

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

A preamble for the Queensland Constitution?

REPORT

November 2004

Report No. 46

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

51ST PARLIAMENT

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

REPORTS

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1. Annual report 1995-96	8 August 1996
2. Report on 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. Report on the Electoral Amendment Bill 1996	20 March 1997
6. Report on the 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. <i>The Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	19 July 2000
27. Review of the Queensland Constitutional Review Commission's recommendation for four year parliamentary terms	28 July 2000
28. The prevention of electoral fraud: Interim report	14 November 2000
29. Annual report 2000-01	2 August 2001
30. Progress report on implementation of recommendations made in the Report of the strategic management review of the Offices of the Queensland Ombudsman and the Information Commissioner	8 August 2001
31. Review of the Members' oath or affirmation of allegiance	25 October 2001

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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 2001/2002	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 2002/2003	21 August 2003
41. Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution	27 August 2003
42. Hands on Parliament: A parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes	11 September 2003
43. Meeting with the Queensland Ombudsman (25 November 2003) and final report on implementation of recommendations made in the <i>Report of the Strategic Management Review of the Offices of the Queensland Ombudsman and the Information Commissioner</i>	17 December 2003
44. Meeting with the Queensland Ombudsman ~ 11 May 2004	17 June 2004
45. Annual Report 2003/2004	19 August 2004

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	12 December 2002
A preamble for the Queensland Constitution?	17 June 2004

CHAIR'S FOREWORD

This review, *A preamble for the Queensland Constitution?*, has been the final in a series undertaken by the Legal, Constitutional and Administrative Review Committees of the 49th, 50th and now 51st Parliaments. Those reviews have considered recommendations made by the Queensland Constitutional Review Commission. This review relates to the Commission's recommendation that there should be a preamble to the Queensland Constitution affirming certain values widely-held by the people of Queensland.

During the course of this review, the committee has been told by many that the enactment of a preamble to the Queensland Constitution would create an opportunity for a strong unifying statement of the aspirations and values shared by Queenslanders. Responses also indicated, however, that finding consensus about those values and aspirations is a very difficult task.

The committee is of the view that the Queensland Constitution, in its present form, should not contain a preamble at this stage. Reasons for this conclusion, which are detailed in this report, include: insufficient public support and consensus; concerns about the legal effect of a preamble; queries as to whether the extensive consultation required to develop the form and text of a preamble is an effective use of resources; and the likelihood of having to revisit any preamble if there is a change to a republican system of government.

Nevertheless, the public submissions received by the committee to this inquiry, together with the transcript from a roundtable forum with members of the Australian Association of Constitutional Law (Queensland Chapter) constitute significant deliberation on the issue of a preamble to the Queensland Constitution, and the form and content of such a preamble. Those deliberations will be important to future consideration of these matters in Queensland.

The committee's decision not to recommend the enactment of a preamble will no doubt disappoint many members of Indigenous communities and organisations that responded to the review. Many Indigenous people and organisations regarded a preamble as a potential vehicle for reconciliation in so far as it could provide constitutional recognition of Aboriginal peoples and Torres Strait Islanders. The committee has sympathy for that view, and notes in this regard the recent amendment to Victoria's Constitution recognising Aboriginal peoples. Similar substantive amendment to Queensland's Constitution is an alternative mechanism to that of a preamble which could be considered by the government in the interests of further fostering reconciliation with Indigenous Queenslanders.

On behalf of the committee, I thank all those who have contributed to this review.

I thank also my fellow committee members for their constructive contributions to this review.

Finally, on behalf of all committee members I would also like to thank the secretariat staff for their assistance throughout the inquiry, in particular, Kerryn Newton and Julie Copley.

Dr Lesley Clark MP
Chair

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1. INTRODUCTION

1.1 CONTEXT

On 29 February 2000, the Premier tabled in the Queensland Legislative Assembly the *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution* prepared by the Queensland Constitutional Review Commission (the ‘QCRC’).¹ The Premier stated that he tabled the QCRC’s report for ‘*consideration and reporting*’ by the Legal, Constitutional and Administrative Review Committee (‘LCARC’ or ‘the committee’).²

The LCARCs of the 49th and 50th Parliaments progressively reviewed the QCRC’s recommendations.

The final QCRC recommendation to be reviewed by LCARC is that there should be a preamble to the Queensland Constitution. The *Constitution of Queensland 2001* (‘the Queensland Constitution’) does not presently contain a preamble.

The preamble recommended by the QCRC is set out below.³

Since the Australia Acts 1986 no law made by the Parliament of the United Kingdom shall extend to the State of Queensland.

Previously the Parliament of the United Kingdom was the ultimate authority for the Acts, Laws and Documents relating to the Constitution of the State of Queensland.

We, the people of Queensland wish to continue as free and equal citizens under the Rule of Law, and to be governed in accordance with the democratic processes contained in this Constitution.

And being within the federal Commonwealth of Australia, we recognise we are subject also to its Constitution.

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

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

We declare that we respect the land and the environment we all share.

The LCARC of the 50th Parliament had proposed not to pursue the issue of whether the Queensland Constitution should include a preamble.⁴ However, the Premier subsequently wrote to that committee asking that it reconsider its position.⁵

1.2 THIS COMMITTEE’S REVIEW

In May 2004, the newly-formed LCARC of the 51st Parliament resolved to consider the QCRC’s recommendations regarding a preamble.

A report of the LCARC of the 50th Parliament related to that committee’s *Hands on Parliament* inquiry into Aboriginal and Torres Strait Islander peoples’ participation in Queensland’s democratic processes.⁶ One of the issues canvassed in that report was constitutional recognition of Aboriginal peoples and Torres Strait Islanders in a preamble to the Queensland Constitution.

¹ Brisbane, Goprint, February 2000. Available at <www.constitution.qld.gov.au>.

² In a ministerial statement to the Legislative Assembly.

³ QCRC, n 1 at 29, Recommendations 3.1 and 3.2.

⁴ LCARC, issues paper, *The Queensland Constitution: Specific Content Issues*, Brisbane, Goprint, April 2002 at 4.

⁵ By letter dated 22 April 2002.

⁶ Report no. 42, *Hands on Parliament: A parliamentary committee inquiry in Aboriginal and Torres Strait Islander peoples’ participation in Queensland’s democratic process*, Goprint, Brisbane, September 2003. Available at: <www.parliament.qld.gov.au/Committees/LCARC/LCARCHandsonParl.htm>.

To inform its inquiry process regarding a preamble to the Queensland Constitution, this committee sought the views of a number of persons and organisations involved in the former committee's *Hands on Parliament* inquiry. This initial feedback supported recognition of Aboriginal peoples and Torres Strait Islanders in the preamble and indicated the need for wide community consultation in this regard.

In June 2004 the committee released an issues paper to facilitate a call for public submissions on relevant issues.⁷ This paper:

- provided background information regarding: preambles generally; previous comment on the issue of a preamble for the Queensland Constitution; and the 1999 referendum for a preamble to the Australian Constitution;
- asked the threshold issue of whether the Queensland Constitution should contain a preamble and, if so: (a) whether the QCRC's preamble should be adopted; and (b) if the QCRC's preamble is not to be adopted, what generally should the nature of a preamble be;
- discussed a range of elements which could be included in a preamble;
- asked how the text of a preamble should be developed around those elements and what consultation should occur; and
- raised various options as to how a preamble might be adopted.

The committee advertised this call for submissions in *The Courier-Mail*, *The Australian*, *Bundaberg's News Mail*, *Cairns Post*, *Gladstone's Observer*, *Gold Coast Bulletin*, *Queensland Times*, *Mackay's Daily Mercury*, *Rockhampton's Morning Bulletin*, *Sunshine Coast Daily*, *Townsville's Bulletin*, *Toowoomba's Chronicle*, and *Mt Isa's North West Star*.

Further measures adopted by the committee to ensure public input included:

- writing to approximately 800 persons and organisations identified as having an interest in the issues under inquiry and inviting their comments on the issues paper;
- the issue of a media release;
- posting the committee's call for public submissions on the Queensland Government's 'Getinvolved' website⁸ and other on-line gateways;⁹ and
- sending copies of the issues paper and a 'flyer' to public libraries around Queensland.

In response to this call for public input, the committee received 134 submissions.

A list of persons who and organisations that made submissions to the committee's inquiry appears as **Appendix A** of this report. Those submissions that the committee has authorised for publication and which have been tabled can be viewed at the Bills and Papers Office, Parliament House, Brisbane.

In addition, on 17 August 2004, the Queensland Chapter of the Australian Association of Constitutional Law and the committee jointly hosted a round-table discussion at which the issues raised in the committee's issues paper and other relevant issues were discussed (the 'AACL roundtable').¹⁰

⁷ *A Preamble for the Queensland Constitution?*, Brisbane, Goprint, June 2004. Available at: <www.parliament.qld.gov.au/Committees/LCARC/LCARCHandsonParl.htm>.

⁸ At: <www.getinvolved.qld.gov.au>.

⁹ Such as ABC on-line youth, rural, indigenous and arts gateways.

¹⁰ See Legal, Constitutional and Administrative Review Committee and Queensland Chapter, Australian Association of Constitutional Law, *Preamble to the Queensland Constitution*, Transcript of Proceedings, 17 August 2004, Brisbane.

1.3 THIS REPORT

Chapter 2 of this report provides background information regarding: the function of a preamble; the legislative history of a preamble to the Queensland Constitution; and prior reviews relevant to a preamble to the Queensland Constitution.

Chapter 3 discusses the threshold issue of whether the Queensland Constitution should contain a preamble. The committee recommends in this chapter that the Queensland Constitution should not contain a preamble at this stage.

2. BACKGROUND INFORMATION

2.1 THE FUNCTION OF A PREAMBLE

Most statutes enacted by Parliaments today do not contain a preamble. Where an Act does have a preamble, its purpose is as an introduction, setting out the reasons for the enactment of the statute and stating matters which may allow the provisions of the Act to be better understood.¹¹ The preamble might further indicate ‘*how various ambiguous enactments may be restrained or enlarged to better reflect the intention of Parliament*’.¹²

The Australian Constitution itself does not contain a preamble. However, there is a preamble to the *Commonwealth of Australia Constitution Act 1900* (UK) which contains the Australian Constitution. That preamble provides:

Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established.

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

When enacted, the various constitutional enactments of the states included preambles which provided historical background. With the exception of the preambles to the *Constitution Act 1975* (Vic) and the *Constitution Act 1934* (Tas), these preambles were repealed when the constitutional statutes of each state were consolidated.

In a submission to the committee, Professor George Winterton observed that:

*Unlike many national constitutions, such as those of the United States, Ireland, India and South Africa, the Commonwealth Constitution ... deals mainly with the structure, machinery and powers of government. Consequently, it is expressed rather prosaically, and has a Preamble which essentially explains tersely how the Constitution came to be enacted, making no allusion to social or political values, with the exception of an invocation of ‘the blessing of Almighty God’. Australian State constitutions focus almost entirely on the machinery of government.*¹³

However, a preamble to a constitution may have a more extensive role. It may set out the beliefs and values which are accepted by the people in adopting the Constitution.¹⁴ Accordingly, 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 to a constitution might also seek to unify and promote shared commitment to that constitution. It can be symbolic, inspirational or aspirational in nature.

Sir Harry Gibbs, a former Chief Justice of the High Court, has identified the differing historical and societal circumstances surrounding the enactment of constitutions of other overseas jurisdictions and the Australian Constitution:

This wide view, that the preamble to a Constitution may have a symbolic effect, and should reflect ... contemporary beliefs, values and aspirations, has been supported by reliance on the precedent said to be provided by the Constitution of the United States, and by other more modern Constitutions, including those of Ireland and South Africa.

¹¹ See, for example, *Wacando v Commonwealth* (1981) 37 ALR 317 at 327 and 333; DC Pearce and RS Geddes, *Statutory Interpretation in Australia*, 5th ed, Butterworths, Sydney, 2001 at paras [1.27] and [4.39]; and Rt Hon Sir Harry Gibbs, GCMG, AC, KBE, ‘A Preamble: The Issues’, Proceedings of the Samuel Griffith Society, Volume 11, Chapter 4 at 1, available at: <[www.samuelgriffith.org.au/papers/html/volume 11/v11chap4.htm](http://www.samuelgriffith.org.au/papers/html/volume%2011/v11chap4.htm)>.

¹² A Winckel, ‘The contextual role of a preamble in statutory interpretation’, *Melbourne University Law Review*, Vol 23, 1999, 184-210 at 186.

¹³ Submission no. 104 at 1.

¹⁴ A majority of the delegates to the Commonwealth Constitutional Convention believed that this was the form that a preamble to the Commonwealth Constitution should take: Constitutional Convention, *Report of the Constitutional Convention: Volume 1 – Report of Proceedings*, CanPrint Communications Pty Limited, Canberra, 1998 at 46-47.

*Those preambles stated the purposes for which a new and independent nation was being created (as in the US and Ireland) or an entirely new order of society was being brought into existence (as in South Africa). This, of course, is not the situation in Australia.*¹⁵ [Emphasis added.]

2.2 LEGISLATIVE HISTORY OF A PREAMBLE TO THE QUEENSLAND CONSTITUTION

When enacted, the *Constitution Act 1867* (Qld) contained a very lengthy preamble which made certain statements to allow that Act's provisions to be better understood and was certainly not aspirational in nature. Those statements related to the:

- power of alteration of the Constitution;
- giving or withholding of assent to bills;
- disallowance of bills assented to;
- assent to bills reserved;
- Governor conforming to instructions from 'Her Majesty';
- extending the Governor's powers as to giving or withholding the royal assent; and
- reservation of bills.

A copy of that preamble appears as **Appendix B**.

In its submission to the committee, the Bar Association of Queensland, noted that:

*At the time of the enactment of the Constitution Act 1867, that preamble served the useful purpose of highlighting measures then relevant to Queensland constitutional law and also the consolidating purpose of that Act. Over time, with amendments to the Constitution Act 1867, the evolution of Queensland from British colony to a State within the Commonwealth of Australia and the latter's emergence as an independent nation, that preamble became, increasingly, something of an anachronism. There was certainly a basis for its repeal.*¹⁶

The *Constitution of Queensland 2001* was enacted with the object of declaring, consolidating and modernising the language of the Constitution of Queensland.¹⁷ It repealed the preamble to the *Constitution Act 1867* for the reasons identified by the Bar Association in its submission.

2.3 PRIOR REVIEWS RELEVANT TO A PREAMBLE TO THE QUEENSLAND CONSTITUTION

Prior to this review of the QCRC's recommendations by the LCARC of the 51st Parliament, the issue of a preamble to the Queensland Constitution was raised by:

- the Queensland Constitutional Convention (see section 2.3.1);
- the QCRC (see sections 1.1 and 2.3.2); and
- the LCARC of the 50th Parliament (see section 2.3.3).

The issue of whether the existing preamble to the Australian Constitution should be replaced was put to the people of Australia in a referendum in 1999 (see section 2.3.4).

¹⁵ Gibbs, n 11 at 2. Sir Harry Gibbs further notes, however, that the '*Preamble to the Constitution of the United States does not do more than state (eloquently) the purposes for which that Constitution was ordained and established*', and that the US Constitution was considered closely by those who drafted the Commonwealth Constitution but that the preamble was not followed by them as a precedent.

¹⁶ Submission no. 84 at 2.

¹⁷ Section 3. However, some provisions from earlier constitutional enactments were not consolidated because of special additional procedures, including approval by the majority of electors at a referendum, that might be required: see the note to s 3.

2.3.1 The Queensland Constitutional Convention

The Queensland Constitutional Convention was held in June 1999 in Gladstone. A conclusion reached at that Convention was that each State's constitution should include a concise, inspirational and aspirational preamble acknowledging the past, the custodianship of Indigenous peoples and equality before the law. That convention also identified '*a need to achieve a broad consensus on shared values to be included in the preamble through real and genuinely wide consultation with the people*'. It was suggested that a preamble '*should give a sense of what sort of society we want to be*'.¹⁸

2.3.2 The Queensland Constitutional Review Commission

The QCRC was established in May 1999 to investigate whether there should be reform of and changes to the Queensland Constitution through a major program of community consultation conducted by a Constitutional Review Commission. Chaired by Emeritus Professor Colin Hughes, the QCRC distributed an issues paper and held public meetings throughout Queensland.

On 1 February 2000, the Commission delivered its report to the Queensland Premier.

In that report, the QCRC recommended that there should be a preamble to the Queensland Constitution which should '*affirm certain widely-held values*'.¹⁹

The preamble the QCRC recommended for adoption in Queensland is set out in section 1.1.

2.3.3 Hands on Parliament – LCARC report no. 42

In its *Hands on Parliament* inquiry, the LCARC of the 50th Parliament considered Aboriginal peoples' and Torres Strait Islanders' participation in Queensland's democratic processes. In its report, the former committee noted that it had been:

... 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. 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.*²⁰

Accordingly, the former committee recommended that:

*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.*²¹

2.3.4 The 1999 referendum for a preamble to the Australian Constitution

A Commonwealth Constitutional Convention met in February 1998 (the 'Commonwealth Constitutional Convention'). Although primarily a forum for discussion about an Australian republic, the Commonwealth Constitutional Convention recommended that the Australian Constitution contain a new preamble.²²

¹⁸ Queensland Constitutional Convention, *Communiqué*, available at: <www.constitution.qld.gov.au/communique.htm>. See also QCRC, n 1 at 29-30.

¹⁹ QCRC, n 1 at 29, Recommendation 3.2.

²⁰ Note 6 at 20.

²¹ Note 6 at 21, Recommendation 2.

²² For a detailed discussion of earlier calls for a preamble to the Australian Constitution and the events surrounding, and subsequent to, the 1999 referendum on the issue, see M Mc Kenna, A Simpson, and G Williams, 'With Hope in God, The Prime Minister and the Poet: Lessons from the 1999 Referendum on the Preamble', *UNSW Law Journal*, vol 24, 2001 at 401-419.

It further recommended elements which should be contained in such a preamble, and those which should be considered for inclusion.²³

Following the Commonwealth Constitutional Convention's report,²⁴ the preamble to the Australian Constitution was the subject of significant public discussion in Australia. This discussion was facilitated by:

- a Preamble Quest run by the Constitutional Centenary Foundation to give Australians an opportunity to say what they would like in the preamble;²⁵
- a draft preamble, prepared in conjunction with poet Les Murray and in consultation with historian Geoffrey Blainey and two members of the staff of the Prime Minister's Office, released by the Prime Minister in March 1999;²⁶ and
- a revised draft preamble, developed following a change in the balance of power in the Senate on 1 July 1999 and with the involvement of the then new Democrat spokesperson on reconciliation, Senator Aden Ridgeway.

On 6 November 1999 Australians voted on two referendum proposals. The first was to change the Australian Constitution to create a republic. The second was to add a preamble to that Constitution.

The preamble put to the people was the revised draft preamble contained in **Appendix C** and, in accordance with a recommendation of the Commonwealth Constitutional Convention, the referendum question encompassed an amendment to the Constitution itself to provide that the preamble would have no legal effect and could not be used to interpret the Constitution or any other law.²⁷

Neither referendum proposal received the approval of a majority of electors in a majority of states as required to amend the Australian Constitution. In relation to the proposed preamble, nationally, 60.66% of people voted 'no'. Voters in Queensland registered the highest 'no' vote of all the states and territories, with 67.19% of the voting population voting against the proposal.²⁸

²³ These are set out in this committee's issues paper, n 7 at 4.

²⁴ Note 14.

²⁵ The Constitutional Centenary Foundation was an independent body established to encourage public understanding of the Constitution and participation in discussions about it in the approach to the centenary of federation in 2001.

²⁶ Constitution Alteration (Preamble) 1999 (Cth) Exposure Draft, released 25 March 1999, reproduced in McKenna, Simpson and Williams, n 22 at 406.

²⁷ Constitution Alteration (Preamble) Bill 1999 (Cth). Clause 4 of this bill sought to insert a new s 125A into the Constitution. See criticisms of the proposed s 125A by L Behrendt, *Achieving Social Justice – Indigenous rights and Australia's future*, The Federation Press, Sydney, 2003 at 143.

²⁸ The referendum results can be accessed at <www.aec.gov.au/_content/how/newsfiles/news87.htm>.

3. THE THRESHOLD ISSUE

The threshold issue to be considered by the committee was whether the Queensland Constitution should contain a preamble. Considerations relevant to this determination were identified in the committee's issues paper, in public submissions in response to that issues paper, and at the AACL roundtable. These considerations include:

- the need for a preamble to the Queensland Constitution;
- the function of a preamble;
- whether the focus should be on a national preamble rather than at the state level;
- the symbolic, inspirational or aspirational objectives that might be achieved by a preamble;
- the likelihood of public support for the inclusion of a preamble to the Queensland Constitution;
- competing needs for constitutional, parliamentary and/or electoral reform in Queensland;
- the impact any future move to an Australian republic might have on a preamble developed at present; and
- whether a preamble might be an appropriate vehicle to provide constitutional recognition of Aboriginal peoples and Torres Strait Islanders.

3.1 SUBMISSIONS AND AUSTRALIAN ASSOCIATION OF CONSTITUTIONAL LAW ROUNDTABLE

3.1.1 The general approach taken by submissions

The committee received 134 submissions to its inquiry. A list of those submissions is set out as **Appendix A** to this report.

Of the submissions received, 52 apparently followed a pro forma response and essentially addressed the bare threshold question only. They stated that the Queensland Constitution should not contain a preamble, and these submissions then commonly indicated that it was unnecessary to address any of the remaining issues.²⁹

Of the remaining submissions, there was a mixed response to the threshold issue of whether the Queensland Constitution should contain a preamble. Issues and arguments canvassed by those submissions and put forward at the AACL roundtable are set out below.

3.1.2 The function of a preamble to the Queensland Constitution

In section 2.1, reference was made to the function of a preamble to a statute. In relation to the threshold issue of whether there should be a preamble to the Queensland Constitution some of the submissions received by the committee, and some of the participants at the AACL roundtable, considered whether a constitutional preamble could:

- set out the reasons for enactment (see section 3.1.2.1);
- introduce the Constitution (see section 3.1.2.2); and
- assist with statutory interpretation (see section 3.1.2.3).

²⁹ A number of these submissions had, as an attachment, a response to the issues raised by the committee's issues paper prepared by Ms Rosa Lee Long MP: see submission nos. 59, 70, 72, 113, 114 and 129. Ms Lee Long's own submission (submission no. 40), however, adopted the pro forma response. Senator Len Harris had likewise circulated the committee's feedback form with a covering letter suggesting how to respond by way of the committee's feedback form: see submission no. 120 and the attachment to that submission.

3.1.2.1 To set out the reasons for enactment

At the AACL roundtable, Professor Gerard Carney, Bond University, stated:

I think that the purpose of a preamble in most constitutions is to state a development in the Constitution. It might be a revolution or independence or a republic.

I think that is the clearest and strongest basis for having a preamble, one that explains that there has been a constitutional step taken here, whether that is federation or a republic, and we are acknowledging that...

In the case of the current Queensland Constitution, it is an inadequate Constitution in that it does not explain the constitutional system in terms which we would use to describe a constitution today. It is a 19th century historical animal that... barely relates to or explains the system.³⁰

In the same way, in its submission to the committee, the Bar Association of Queensland observed that, in Queensland, a newly-enacted preamble to previously enacted constitutional statutes could not set out reasons for the enactment of those constitutional statutes: *‘The proposed preamble does not serve the traditional end of a preamble in explaining why the legislation was considered desirable.’³¹*

3.1.2.2 To introduce the Constitution

Submissions from three constitutional lawyers suggested that a preamble could be an introduction to the Queensland Constitution.

Professor George Winterton, The University of Sydney, said that he believes that State Constitutions should include preambles which recite the circumstances leading to the foundation of the polity and enactment of the Constitution, and core civic values which enjoy virtually universal support. In this way:

Just as a book or article is enhanced by an introduction setting the context of the material discussed, so a constitution should include a Preamble which explains concisely the circumstances leading to its adoption and the core governmental features of the society which it governs.³²

Mr Geoffrey Fisher, QUT Law School, submitted that:

A preamble to the Queensland Constitution should serve the purpose of providing a brief introduction to the text, alluding to the origins of the Constitution and the fundamental assumptions that underlie it.³³

Mr John Pyke, also from QUT Law School, suggested that the Queensland Constitution is in need of an *‘improved introductory note’* to assist comprehension of the Constitution, particularly for those who are not lawyers. Mr Pyke urged the committee to consider the need for a preamble to explain clearly that:

- (i) the State Constitution is subject to the Commonwealth Constitution ... and that*
- (ii) the full “Constitution” of Queensland really consists of this [consolidated] Act plus the remaining sections of the Acts of 1867, 1890 and 1934, which are reproduced for convenience of reading in the Attachments.³⁴*

3.1.2.3 To assist with the interpretation of the Constitution

In its issues paper, the committee made the following observations:³⁵

³⁰ Transcript, n 10 at 4.

³¹ Submission no. 84 at 6.

³² Submission no. 104 at 3.

³³ Submission no. 105 at 2.

³⁴ Submission no. 68.

³⁵ Note 7 at 8.

[A] preamble does not have the same legal effect as a substantive provision of a Constitution. A preamble will be used to determine a legal question only where it assists in resolving existing ambiguity in operative provisions.³⁶ It does not create substantive rights or obligations.

However, a preamble's 'symbolic aspect may assist in the interpretation of the constitution itself by providing normative guidance'; that is, 'a preamble can be used in constitutional interpretation and in the construction of statutes and the development of the common law as a legally useful statement of fundamental values'.³⁷

At the ACL roundtable, Mr Robert Campbell, Deputy Crown Solicitor confirmed that the preamble could be used for interpretative purposes and suggested that the value of the preamble would be significantly diminished if this was not in fact the case.

A preamble is of course part of the statute that would be the Constitution of Queensland. It can be used for interpretive purposes. What then is its function? Is it an aspirational lead-in to the actual Constitution document, or is it really to have some substantial material impact upon the interpretation of the Constitution? That is the query that I would have for the committee, because if in fact there is going to be some broad policy or broad constitutional statement as to the intent of the preamble and it is of such generality as to be of no real material benefit in the interpretation of the Constitution itself, then its purpose would really be elusive to me anyway – that is, from a technical legal aspect and a constitutional sense. So unless the preamble is to be used as an interpretive guide or aid to the Constitution itself...its purpose is elusive.³⁸

However, the Bar Association of Queensland's submission maintained that 'the proposed preamble offers no improvement to the existing law in terms of interpretation':

... The long title of the Queensland Constitution is exactly descriptive of what the statute is – "An Act to consolidate particular laws relating to the Constitution of the State of Queensland". Those laws reflect our heritage and it is beyond argument that the Queensland Constitution would be interpreted in the light of that heritage and against the background of a presumption that no alteration to fundamental common law doctrines (which include native title), liberties and privileges was intended.³⁹

In her submission, Mrs Sally-Anne Irvine said that:

...if such an addition is to become a part of our Constitution then it should be approached very carefully. I am concerned that the original intention of those who first put our Constitution together may be lost.⁴⁰

A number of submissions received by the committee went further and argued that uncertainty about the legal use that might be made of the preamble in fact provided a strong argument against a preamble to the Queensland Constitution. For example, Senator Len Harris in his letter to constituents said:

I, as the Queensland Senator for One Nation, am totally against the addition of a preamble to the Queensland Constitution. I also believe that the addition of a preamble must go to a referendum of all eligible voting people in the State of Queensland for a democratic decision before any change can be implemented. The reason for this is that a preamble can totally change the meaning of the Constitution, giving the Queensland Government powers that we may not want them to have.

The Queensland Constitution has served the people of Queensland since 1867, almost 150 years. The constitution as it stands has provided governments of all persuasions with sufficient power to legislate for the benefit of Queensland of the past and there is no reason that it will not in its present form continue to do so.⁴¹

³⁶ G Craven, 'The Constitutionality of the Unilateral Secession of an Australian State', *Federal Law Review*, vol 15, 1984, 123-135 at 126.

³⁷ McKenna, Simpson and Williams, n 22 at 399.

³⁸ Transcript, n 10 at 2.

³⁹ Submission no. 84 at 5.

⁴⁰ Submission no. 64.

⁴¹ Attached to submission no. 31.

Dr Bruce Flegg MP was another who advanced this view:

I am opposed to the inclusion of a preamble in the Queensland Constitution ... The preamble may in certain circumstances alter the interpretation of the Constitution ...

Should a preamble be included in my view it is imperative that it should not have legal standing to interpret other provisions of the Constitution.

*I would consider this a great intrusion into the liberty and democratic processes of Queenslanders if their Constitution would have its interpretation altered by the inclusion of a preamble.*⁴²

In its issues paper, the committee had noted that, at the Commonwealth Constitutional Convention, concern over the possible legal effect of a preamble to the Australian Constitution led to a recommendation that, if a preamble were to be added to that Constitution, a provision should also be added to the Constitution stating that the preamble should not be used to interpret the other provisions of the Constitution.⁴³

Accordingly, issue 6 in the issues paper asked, ‘*Should the Queensland Constitution specifically state that the preamble cannot be used to interpret other provisions of the Constitution?*’⁴⁴

Most submissions which addressed the interpretive use that might be made of a preamble did so in response to that issue. Some submissions which addressed issue 6 agreed that, if a preamble is to be included in the Queensland Constitution, so should a provision limiting the legal effect of the preamble.⁴⁵ Dr Paul Reynolds, for example, stated:

*The preamble is aspirational – a statement of what we believe about ourselves. To make it justiciable risks over codifying these beliefs and/or imposing a legalistic interpretation on them.*⁴⁶

However, most submissions addressing issue 6 said that such a provision would not be necessary.⁴⁷ They suggested that to enact such a provision ‘*would diminish the reason for the preamble and any messages or values it contained*’,⁴⁸ or would impact upon accountability.⁴⁹ In particular, the theme of accountability came through strongly, and the submission of Mr R Paul Carew provides an illustration of these concerns:

*A specific denial or exclusion of interpretations of the Preamble in the Constitution from use in a Court of Law which may influence any decisions arising there from could be detrimental to an Individual and or to the People of Queensland. In addition such exclusion could place excessive power in the hands of a Queensland Government.*⁵⁰

With reference to the provision which the Commonwealth Constitutional Convention recommended be added to the Australian Constitution, Mr John Pyke made the following comments at the ACL roundtable:

*[A]t the time that that amazing preamble and the amazing clause saying it would have no effect were being discussed, there was a lot of doubt about whether such a clause would really stop the High Court from using the preamble in a fine-cut case because the overriding principle of statutory interpretation is that every section of a statute has to be interpreted in the context of the whole statute and, despite a clause like that, the preamble would still be a part of the context of the whole statute, and there were many people who anticipated that, at least, the fairly activist judges on the High Court at that stage would have had absolutely no difficulty in avoiding a clause such as that.*⁵¹

⁴² Submission no. 119 at 1-2.

⁴³ Resolution (4) F, Commonwealth Constitutional Convention, n 14, vol 3, at 421-422. That recommendation received detailed consideration by McKenna, Simpson and Williams: n 22 at 399.

⁴⁴ Note 7 at 9.

⁴⁵ See, for example, submissions nos. 12, 39, 57, 77, 117 and 119.

⁴⁶ Submission no. 39 at 3.

⁴⁷ Mr T H Little (submission no. 11), for example, said that a preamble was necessary to clarify ambiguous constitutional provisions.

⁴⁸ Mr D Willis, submission no. 47 at 4. Similarly, Dr Noel Preston (submission no. 21) said that such a provision would ‘*in effect diminish the preamble. The courts and the parliament must be trusted to monitor this question.*’

⁴⁹ See, for example, submissions nos. 2-4, 7-8, 11, 15, 20-23, 27, 38, 42, 46-47, 52, 55, 61, 82, 103-105, 122 and 125.

⁵⁰ Submission no. 46.

⁵¹ Transcript, n 10 at 3.

3.1.3 National or state focus

In its issues paper, the committee observed that:

*Although the Gladstone Constitutional Convention concluded that each State's constitution should include a preamble, it might be argued that it is more significant for the Australian Constitution to contain a preamble that serves to unify and aspire the nation. Arguably, therefore, this should be the area in which effort towards a preamble is directed.*⁵²

Professor Winterton's submission identified a possible reason for greater significance being attached to a federal constitutional preamble:

*National constitutions serve an important symbolic function as the legal embodiment of national values and aspirations which is not entirely paralleled by State or Provincial constitutions, and their respective Preambles may reflect this difference. Indeed the present Australian constitutions do, in that the State Constitutions lack any equivalent even to the meagre Commonwealth Preamble.*⁵³

Mr Graeme Orr, Griffith University, went further:

[I]t seems clear to me that a preamble in any state's constitution is fatuous. Not so much because it would be a waste of parliamentary time and public money, as because:

- *States in Australia are not organic entities. They are artificial administrative entities, the legacy of colonial border-drawing. There is nothing unique or community-binding in Queensland political history that deserves or ought to be glorified in a preamble.*
- *Unlike Australia as an island-nation with a unique indigenous history, there is nothing in any State history or identity worth extolling in pseudo-legal rhetoric.*⁵⁴

However, Dr Barbara Hocking, QUT, and Mr Scott Guy, UQ, in their submission⁵⁵ said that, 'For so long as we retain the states, then their Constitutions matter.' And at the AAFL roundtable, Professor Gerard Carney, Bond University, stated that 'The state Constitutions are important statutes within our federation.'⁵⁶

Mr Don Willis suggested:

*Given the foundational importance of the Queensland Constitution, it is appropriate that it be accompanied by a statement outlining the background to, and reasons for, its enactment.*⁵⁷

Ms Linda Petrie said:

*I believe that a Preamble to the Queensland Constitution should not be hamstrung by any Federal Preamble. [Queensland should] have the courage to spell out the ideals its citizens aspire to, even if those be loftier than any affirmation of certain widely-held values assumed to be for the whole of Australia.*⁵⁸

Dr Hocking and Mr Guy also argued that 'including preambles in State Constitutions will provide an impetus for the ultimate inclusion of a preamble in the federal Constitution'.⁵⁹

⁵² Note 7 at 6.

⁵³ Submission no. 104. Professor Winterton went on to say: 'I believe that both the Commonwealth and State Constitutions should include Preambles which recite the circumstances leading to the foundation of the polity and enactment of the Constitution, and to core civic values which enjoy virtually universal support'.

⁵⁴ Submission no. 5.

⁵⁵ Submission no. 130 at 1.

⁵⁶ Transcript, n 10 at 2.

⁵⁷ Submission no. 47.

⁵⁸ Submission no. 92.

⁵⁹ Submission no. 130 at 1.

3.1.4 Symbolic, inspirational or aspirational objectives

Some people who and organisations that made submissions to the committee's inquiry said that a preamble should have a symbolic role and might include a statement of values or ideals to which most Queenslanders aspire. It was said that these symbolic, inspirational and aspirational objectives are sufficient reason for a preamble to be added to the Queensland Constitution:

*Preambles have significant symbolic power and symbolism reflects as well as defines what is important to us as a society. By suggesting what is important, symbols influence people's sense of involvement in the society in which they live.*⁶⁰

Accordingly, Ms Samantha Faulkner suggested that a preamble could 'unite all Queenslanders'.⁶¹ In the same way, Mr John Wakely said that a preamble could be 'a uniting force'.⁶²

The submission from Mr Peter Friis stated that:

*All Constitutions should contain a Preamble to signify a coming together as an act of unity setting out the history and the direction of the principles that we would move towards in this unity.*⁶³

The Tablelands Elders Justice Authority said that a preamble to the Queensland Constitution could 'be a possible way to unite and strengthen the Queensland Constitution for Indigenous representation into Parliament'.⁶⁴

Mrs Zelda Bailey said it would cause us to 'focus on truly common aspirations and values'.⁶⁵ Mr R J Doyle suggested that a preamble would create ownership by the people of Queensland of their Constitution,⁶⁶ and Mr Peter Friis further said that it could 'aid us to look forward towards achieving a united, just and compassionate people, reliant on inner integrity'.⁶⁷

In the same way, The Hon Warren Pitt MP, Minister for Communities and Disabilities, urged that any discussion of a preamble to the Queensland Constitution should give consideration to:

*[t]he unique nature of Queensland's diverse regions and the importance of strong and inclusive communities which value people of all ages and diverse abilities.*⁶⁸

The submissions received by the committee raised a number of issues in relation to symbolic, inspirational or aspirational objectives that might be achieved by a preamble to the Queensland Constitution.

3.1.4.1 A bill of rights

Queensland does not currently have a bill of rights. In 1998, a former LCARC conducted a public inquiry into the issue and recommended that Queensland should not adopt a bill of rights.⁶⁹

Some submissions urged that in the absence of a bill of rights in Queensland a preamble to the Constitution should take on a wider role.⁷⁰ Dr Barbara Hocking and Mr Scott Guy said in their submission:

⁶⁰ Australian Institute of Aboriginal and Torres Strait Islander Studies, submission no. 125 at 1.

⁶¹ Submission no. 82.

⁶² Submission no. 26.

⁶³ Submission no. 20.

⁶⁴ Submission no. 16.

⁶⁵ Submission no. 23.

⁶⁶ Submission no. 101.

⁶⁷ Submission no. 20.

⁶⁸ Submission no. 133. The preamble in the consolidated provisional text of the *Treaty Establishing a Constitution for Europe*, available at: <<http://ue.eu.int/igcpdf/en/04/cg00/cg000087.en04.pdf>>, refers to the European Union being 'united in diversity'.

⁶⁹ LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?*, report no. 12, November 1998, Goprint, Brisbane.

⁷⁰ See submission nos. 11, 26, 28, 57 and 118; and see Dr Barbara Hocking, Transcript, n 10 at 1.

In our view the preamble could presage human rights legislation in this State, given that 'laws relating to human rights are clearly within the legislative competence of the States'.⁷¹

Mr Peter Carter said of a preamble:

It should contain a statement of all fundamental rights that cannot be amended except by the same means by which it is enacted, eg a ¾ majority. The EARC draft bill of rights is a good example.⁷²

However, the Bar Association of Queensland suggested that a bill of rights is a matter in itself warranting discrete consideration.⁷³ Mr Geoffrey Fisher also advised that this is not an appropriate function for a preamble:

Any aspirational statements in the preamble should be succinct and desirably find at least some support, implicit or explicit, in the provisions of the Constitution. Broad aspirational statements of values need to be closely scrutinised, as they can be controversial and contested. There is no point in developing an elaborate and high-flown preamble which fails to win public acceptance. Statements in the preamble should not be cast in the language of rights and freedoms unless such rights and freedoms are guaranteed in the Constitution. It would be bogus for the preamble to promise more than the Constitution will deliver. The preamble should not be regarded as some sort of substitute for a bill of rights, for by its very nature it would be a very inadequate substitute. If the Constitution is serious about the protection of rights and freedoms it should contain entrenched guarantees in the nature of bill of rights provisions.⁷⁴

3.1.4.2 A minimal approach

The committee was told by some that any reference to values or aspirations should be circumscribed. Mr Brian Sheehy said that, *'There should be NOTHING included in the Preamble, which is not contained in the Constitution.'*⁷⁵ And Professor Carney advised the committee that, in his view, any preamble should be *'a minimal preamble, one which identifies the legal principles which are not expressly set out in the Constitution'*.⁷⁶

Dr Noel Preston, Director, Centre for Social Justice, offered comments both as a citizen and in his capacity as a public sector ethicist. Dr Preston submitted that while a preamble should emphasise the constitutional regime and affirm *'certain widely-held values'* it should adopt a limited approach:

The minimalist approach is recognition that mixing ethical affirmations with what is essentially a legal document may be problematic; nonetheless, this concern can be overstated, especially as the constitutional nature of this statute clearly depends on a normative view of the kind of state and society to be constituted. At the same time, it is my belief that the ethical discussion which such views can provoke can and must be pursued in contexts other than those which define and interpret legislation.⁷⁷

In this context, at the AACL roundtable, Mr John Logan RFD SC, suggested that the committee give consideration to the Australian Constitution:

[I]n that one has a statement exactly descriptive of what follows in terms of colonies uniting together in an indissoluble federal Commonwealth. It is an aspirational statement with a reference to a nation and then there is a further statement that follows after that which again is exactly descriptive of the type of system of government which it was changed to back in 1901. When one moves beyond something which has that sort of content one will inevitably get into areas of controversy in relation to which reasonable political groupings can differ.⁷⁸

⁷¹ Submission no. 130 at 1, referring to Nick O'Neill, Simon Rice and Roger Douglas, *Retreat from INJUSTICE*, Sydney, Federation Press, 2004 at 38.

⁷² Submission no. 118. See EARC, *Report on Review of the preservation and enhancement of individuals' rights and freedoms*, Goprint, Brisbane, August 1993.

⁷³ Submission no. 84.

⁷⁴ Submission no. 105 at 2.

⁷⁵ Submission no. 15 at 3.

⁷⁶ Transcript, n 10 at 2.

⁷⁷ Submission no. 21 at 2.

⁷⁸ Transcript, n 10 at 4.

3.1.4.3 Relationship to the Constitution

The submission from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), pointed out in relation to the QCRC recommendation that the preamble ‘*affirm certain widely-held values*’ that ‘*these values are neither affirmed nor protected by the substantive provisions of the Queensland Constitution itself*’.⁷⁹ AIATSIS said that:

Preambles can be powerful in capturing the sense of a nation or a people but the preamble must be in harmony with the Constitution itself.

The Bar Association of Queensland referred to section 3 of the *Constitution of Queensland 2001* providing for the continuing existence of the remaining provisions of previous constitutional enactments.⁸⁰ It suggested that it would be incongruous to insert a preamble into the *Constitution of Queensland 2001* and not into those other measures:

*If, for example, that preamble were to take the form of some sort of aspirational statement or recitation of fundamental values or beliefs, would the absence of such a statement from the other measures mean, by way of contrast, that they could be construed without regard to those aspirations, values or beliefs?*⁸¹

B and G Norton said that, ‘*If the Queensland Constitution required a preamble it should have been included at the time the Constitution was drafted*’.⁸² A similar argument was made by the Bar Association of Queensland elsewhere in its submission:

*A preamble itself was not considered necessary at the time when the Queensland Constitution was enacted. This preamble, if enacted, would always be nothing more than an afterthought that may serve only to unsettle, in ways not readily predictable, the interpretation of provisions in the Queensland Constitution. It could never be, as in other constitutional instruments, a lofty statement of the ideals that had inspired a people to choose to be governed under the terms of that instrument.*⁸³

The Hon Alan Demack AO, Integrity Commissioner, expressed similar concerns:

*There is no point in having a symbolic inspirational or aspirational preamble to an Act of the Queensland Parliament which is a patchwork of legislation passed by Parliament over a period of about 150 years. Few people know that there is a Constitution of Queensland 2001 and even fewer have any familiarity with it.*⁸⁴

Mr Lawrence Springborg MP, Leader of the Opposition, referred to the ease with which the *Constitution of Queensland 2001* might be amended compared with the need to comply with special enactment procedures in section 128 of the Australian Constitution and said:

*Indeed, the very concept of a Queensland Constitution similar to the Constitution of the Commonwealth of Australia is challengeable. Whilst the Beattie Labor Government has enacted the Constitution of Queensland Act 2001 as an attempt to consolidate most of the Constitution foundations of Queensland, this Act still remains merely an expression of the Queensland Parliament as constituted at the time of its enactment and it does not, as such, incorporate all legal documents providing the Constitutional foundations of the State of Queensland.*⁸⁵

⁷⁹ Submission no. 125 at 2.

⁸⁰ Special additional procedures, including approval by the majority of electors at a referendum, may be required for the alteration of these provisions. As a referendum has not been held, these provisions remain in their original Acts, and were not relocated to the *Constitution of Queensland 2001*.

⁸¹ Submission no. 84 at 2.

⁸² Submission no. 30.

⁸³ Submission no. 84 at 6. See, for a contemporary comparison, the preamble in the consolidated provisional text of the *Treaty Establishing a Constitution for Europe*, n 68. The ‘Objectives of the Union’ are set out in the first article of the draft Constitution.

⁸⁴ Submission no. 4.

⁸⁵ Submission no. 13.

3.1.5 Public support

3.1.5.1 As demonstrated by the Australian republic referendum

The referendum on a preamble to the Australian Constitution is discussed in section 2.3.4. With reference to the result of that referendum, Mr Lawrence Springborg MP said in his submission:

It is clear from the results of the Commonwealth Referendum held on 6 November 1999 that the people of Australia, and the people of Queensland, rejected both a move towards a republic and the introduction of a preamble to the Queensland Constitution.

I would in particular draw your attention to the fact that 67.19% of the people of Queensland rejected the proposal to insert a preamble in the Commonwealth Constitution, the strongest majority against such proposition in any Australian jurisdiction.

Whilst acknowledging that the proposal in the issues paper relates to the Queensland Constitution as opposed to the Commonwealth Constitution, I have seen no evidence or argument that would suggest that the people of Queensland would adopt any different attitude towards proposals to insert a preamble in the Queensland Constitution than they adopted in relation to proposals to insert a preamble in the Commonwealth Constitution.

*Indeed, the issues which you raise in your issues paper remain issues of high public controversy upon which no consensus is likely to emerge in the foreseeable future.*⁸⁶

In the same way, Mrs JE Clarkson and Mr William James Ryan, Moreton Branch, One Nation – Queensland Division, respectively referred to a preamble and a republic and stated that ‘*the Australian people have already said NO to these*’.⁸⁷

3.1.5.2 Regarding symbolic, inspirational and aspirational objectives

Submissions to the committee’s inquiry identified a strong correlation between a preamble referring to aspirations and values shared by all Queenslanders and public support for that preamble. It was suggested that a preamble should focus on ‘*truly common aspirations*’⁸⁸ and ‘*a shared vision*’.⁸⁹ Dr Noel Preston said that adoption of a preamble must be conditional on broad support.⁹⁰

In the same way, in submission no. 22 it was said that the words of a preamble should ‘*signify a diversity of peoples and places to unify for common good*’.⁹¹

However, some submissions suggested that values and aspirations referred to in a preamble must be supported by most Queensland people. Mr Bryan Sheppard, for example, advised the committee that:

*[M]atters dealing with the Queensland Constitution can’t be resolved through preambles. Successful changes only come when issues involved are put to the voting public through referendum.*⁹²

Mr Peter McMahon said that a preamble ‘*must unite all in the community*’ and should not ‘*cater for any specific interest groups as this option divides the community*’.⁹³

⁸⁶ Submission no. 13.

⁸⁷ Submissions nos. 54 and 53.

⁸⁸ Mrs Z Bailey, submission no. 23

⁸⁹ Aboriginal Co-ordinating Council, submission no. 8.

⁹⁰ Submission no. 21.

⁹¹ Anonymous.

⁹² Submission no. 89.

⁹³ Submission no. 2.

At the AACL roundtable Mr John Pyke said:

*[W]hatever goes into the preamble should not be the things that are favoured just by the right or just by the left. They should be the things on which there really is a very large consensus agreement of 70 per cent or 80 per cent or hopefully 90 per cent or 95 per cent.*⁹⁴

In the same way, Mr Joe Barnewall, CEO, Commerce Queensland advised that:

*[O]ur initial reaction to this proposal is that we support the concept of a Preamble, conditional upon it not being used as a means of ensuring any one party's political or philosophical agenda.*⁹⁵

AIATSIS, however, cautioned the committee to consider:

*By only asserting the values of the majority we privilege their values and risk alienating and ignoring the rights and interests of minorities.*⁹⁶

3.1.6 Competing needs for reform

A number of submissions to the committee suggested that the time, effort and public money which would be expended in the development, public discussion, drafting and enactment of a preamble would be better directed at other needs for reform. Mr Geoffrey Fisher said that:

*The issue of a preamble is a symbolic one, not having any real significance for matters of substantive constitutional reform. I submit that your committee should first consider what substantive constitutional reforms remain to be addressed in the aftermath of the recent reform initiatives and the successful consolidation of the Queensland Constitution. It is even possible that the text of a preamble might need to reflect or acknowledge the results of any substantive reforms undertaken in the immediate future.*⁹⁷

Professor Kenneth Wiltshire AO, UQ Business School, suggested to the committee that a preamble is the least important need for reform to Queensland's Constitution, and that the following matters are more urgent:

- four year terms for Parliament;
- ministerial responsibility;
- accountability and freedom of information; and
- constitutional recognition of local government.⁹⁸

Mr Graeme Orr submitted that it would be '*much more profitable to put time and effort into new and vibrant ways to improve general civic knowledge*'.⁹⁹ The Hon. Alan Demack concurred that '*Few people know that there is a Constitution of Queensland 2001 and even fewer have any familiarity with it*'.¹⁰⁰

In a similar context, Mr Peter Eardley, submitted:

*I am a great advocate in suggesting that a compulsory study subject at school, both primary and secondary, should be a subject notionally called "Civic" where all aspects of our society, its functions and its responsibilities are taught in a systematic way.*¹⁰¹

In previous reviews, LCARCs of the 49th and 50th Parliaments made recommendations about civics education in Queensland.

⁹⁴ Transcript, n 10 at 6.

⁹⁵ Submission no. 17.

⁹⁶ Submission no. 125 at 4.

⁹⁷ Submission no. 105 at 1.

⁹⁸ Submission no. 6.

⁹⁹ Submission no. 5.

¹⁰⁰ Submission no. 4.

¹⁰¹ Submission no. 9 at 1.

These recommendations were for the development of a civics education strategy in Queensland to improve the level of awareness and understanding of the Queensland Constitution,¹⁰² and specific recommendations to ensure that Aboriginal peoples and Torres Strait Islanders receive appropriate civics education to allow participation in democratic processes.¹⁰³

The committee is encouraged by the ministerial responses to these recommendations.¹⁰⁴ These indicate that steps are being taken by the Government to ensure that effective civics education will be introduced in Queensland. The committee notes also that, in relation to the previous committee's recommendations regarding civics education for Aboriginal peoples and Torres Strait Islanders, LCARCs will evaluate the implementation of recommendations made in the *Hands on Parliament* report.¹⁰⁵

3.1.7 Moves towards an Australian Republic

Despite the defeat of the 1999 republic referendum, there is a level of support and continuing debate in the community regarding a republican system of government in Australia.¹⁰⁶ When the committee called for public submissions to this inquiry, it was mindful that any change to a republican system of government would require significant constitutional amendment to both federal and state constitutions. It is likely that this would include amendment of any preamble to the Queensland Constitution. For this reason, the committee's issues paper queried whether '*it might seem appropriate to delay the question of a preamble until the issue of an Australian Republic has again been put to the people*'.¹⁰⁷

This view received some support in submissions to the committee. For example, Mr Geoffrey Fisher¹⁰⁸ suggested that consideration of a preamble should be delayed until something further is done about a republic, and Dr Bruce Flegg MP¹⁰⁹ said that, although he is opposed to a preamble, if a preamble is to be adopted, it should not pre-empt possible change to a republic. Dr Flegg said if in future Australia becomes a republic then matters relating to the Queensland Constitution can be reconsidered.

In the same way, in reply to issue 24 which asked, '*When is an appropriate time to consider a referendum on the issue of a preamble for the Queensland Constitution?*', a number of submissions stated that a referendum should be timed to take place in association with a change to a republic.¹¹⁰ As noted above, Dr Noel Preston, urged the adoption of a preamble to the Queensland Constitution even though there is debate about a federal republic.¹¹¹

However, Mr Lawrence Springborg MP, the Leader of the Opposition, urged the committee to '*accept that it was spending resources unnecessarily*' on an inquiry '*which merely reflects a view of one particular segment of the community that favours the imposition of a Republican form of government in the Australian nation*'.¹¹²

¹⁰² See Report no. 12, n 68 at 63-64; Report no. 13, *Consolidation of the Queensland Constitution: Final Report*, April 1999, Goprint, Brisbane, April 1999 at 23-24; and Report no. 24, *Review of the Queensland Constitutional Review Commission's recommendations relating to a consolidation of the Queensland Constitution*, Goprint, Brisbane, July 2000 at 18-19.

¹⁰³ Note 6 at 29-32.

¹⁰⁴ Available on the committee's website at: <www.parliament.qld.gov.au/committees/legalrev.htm>, or from the Bills and Papers Office, Parliament House.

¹⁰⁵ See n 104, which was tabled on 28 April 2004.

¹⁰⁶ According to a national survey conducted by Ingenuity Research in late April and early May 2002, 54% of adult Australians would like to see Australia become a republic: *Australians All*, Newsletter of the Australian Republican Movement, Issue 1, Summer 2002/03 at 16.

¹⁰⁷ LCARC, n 7 at 6.

¹⁰⁸ Submission no. 105.

¹⁰⁹ Submission no. 119.

¹¹⁰ See submissions nos. 23 and 26.

¹¹¹ Submission no. 21 at 2.

¹¹² Submission no. 13, and see section 3.1.5.1.

3.1.7.1 Senate Legal and Constitutional References Committee recommendations

Since the close of public submissions to the committee's inquiry, the Senate Legal and Constitutional References Committee (the Senate Committee) has tabled a report on an inquiry into an Australian Republic. That report, *The Road to a Republic*, was tabled on 31 August 2004.¹¹³

In an earlier discussion paper, *Inquiry into an Australian Republic*, the Senate Committee stated, '*If an Australian Republic is to be established, the place of the states must be considered.*' Accordingly, the Senate Committee called for public submissions on the question of, '*What is the best way to deal with the position of the states in a federal Australian republic?*'¹¹⁴ In its report, however, the Senate Committee did not address these issues.

In respect of a move towards an Australian Republic, the report states:

*The Committee recommends a three-stage consultative, non-binding process for moving towards an Australian republic, followed by a fourth stage of a Constitutional referendum to amend the Constitution, and that such a process be enshrined in legislation. This legislation will spell out future steps, in order to give Australians confidence that they will have a say in future decisions, and it would include provisions to make voting in plebiscites compulsory.*¹¹⁵

3.1.8 Recognition of Aboriginal peoples and Torres Strait Islanders

3.1.8.1 In the preamble

As noted in section 1.2, to inform its inquiry process regarding a preamble to the Queensland Constitution, this committee sought the views of a number of persons and organisations involved in the former committee's *Hands on Parliament* inquiry. This initial feedback supported recognition of Aboriginal peoples and Torres Strait Islanders in the preamble and indicated the need for wide community consultation in this regard.

Similarly, a substantial number of submitters who responded to the committee's issues paper believed that a preamble should recognise Aboriginal peoples and Torres Strait Islanders.

In the context of the threshold issue, a number of submissions suggested that a preamble to the Queensland Constitution should be adopted to provide a constitutional statement that we recognise or 'value' the 'unique status of Aboriginal peoples and Torres Strait Islanders'.¹¹⁶

The Aboriginal Co-ordinating Council stated that:

*[T]he preamble should recognise Aboriginal and Torres Strait Islander people because of their unique contribution to the development of Queensland. ATSI people should be recognised as the first owners of the land.*¹¹⁷

Mr John Wakely said that '*there should be a preamble which includes a RECOGNITION and RECONCILIATION STATEMENT*'.¹¹⁸ Mr Ron Doyle suggested that it may be '*a start to help heal old wounds*', and that this should be done by way of an acknowledgement '*in chronological order as to the settlement of this land*'.¹¹⁹

AIATSIS suggests that, '*One of the purposes of the preamble should be to symbolically include Aboriginal and Torres Strait Islander people in the legal domain of the state.*'¹²⁰

¹¹³ Senate Printing Unit, Canberra.

¹¹⁴ Discussion Paper, *Inquiry into an Australian Republic*, December 2003, Question 25 at 13, available at: <www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/republic03/discussion_paper.pdf>.

¹¹⁵ Note 113 at 137, Recommendation 9 at para. 8.28.

¹¹⁶ Multicultural Affairs Queensland, submission no. 124.

¹¹⁷ Aboriginal Co-ordinating Council, submission no. 8.

¹¹⁸ Submission no. 26.

¹¹⁹ Submission no. 101.

¹²⁰ Submission no. 125 at 3.

Mr Geoffrey Fisher said that:

*In my opinion the preamble should recognise the position of Aboriginal and Torres Strait Islander people as the original occupants and custodians of the land. This would be to state the background circumstances to the establishment of Queensland's constitutional arrangements. And it would contribute to the process of reconciliation with indigenous peoples.*¹²¹

The Hon Liddy Clark MP, Minister for Aboriginal and Torres Strait Islander Policy, said that she supports the inclusion of a preamble that appropriately recognises Aboriginal peoples and Torres Strait Islanders.¹²²

More specifically, in response to issue 10 '*Should the preamble recognise Aboriginal and Torres Strait Islander people and, if so, how?*', Dr Barbara Hocking and Mr Scott Guy observed that:

*[B]y the time of the 1999 constitutional referendum (on the subject of a republic) there was widespread support for an acknowledgement of Aboriginal Australians that 'went beyond historical fact'. So this inclusion would appear to mirror community sentiments although we perhaps need to be aware that support for this was lower in WA and Qld.*¹²³

Mr Bruce Alexander suggested that a preamble should be worded to include '*in a spirit of mutual honour, worth and dignity*'.¹²⁴ The Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS) suggested it should state, '*The peoples of Queensland past present and future acknowledging and honouring the Aboriginal peoples and Torres Strait Islanders as the first custodians of the land upon which Queensland now stands*'.¹²⁵

F G Short proposed that there be '*clear recognition of prior occupation and indigenous concepts of engagement with country*'.¹²⁶

Mr Nigel Stobbs said in his submission:

*The preamble ought to make express reference to the sorrow that contemporary Queenslanders feel for ... dispossession and should make an express appeal to the Indigenous community for forgiveness and invite them to join with us in processes of meaningful recognition. This would not only set the Qld community apart as a people who are genuinely concerned with meaningful coexistence, but would not risk any process of divided sovereignty. What would there be to lose?*¹²⁷

However, Dr Bruce Flegg MP, said that reconciliation is best served by '*accepting our responsibilities to address disadvantage*' and advocated '*practical and effective action*' not '*form of words*'.¹²⁸

At the AACL roundtable, Mr John Logan RFD SC, stated:

*As far as the aspects of Aboriginal ownership are concerned, the Constitution has to consider the common law of Australia. That common law was settled by Mabo's case and later by Wik's case. There is such a thing as native title. We are teasing out in a graduated way what it means around the edges, but as a concept in itself at common law it exists in Australia. We do not need to have a formal aspirational statement as a matter of legal interpretative design in the preamble. We may well want it from the point of view of wider political party desires, in respect of which it will again generate endless debate and reconciliation in our society. But in terms of the common law against which prima facie statutes such as this can fall for construction it is axiomatic in that it would have to be interpreted against the background of the position that has been settled by the High Court.*¹²⁹

¹²¹ Submission no. 105 at 3.

¹²² Submission no. 25.

¹²³ Submission no. 130 at 3.

¹²⁴ Submission no. 29.

¹²⁵ Submission no. 67.

¹²⁶ Submission no. 61.

¹²⁷ Submission no. 131.

¹²⁸ Submission no. 119 at 2.

¹²⁹ Transcript, n 10 at 5.

Some submissions observed that ours is a country of many nationalities, ‘*all Australian*’,¹³⁰ and that there should be no recognition of any one group over another because of ancestry.¹³¹ Mr B W Dunn said that ‘*Australians should be Australians, regardless of their skin colour or heritage*’,¹³² and Mr A Webb said that ‘*Under no circumstances should any particular group be singled out for any purpose*’.¹³³ The submission from One Nation, Queensland Division, similarly stated:

*[R]emember in 1966 the Australian people voted in a referendum for Aborigines to have full rights as citizens of Australia. That’s equality to treat them otherwise is illegal and apartheid.*¹³⁴

3.1.8.2 In the Constitution

Some submissions suggested that recognition of Aboriginal peoples and Torres Strait Islanders should be in the body of the Queensland Constitution itself, not merely in any preamble to that Constitution.

At the time at which submissions to the committee’s inquiry closed, the Victorian Government had recently introduced into its Parliament a draft bill providing constitutional recognition for the Aboriginal people of Victoria. The Constitution (Recognition of Aboriginal People) Bill (Vic):

- acknowledged that the development of the Victorian Constitution occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria;
- formally recognised that Aboriginal people: were the original custodians of the land on which the colony of Victoria was established; have a unique status as the descendents of Australia’s first people; have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and have made a unique and irreplaceable contribution to the identity and well-being of Victoria.

However, the amendment also expressly provided that it was not intended to create any legal rights nor to give rise to any civil cause of action, and nor was it intended to affect the interpretation of Victoria’s Constitution or any other law.

In his second reading speech, Premier Steve Bracks stressed the importance of the bill in the context of reconciliation. Reconciliation, he stated, is about ‘*respect, treating others as equals and making right as best we can past injustices*’.¹³⁵

A three-fifths majority in both houses of the Victorian Parliament was required for the bill to be passed. On 7 October 2004, the bill was passed by the Legislative Assembly of Victoria with the concurrence of a special majority of the whole number of the members of the Legislative Assembly.¹³⁶ The bill was then sent to the Legislative Council of Victoria and their agreement requested. This agreement, also by special majority, was received on 4 November 2004.¹³⁷ A copy of the new provision of the Victorian Constitution is reproduced in **Appendix D**.

Submissions received by the committee which proposed such an amendment to the Queensland Constitution referred to what was, at that time, the draft bill to amend the Victorian Constitution.¹³⁸

¹³⁰ Mrs D Pratt MP, Ms V Wicks, Ms K Redman and Ms L Mangan, Nanango Electorate Office, submission no. 3.

¹³¹ Mr W J Ryan, submission no. 53. Mrs J E Clarkson (submission no. 54) said this would be ‘*blatant racism*’.

¹³² Submission no. 117.

¹³³ Submission no. 122.

¹³⁴ Submission no. 24.

¹³⁵ Victorian Legislative Assembly, *Parliamentary Debates (Hansard)*, 16 September 2004, at 520.

¹³⁶ Victorian Legislative Assembly, *Parliamentary Debates (Hansard)*, 7 October 2004, at 55.

¹³⁷ Victorian Legislative Council, *Parliamentary Debates (Hansard)*, 4 November 2004, at 58.

¹³⁸ See submission nos. 82, 130 and 132. Ms Samantha Faulkner (submission no. 82) referred also to an amendment proposed to the West Australian Constitution by the Premier of that State earlier in 2004, but which did not reach the stage of a bill before the Western Australian Parliament: see n 143.

The Indigenous Coordination Centre, Brisbane, said, in respect of the Victorian bill:

*This is seen as a positive development by many Indigenous peoples and the bill has been deferred for further discussion between political parties. Detailed community consultations occurred with ATSIC, other Indigenous peak bodies and community members on drafting the bill and the text used.*¹³⁹

Supporting constitutional recognition in Queensland, the Indigenous Coordination Centre, Brisbane, said:

Whilst recognition of Indigenous peoples in the Queensland preamble would not grant any substantive or legal rights, it would hopefully lead to greater attitudinal change of Queensland's citizenry about Australia's pre and post-colonial history and Indigenous culture.

Australia is the only new-world country that has not afforded constitutional recognition to its Indigenous peoples or entered into some form of treaty.

*We are severely lagging behind Canada, New Zealand and the United States of America and some commentators have suggested this lack of recognition (and other legal safeguards) is one of the reasons Australia has a twenty year life gap between Indigenous and non-Indigenous Australians (compared with nine years for New Zealand, seven years for Canada and six for the United States).*¹⁴⁰

The committee recognises that there are many facets to reconciliation and that in a day-to-day context issues such as education, health, housing and employment are of a high priority to Australia's Indigenous people.¹⁴¹ However, as was made clear both in the former committee's *Hands on Parliament* inquiry and in this inquiry, symbolic recognition of Aboriginal peoples and Torres Strait Islanders is also an important part of reconciliation. In a response to the exposure draft of the Victorian bill, the Victorian Aboriginal Legal Service Co-operative Limited (VALS) stated in this regard:

*... VALS acknowledges that there can be value in a symbolic gesture. Arguably, symbolism does matter because it is a reference point for all Australians, embodies ideals, speaks of identity, is a sign of change, a beacon of hope and reflects aspirations.*¹⁴²

Western Australia has considered a similar constitutional amendment.¹⁴³ The Tasmanian Division of the Democrats has called on the Tasmanian Government to 'follow the lead taken by the Victorian government ... and amend Tasmania's Constitution to enshrine acknowledgement of Tasmania's Indigenous people'.¹⁴⁴ In the Northern Territory, the Chief Minister announced last year a five-year process towards achieving statehood.¹⁴⁵ It is expected that constitutional recognition will be one issue discussed with Indigenous peoples as part of that process.

Given the passage of the Victorian bill, the Queensland Government might consider a similar amendment to Queensland's Constitution.

¹³⁹ Submission no. 132.

¹⁴⁰ Submission no. 132.

¹⁴¹ See submission no. 119.

¹⁴² VALS, letter to Executive Director, Aboriginal Affairs Victoria, 29 July 2004, available at: <www.vals.org.au/news/submissions/2%20Constitution%20020804%20final.pdf>.

¹⁴³ On 16 July 2004, it was reported in *The West Australian* that the Western Australian Government had planned to introduce legislation recognising Aboriginal people as the first inhabitants during a symbolic joint sitting of Parliament to mark the 175th anniversary of white settlement in WA. Although these plans did not eventuate, it was further reported that the Indigenous Affairs Minister now intends to introduce the legislation into Parliament later this year. See also, Neil Morgan, Crime Research Centre, University of Western Australia, 'Aboriginal Law: Four Reflections', paper presented to Australian Institute of Judicial Administration Conference, Fremantle, 20 September 2003.

¹⁴⁴ Democrats Media, Tasmanian Division, *Queen's Birthday: Replace it with a day focussed on Tasmania*, Media Release, 13 June 2004, available at: <www.tas.democrats.org.au>.

¹⁴⁵ Office of the Chief Minister, Northern Territory Government, *Statehood: this time let's get it right!*, Media Release, 22 May 2003, available at: <www.nt.gov.au/ocm/media_releases/2003/20030522_statehood.shtml>.

3.2 COMMITTEE CONCLUSION

The committee does not believe that a preamble for the Queensland Constitution should be developed or enacted at this time. The reasons for this conclusion include:

- the public input received by the committee demonstrates insufficient support for a preamble to the Queensland Constitution;
- uncertainty exists as to how such a preamble should or might be used to interpret the Constitution, particularly if that preamble contained statements of values or aspirations;
- concerns exist about the time, effort and public money required to develop and enact a preamble and whether these resources might be better directed to other competing needs for reform, such as recommendations by previous LCARCs for constitutional reform;
- the preamble would need to be modified again if Australia moves to a republican system of government;
- further steps need to be undertaken to complete the consolidation of the Queensland Constitution;
- there is a lack of consistency between the content of the Queensland Constitution and the proposed aspirational elements of the preamble;
- given the nature of the consolidated Queensland Constitution, a preamble enacted now could not set out the reasons for the enactment of the provisions in their original form; and
- given that the adoption of a preamble by the people of Queensland would be conditional on their broad support for the wording of that preamble, significant and prolonged consultation would be required to develop the form and text. Such consultation should, more appropriately, take place following substantive constitutional reform, or if the Queensland Constitution is to be amended at some time to effect change to a republican system of government.

RECOMMENDATION

The *Constitution of Queensland 2001* should not contain a preamble at this stage.

APPENDIX A: LIST OF SUBMISSIONS MADE TO THE INQUIRY

Sub no:	Submission from:
1	Mr R D MacGregor
2	Mr P McMahon (Parish of St John's Wood/The Gap)
3	Mrs D Pratt MP, Ms V Wicks, Ms K Redman, Ms L Mangan (Nanango Electorate Office)
4	Hon A Demack AO (Queensland Integrity Commissioner)
5	Mr G Orr
6	Professor K Wiltshire AO
7	Ms B Daly
8	Aboriginal Co-ordinating Council
9	Mr P Eardley
10	Hon P de Jersey AC
11	Mr T H Little
12	Department of Industrial Relations
13	Mr L Springborg MP (Leader of the Opposition)
14	Commission for Children and Young People
15	Mr B Sheehy
16	Tablelands Elders Justice Authority
17	Commerce Queensland
18	Millaa Millaa Chamber of Commerce
19	Mr B Tait
20	Mr P Friis
21	Dr N Preston
22	Anonymous
23	Ms Z Bailey
24	Mr C Law (VP Qld Div. & Policy Coordinator, One Nation Queensland Division)
25	Hon E A Clark MP (Minister for Aboriginal and Torres Strait Islander Policy)
26	Mr J Wakely
27	Anonymous
28	Mr W Ryan
29	Mr B Alexander
30	Mr B & Mrs G Norton
31	Senator L Harris
32	A S Bailey
33	Ms S Z Basnik
34	Ms K Apelt
35	Anonymous
36	Anonymous
37	Anonymous
38	Mr S W Wigzell

Sub no:	Submission from:
39	Dr P Reynolds
40	Ms Rosa Lee Long MP (Member for Tablelands)
41	Mr T Pitt
42	Ms L Kealy
43	Ms C Cottone (Youth Affairs Network of Queensland Inc).
44	K McFadzen
45	Mr E H Vaughan
46	Mr R P Carew
47	Mr D Willis
48	Ms J Allan
49	Ms P Tieppo
50	Mr G Gowan
51	Mr J Goncalves
52	Mrs R MacKinnon
53	Mr W J Ryan (Vice President, Moreton Branch, One Nation – Queensland Division) (Second submission)
54	Mrs J E Clarkson
55	Mr M and Mrs S Meredith
56	Anonymous
57	Mr R A Cook
58	Ms M Graham
59	Mr I Kippen Snr
60	Ms R Coleman
61	F G Short
62	M Shanahan
63	L D Day
64	Mrs S-A Irvine
65	Mr K Eagers
66	Anonymous
67	Queensland Aboriginal and Islander Legal Services Secretariat (QAILSS)
68	Mr J Pyke
69	Mr N Baines
70	Mr Miller
71	Mr D W Smith
72	Mrs E Miller
73	Mr J A Logan
74	Mr K Maguire
75	Mr K Taylor
76	Ms C Pepperell
77	I P Shanks
78	G S Shanks

Sub no:	Submission from:
79	Mr A P Keene
80	Anonymous
81	Mr J Dixon
82	Ms S Faulkner
83	Mr R Evans (Queensland State Director, One Nation)
84	Bar Association of Queensland
85	Mr D and Mrs M Dunn
86	Ms S Brittain
87	Mr J McDougall
88	Ms H Perry-Keene
89	Mr B Sheppard
90	Mr G Fraser
91	Mr A Quintieri
92	Ms L Petrie
93	Confidential
94	Confidential
95	Mrs A Mammino
96	Mr A J Kneipp
97	Ms B le Goullon
98	Mr C Hubner (Justice Group, Cairns)
99	Department Communities and Disability Services Queensland
100	Department of Natural Resources and Mines
101	Mr R J Doyle
102	Mr P Lewis
103	Presbyterian Church of Queensland
104	Professor G Winterton
105	Mr G Fisher
106	Mrs F Kennedy
107	Anonymous
108	Anonymous
109	Anonymous
110	Anonymous
111	Mr J Mammino
112	Mr N Anderson
113	Ms P Daly
114	Mrs J Overell
115	B E Oglenly
116	V R O Merritt
117	Mr B W Dunn
118	Mr P Carter
119	Dr B Flegg MP (Member for Moggill)

Sub no:	Submission from:
120	Mr L R Arroeta
121	Ms M Stainer
122	A V Webb
123	P Kerlin
124	Ms H Babacan (Multicultural Affairs Queensland)
125	Australian Institute of Aboriginal and Torres Strait Islander Studies
126	Mr D Bevan (Information Commissioner, Queensland)
127	Ms L Webb
128	Mr S Johnston
129	Ms L Leeds
130	Dr B Hocking and Mr S Guy
131	Mr N Stobbs
132	Office of Indigenous Policy Coordination (Indigenous Coordination Centre)
133	Hon W Pitt MP, Minister for Communities, Disability Services and Seniors
134	Mr R Sharpe

APPENDIX B: PREAMBLE TO THE *CONSTITUTION ACT 1867* (QLD)

PREAMBLE

Power of alteration of constitution

WHEREAS by an order in council empowering the Government of Queensland to make laws and to provide for the administration of justice in the colony dated at the court at Buckingham Palace 6 June 1859 it was declared and ordered by the Queen's Most Excellent Majesty in Council that the legislature of the colony should have full power and authority from time to time to make laws altering or repealing all or any of the provisions of the said order in council in the same manner as any other laws for the good government of the colony except so much of the same as incorporates the enactments of the 14th year of Her Majesty chapter 59 and of the sixth year of Her Majesty chapter 76 relating to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty. However, every Bill by which any alteration should be made in the constitution of the Legislative Council so as to render the whole or any portion thereof elective should be reserved for the signification of Her Majesty's pleasure thereon and a copy of such Bill should be laid before both houses of the Imperial Parliament for the period of 30 days at least before Her Majesty's pleasure thereon should be signified.

Giving or withholding assent to Bills

And whereas by clause 31 of an Act of the sixth year of Her Majesty chapter 76 entitled *An Act for the government of New South Wales and Diemen's Land* it was enacted as follows—'That every Bill which has been passed by the said Council and also every law proposed by the Governor which shall have been passed by the said Council whether with or without amendments shall be presented for Her Majesty's assent to the Governor of the said colony and that the Governor shall declare according to his discretion but subject nevertheless to the provisions contained in this Act and to such instructions as may from time to time be given in that behalf by Her Majesty her heirs or successors that he assents to such Bill in Her Majesty's name or that he withholds Her Majesty's assent or that he reserves such Bill for the signification of Her Majesty's pleasure thereon and all Bills altering or affecting the divisions and extent of the several districts and towns which shall be represented in the Legislative Council or establishing new and other divisions of the same or altering the number of the members of the Council to be chosen by the said districts and towns respectively or increasing the whole number of the Legislative Council or altering the salaries of the Governor superintendent or judges or any of them and also all Bills altering or affecting the duties of customs upon any goods wares or merchandise imported to or exported from the said colony shall in every case be so reserved except such Bills for temporary laws as the Governor shall expressly declare necessary to be forthwith assented to by reason of some public and pressing emergency'.

Disallowance of Bills assented to

And by clause 32 of the said lastmentioned Act it was enacted as follows—'That whenever any bill which shall have been presented for Her Majesty's assent to the Governor of the said colony shall by such Governor have been assented to in Her Majesty's name the Governor shall by the first convenient opportunity transmit to one of Her Majesty's Principal Secretaries of State an authentic copy of such Bill so assented to and that it shall be lawful at any time within two years after such Bill shall have been so received by the Secretary of State for Her Majesty by Order in Council to declare her disallowance of such Bill and that such disallowance together with a certificate under the hand and seal of the Secretary of State certifying the day on which such Bill was received as aforesaid being signified by the Governor to the Legislative Council of the said colony by speech or message to the said Council or by proclamation in the *New South Wales Government Gazette* shall make void and annul the same from and after the day of such signification'.

Assent to Bills reserved

And by clause 33 of the same Act it was enacted as follows—‘That no Bill which shall be so reserved for the signification of Her Majesty’s pleasure thereon shall have any force or authority within the colony of New South Wales until the Governor of the said colony shall signify either by speech or message to the Legislative Council of the said colony or by proclamation as aforesaid that such Bill has been laid before Her Majesty in Council and that Her Majesty has been pleased to assent to the same and that an entry shall be made in the journals of the said Legislative Council of every such speech message or proclamation and a duplicate thereof duly attested shall be delivered to the registrar of the Supreme Court or other proper officer to be kept among the records of the said colony and that no Bill which shall be so reserved as aforesaid shall have any force or authority in the said colony unless Her Majesty’s assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such Bill shall have been presented for Her Majesty’s assent to the Governor as aforesaid’.

Governor to conform to instructions

And by clause 40 of the same Act it was declared and enacted as follows—‘That it shall be lawful for Her said Majesty with the advice of Her Privy Council or under Her Majesty’s signet and sign manual or through one of Her principal Secretaries of State from time to time to convey to the Governor of the said Colony of New South Wales such instructions as to Her Majesty shall seem meet for the guidance of such Governor for the exercise of the powers hereby vested in him of assenting to or dissenting from or for reserving for the signification of Her Majesty’s pleasure Bills to be passed by the said Council and it shall be the duty of such Governor to act in obedience to such instructions’.

Extending the Governor’s powers as to giving or withholding the royal assent

And whereas by the Act of the eighth year of Her Majesty chapter 74 entitled *An Act to explain and amend the Act for the government of New South Wales and Van Diemen’s Land* and by section 7 thereof after reciting that by the said recited Act (to wit the said hereinbefore mentioned Act of the sixth year of Her Majesty chapter 76) ‘it is provided that certain Bills shall in every case be reserved by the Governor for the signification of Her Majesty’s pleasure thereon and the intent of such provision was to ensure that such Bills as aforesaid should not be assented to by the Governor without due consideration’ it was enacted ‘That it shall not be necessary for the Governor to reserve any such Bill for the signification of Her Majesty’s pleasure thereon from which in the exercise of his discretion as limited in the said recited Act he shall declare that he withholds Her Majesty’s assent or to which he shall have previously received instructions on the part of Her Majesty to assent and to which he shall assent accordingly’.

Reservation of Bills

And whereas by the Act of the 14th year of Her Majesty chapter 59 intituled *An Act for better government of Her Majesty’s Australian Colonies* it was provided and enacted that the provisions of the said Act of the sixth year of the reign of Her Majesty as explained and amended by the said Act of the eighth year of the reign of Her Majesty concerning Bills reserved for the signification of Her Majesty’s pleasure thereon shall be applicable to every Bill so reserved under the provisions of the said Act of the 14th year of Her Majesty chapter 59. And whereas it is expedient to consolidate the laws relating to the constitution of Her Majesty’s said colony of Queensland.

APPENDIX C: PROPOSED PREAMBLE TO THE AUSTRALIAN CONSTITUTION

The preamble put to a national referendum on 6 November 1999 was contained in the schedule to the Constitution Alteration (Preamble) Bill 1999 (Cth) and stated:

Preamble

With hope in God, the Commonwealth of Australia is constituted as a democracy with a federal system of government to serve the common good.

We the Australian people commit ourselves to this Constitution:

proud that our national unity has been forged by Australians from many ancestries;

never forgetting the sacrifices of all who defended our country and our liberty in time of war;

upholding freedom, tolerance, individual dignity and the rule of law;

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;

recognising the nation-building contribution of generations of immigrants;

mindful of our responsibility to protect our unique natural environment;

supportive of achievement as well as equality of opportunity for all;

and valuing independence as dearly as the national spirit which binds us together in both adversity and success.

APPENDIX D: CONSTITUTION ACT 1975 (VIC), SECTION 1A

S. 1A
Inserted by
No. 73/2004
s.3.

1A. Recognition of Aboriginal people

- (1) The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria.
- (2) The Parliament recognises that Victoria's Aboriginal people, as the original custodians of the land on which the Colony of Victoria was established—
 - (a) have a unique status as the descendants of Australia's first people; and
 - (b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and
 - (c) have made a unique and irreplaceable contribution to the identity and well-being of Victoria.
- (3) The Parliament does not intend by this section—
 - (a) to create in any person any legal right or give rise to any civil cause of action; or
 - (b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.