed in its issues paper, it was willing to receive evidence supporting the establishment of such a review.²⁸⁵

12.2 CONSULTATION

The committee's issues paper asked whether the electoral system should be reviewed to ensure that it is the most effective system to represent the diverse interests of the Queensland community. Of those who

²⁸⁰ Note 89.

²⁸¹ *Constitution of Queensland 2001* (Qld), ss 12-13.

²⁸² EARC, n 89 at para 4.19.

²⁸³ A Reilly; 'Dedicated seats in the Federal Parliament for indigenous Australians: The theoretical case and its practical possibility', *Balayi: culture Law and Colonialism*, Volume 2(1) 2001:73 at 87.

²⁸⁴ Note 252 at 46.

²⁸⁵ Note 12 at 22.

commented on this issue, the majority advocated review of the current system²⁸⁶ with some suggesting change to a system of proportional representation.²⁸⁷ Some participants at the South Brisbane public meeting felt that there was a problem with the current electoral system because it is not enabling Indigenous people to mobilise a critical mass.

A minority expressed the view that the current system was sufficiently representative.²⁸⁸

One specific issue raised during consultation was that the electoral district boundaries should be modified to better represent Aboriginal and Torres Strait Islander peoples, for example, by constituting the Torres Strait Islands as a separate electorate.²⁸⁹ The TSRA also submitted that: '*Recognition of a community of interest where there are large numbers of Torres Strait Islanders and Aboriginal people in existing electorates may be a factor for consideration in future redistributions*'.²⁹⁰

12.3 COMMITTEE POSITION

The committee does not believe that, at this stage, there should be a review examining alternatives to Queensland's electoral system of single representative electoral districts. However, the question of whether the current system is the most effective system to represent the diverse interests of the Queensland community, including the interests of Aboriginal and Torres Strait Islander peoples, should be revisited as part of the evaluation of Indigenous peoples' participation in Queensland's democratic processes: see recommendation 1. At this time, an assessment can be made of the effectiveness of other strategies recommended in this report.

Should there be a compelling need for any review of the electoral system before that time, this committee—the Legal, Constitutional and Administrative Review Committee—has the ability within its 'electoral reform' jurisdiction to initiate such a review.²⁹¹

Further, the committee has concerns about any proposal to modify electoral boundaries to better represent Aboriginal and Torres Strait Islander peoples. Queensland's *Electoral Act 1992* puts in place certain mechanisms designed to ensure free and democratic elections and maintain the integrity of the electoral system. In essence, the Act seeks to ensure that the number of voters in each electoral district is within 10 percent of the average number of voters in all districts ('the quota'), subject to a greater permissible deviation in districts of 100 000km² or more in area.²⁹²

A redistribution of electoral districts is triggered where one third or more electoral districts are out of quota for two months in a row.²⁹³ Factors which are required to be taken into account when the need for an electoral district redistribution arises include the extent to which there is a community of economic, social, regional or other interests within each proposed electoral district and the ways of communication and travel within each proposed electoral district.²⁹⁴

The committee does not, at this stage, advocate deviation from these mechanisms in the *Electoral Act*.

Two further considerations also argue against modifying the electoral district boundaries other than in accordance with current provisions of the *Electoral Act*.

²⁸⁶ See, for example, submissions nos 3, 24, 25, 32, 34, 36, 37, 44, 48 and 51.

²⁸⁷ See, for example, submissions nos 35, 38, and 46.

²⁸⁸ See, for example, submissions nos 9, 19 and 27.

²⁸⁹ This issue was raised at the committee's meeting with ATSIAB and the TSRA (and in the TSRA's submission no 39), and at the public meetings at Thursday Island and Townsville. The Torres Shire Council also submitted that a new electoral district be created comprising the area of the Shire of Torres and other lands: see submission no 40.

²⁹⁰ Submission no 39.

²⁹¹ *Parliament of Queensland Act 2001* (Qld), ss 85 and 88.

²⁹² *Electoral Act 1992* (Qld), s 45.

²⁹³ *Electoral Act 1992* (Qld), s 39. The need for a redistribution can also arise under ss 37 and 38 of that Act.

²⁹⁴ *Electoral Act 1992* (Qld), s 46(1).

First, it was made clear during consultation that Aboriginal and Torres Strait Islander people do not necessarily vote for an Indigenous candidate.²⁹⁵ There are other relevant factors such as family and clan ties,²⁹⁶ and, in some cases, the political party that the candidate is representing. Changing electoral boundaries will not alter such factors.

Secondly, any change in boundaries might also result in the further alienation of Indigenous people if they are isolated from their major service centre.

Recommendation 25 – Queensland’s electoral system

The question of whether Queensland’s current electoral system, based on single representative electoral districts, is the most effective system to represent the diverse interests of the Queensland community, including the interests of Aboriginal and Torres Strait Islander peoples, should be revisited as part of the evaluation of the effect of strategies on Aboriginal and Torres Strait Islander peoples’ participation in Queensland’s democratic processes: see recommendation 1.

²⁹⁵ Public meetings at Cairns and Cherbourg. See also, for example, submission no 41.

²⁹⁶ Public meeting at Rockhampton.

PART 3

LOOKING FORWARD

13. LOOKING FORWARD

The inquiry process does not stop with the handing down of this report.

It is the committee's intention that this inquiry will broaden interest in, and action on, strategies to enhance Aboriginal and Torres Strait Islander peoples' participation in democratic processes.

This report has been tabled in the Queensland Parliament for Parliament's consideration. The State Government is required by law to respond to the committee's recommendations in this report. Ministers to whom the committee's recommendations are directed must table a response to the committee's recommendations within three months of the report being tabled.²⁹⁷ Ministerial responses must set out any recommendations to be adopted and the way and time within which they will be carried out, and any recommendations not to be adopted and the reasons for not adopting them.²⁹⁸ Copies of ministerial responses are posted on the committee's website once tabled.

Even when these formal procedures have taken place, the committee urges all people to keep the issues discussed in the report alive and actively pursue implementation of strategies which will enhance Aboriginal and Torres Strait Islander peoples' participation in democratic processes. Indigenous and non-Indigenous peoples should call political parties and other bodies to account for action recommended in this report. The committee undertakes to actively monitor the effect of its recommendations.

The committee urges Aboriginal and Torres Strait Islander people to be actively involved in democratic processes. In particular, Aboriginal and Torres Strait Islander people should seek to take up positions in political parties, encourage those who show leadership potential and support the efforts of those who seek election. Aboriginal and Torres Strait Islander people who do seek election and are unsuccessful should not be deterred but stand again.

The recommendations in this report largely require the government to take action. However, all people must take responsibility for their own participation in democratic processes. In this regard, Indigenous and non-Indigenous Queenslanders, political parties, the Parliament and the government will be called to account for steps taken to ensure the State's first peoples are given a proper voice in democratic processes when an evaluation is conducted after three state electoral cycles or nine years, whichever is the later, as recommended in this report.

The committee is determined that this report will lead to positive outcomes for Aboriginal and Torres Strait Islander peoples and raise awareness of issues among non-Indigenous Queenslanders so that further progress can be made towards a reconciled community.

²⁹⁷ Or table an interim response within three months and table a final response within six months of the report being tabled: *Parliament of Queensland Act 2001* (Qld), s 107.

²⁹⁸ *Parliament of Queensland Act 2001* (Qld), s 107(3).

APPENDIX A: LIST OF SUBMISSIONS

SUB NO:	SUBMISSION FROM:
1	Mr N Stobbs, Barrister at Law
2	Ms Z Quakawoot
3	J A Wright
4	Department of Families
5	Ms A Jensen
6	Mr R Burns
7	Mr R Blackley
8	Electoral Commission Queensland
9	Mr M Collins
10	Ms R Lee Long MP (Member for Tablelands)
11	Legal Aid Queensland
12	Mr P Jerome
13	Mr G Jones
14	Ms L George
15	Mr R MacGregor (Not tabled)
16	Noonga Reconciliation Group
17	Mr L Murphy
18	Anti-Discrimination Commission Queensland
19	Mr C Feher
20	Mr J Wakely
21	Mr P Jull
22	Mr B Sheehy
23	Mr J Hendrick
24	Dr B Hocking and Ms C Magwaro
25	Ms T McPherson
26	Ms M Stainer (Not tabled)
27	Mr G McDonald
28	Mr P McMahan
29	Mr B Alexander
30	Gilbert + Tobin Centre of Public Law (University of New South Wales)
31	Ms D Bradshaw
32	Mr J Thompson
33	Ms L Stewart
34	Mr G Cannon
35	Ms P Nimmett
36	Ms L Barney

SUB NO:	SUBMISSION FROM:
37	Ms L Orcher
38	Mr H Bonney
39	Torres Strait Regional Authority
40	Torres Shire Council
41	Ms D Boyle MP (Member for Cairns)
42	Hon J Spence MP, Minister for Families, Minister for Aboriginal and Torres Strait Islander Policy, Minister for Disability Services and Minister for Seniors
43	Mr W Tait
44	Ms S Faulkner
45	Mr S Gorringer
46	Mr B Alexander (supplementary submission)
47	Aboriginal and Torres Strait Islander Commission (Queensland State Office)
48	Ms M Davey
49	Ms B Gambrill
50	Aboriginal Coordinating Council
51	Tableland Elders Local Justice Authority
52	Mr B Sheehy (supplementary submission)
53	Mr R Carr
54	Mr L Springborg MP (Leader of the Opposition)
55	Australian Labor Party (Qld)
56	Education Queensland

APPENDIX B: PUBLIC MEETINGS

Public meeting dates and committee attendance

Friday 4 April – Ipswich

Peter Lawlor, Rachel Nolan, Liz Cunningham, Dorothy Pratt

Monday 7 April – South Brisbane

Karen Struthers, Peter Lawlor, Rachel Nolan

Wednesday 9 April – Deception Bay

Karen Struthers, Peter Lawlor

Friday 11 April – Cleveland

Karen Struthers, Rachel Nolan, Dorothy Pratt

Friday 2 May – Toowoomba

Karen Struthers, Ronan Lee, Dorothy Pratt

Wednesday 7 May – Thursday Island

Karen Struthers, Fiona Simpson, Peter Lawlor, Liz Cunningham, Dorothy Pratt

Thursday 8 May – Cairns

Karen Struthers, Fiona Simpson, Peter Lawlor, Liz Cunningham, Dorothy Pratt

Friday 16 May – Nerang

Karen Struthers, Peter Lawlor, Rachel Nolan

Monday 19 May – Roma

Karen Struthers, Liz Cunningham

Monday 19 May – Charleville

Ronan Lee, Rachel Nolan

Wednesday 11 June – Rockhampton

Karen Struthers, Rachel Nolan

Thursday 12 June – Mackay

Karen Struthers, Peter Lawlor, Rachel Nolan

Monday 16 June – Townsville

Peter Lawlor, Dorothy Pratt

Monday 16 June – Mt Isa

Rachel Nolan

Wednesday 18 June – Cherbourg

Karen Struthers, Rachel Nolan, Dorothy Pratt

Wednesday 30 July – Logan

Karen Struthers, Rachel Nolan

APPENDIX C: EXISTING BODIES

Aboriginal and Torres Strait Islander Commission (ATSIC): The Aboriginal and Torres Strait Islander Commission is a Commonwealth agency that was established in 1990 under the *Aboriginal and Torres Strait Islander Commission Act 1989* to further the interests of Australia's Indigenous peoples.

It is Australia's principal democratically elected Indigenous organisation. Every three years Aboriginal and Torres Strait Islander people elect local representatives to thirty-five regional councils around Australia. The regions are grouped into sixteen zones and the councillors in each zone elect a Commissioner to sit on the ATSIC Board. An additional commissioner is elected from the Torres Strait to also sit on the ATSIC Board.

Through this network of Councillors and Commissioners, ATSIC advises Commonwealth, state, territory and local governments on Aboriginal and Torres Strait Islander issues. ATSIC is the main Commonwealth agency responsible for administering Aboriginal and Torres Strait Islander programs and monitors the performance of other government agencies providing services to Indigenous peoples.²⁹⁹

A Commitment to Partnership between the Government of Queensland and the Queensland State Policy Council, Aboriginal and Torres Strait Islander Commission was entered into in July 2002. The aim of the commitment to partnership is to 'enhance negotiated outcomes and to protect and respect the inherent rights of Aboriginal peoples and Torres Strait Islanders and to significantly improve the health, education, living standards, and wealth of Aboriginal peoples and Torres Strait Islanders'.³⁰⁰

Torres Strait Regional Authority (TSRA): The Torres Strait Regional Authority is a Commonwealth agency that was established in 1994 under the *Aboriginal and Torres Strait Islander Commission Act 1989* to strengthen the economic, social and cultural development of the Torres Strait to improve the lifestyle and social wellbeing of Torres Strait Islanders and Aboriginal peoples living in the region.³⁰¹

The TSRA has the same responsibilities as ATSIC, except they relate to Torres Strait Islanders and Aboriginal people living in the Torres Strait Region. The TSRA Board consists of 20 members. The TSRA Board elects a commissioner to represent the Torres Strait Region on the ATSIC Board and the Torres Strait Islander Advisory Board.

The TSRA is also the Native Title Representative Body for the region and established the TSRA Native Title Office in 1996 to provide assistance to traditional owners in pursuing recognition of their native title rights and in on-going land management issues impacting upon native title rights.

Aboriginal Coordinating Council (ACC) and Aboriginal Community Councils:³⁰² The ACC is established under the *Community Services (Aborigines) Act 1984* and is the secretariat body and local government to the fifteen Deed of Grant in Trust Communities across Queensland. Aboriginal Community Councils head each of these communities. Functions of the ACC may include providing advice and establishing businesses relating to the promotion, progress, development and wellbeing of Aborigines.

The Aboriginal Community Councils are elected every four years by residents of their own community. Each of the councils elects a member of their council to represent their community on the Aboriginal Coordinating Council.

²⁹⁹ <www.atsic.gov.au>, August 2002.

³⁰⁰ *Commitment to Partnership between the Government of Queensland and the Queensland State Policy Council Aboriginal and Torres Strait Islander Commission*, July 2002. In this document 'inherent rights' are defined to mean autonomy rights, peoplehood or identity rights and territory and resource rights.

³⁰¹ <www.tsra.gov.au/www/index.cfm>, October 2002.

³⁰² <www.accq.org.au/org/main.htm>.

Island Coordinating Council (ICC) and Torres Strait Island Community Councils: The ICC represents the seventeen Torres Strait Island Community Councils established under the *Community Services (Torres Strait) Act 1984* and includes one non-council community representative for people from certain communities on Thursday Island (Tamwoy, Rosehill, Aplin, Wyabin and Quarantine).³⁰³ The ICC's responsibilities include providing advice and establishing businesses relating to the promotion, progress, development and wellbeing of Torres Strait Islanders.³⁰⁴

The Island Community Councils are elected every four years by residents of their own community. The chairperson of each island community council represents their community on the Island Coordinating Council.

Aboriginal and Torres Strait Islander Advisory Board (ATSIAB): ATSIAB was established in May 1999 to advise the Queensland Government on the development and implementation of policy relating to Aboriginal and Torres Strait Islander peoples in Queensland.³⁰⁵

The Board replaced the Indigenous Advisory Council which was established in 1997 from an amalgamation of the Aboriginal and Torres Strait Islander Overview Committee and the Aboriginal Justice Committee. These two committees were established in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Board's responsibilities included providing advice relating to the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and representing Queensland on the National Justice Advisory Committee.

The fifteen members of the Board were appointed by the Minister for Aboriginal and Torres Strait Islander Policy and included Indigenous peoples from across Queensland with a wide range of experience.

The Board is now dissolved.

³⁰³ *Community Services (Torres Strait) Act 1984*, s 140.

³⁰⁴ *Community Services (Torres Strait) Act 1984*, s 141.

³⁰⁵ *Report on the First Aboriginal and Torres Strait Islander Advisory Board 1999-2001*.