25/4/04

Government Response to the
Legal, Constitutional and Administrative Review Committee
Report No. 36 - The Queensland Constitution: Specific Content Issues

The Committee's Recommendations

Recommendation 1 – Constitutional Conventions

The *Constitution of Queensland 2001* should identify the key components of government and include provisions that are necessary to explain the operation and interrelationship of these key components. However, constitutional principles, conventions and practices should only be expressly referred to in the *Constitution of Queensland 2001* where this can be achieved without detracting from their flexibility.

Constitutional principles, conventions and practices which are not expressly referred to in the *Constitution of Queensland 2001* should be recognised and explained in appropriate non-legislative annotations to the Constitution.

The Government supports the Committee's recommendation.

In progressing any legislative response to the Committee's recommendations for reform, the Government will undertake an exercise to identify which constitutional conventions and practices, if any, can be codified without detracting from their flexibility. Reference will be made to those conventions and practices that cannot be codified in the next edition of the Annotated *Constitution of Queensland 2001*.

Codifying constitutional conventions is problematic. Conventions, by their nature, must retain a degree of flexibility and be able to adapt to changes in the legal and political environment. It may be that there are few, if any, conventions the codification of which would advance the workings of government.

Nonetheless, Queensland's Constitution will, as far as practicable, identify and explain the key aspects of Government in the State.

Recommendation 2 – A Statement of Executive Power

The *Constitution of Queensland 2001* should include a statement of executive power expressed along the following lines.

'(1) The executive power of Queensland is vested in the Sovereign, and is exercisable by the Governor as the Sovereign's representative, and extends to the execution and maintenance of the Constitution and the laws of Queensland.

(2) The Governor shall act on the advice of the Executive Council, the Premier or another Minister as appropriate; but the Governor may exercise a power that is a reserve power of the Crown in accordance with the constitutional conventions relating to the exercise of that power.

(3) The executive power of Queensland is subject to the legislative power of Parliament.'

This provision should include a footnote to the effect that the *Australia Acts 1986* (Cth and UK), s.7(2)-(5) provide for the Sovereign's functions and powers in relation to Queensland.

The inclusion of a provision along these lines should be accompanied by additional provisions stating that the enactment of the provision does not:

- prevent the evolution of the constitutional conventions, including those relating to the exercise of the reserve powers; nor
- make justiciable the exercise by the Governor of a reserve power referred to in the section if the exercise by the Governor of that power was not justiciable prior to enactment of the provision.

The Government does not support the Committee's recommendation, based on the advice of the Acting Crown Solicitor.

The insertion of a statement relating to the exercise of executive power carries with it the prospect of complication to the current non-justiciability of such decision-making. Codifying the exercise of executive power would serve to constrain it, and would limit its flexibility.

Recommendation 3 – The Executive Council

Chapter 3, part 4 of the *Constitution of Queensland 2001* should be amended to state that:

- the main function of the Executive Council is to advise the Governor on the government of the State;
- the Executive Council consists of Ministers appointed as members of the Executive Council; and when Ministers resign their portfolio, they must also tender their resignation as a member of the Executive Council if they no longer remain in the Ministry.

The Government supports the Committee's recommendation, subject to some tightening of the drafting relating to the function of Executive Councillors to more accurately reflect their role in advising the Governor. In addition, the Government will seek to amend Chapter 3, Part 4 of the Constitution to state that: 'a member of the Executive Council, excluding the Governor, shall only be entitled to attend Executive Council meetings whilst the member holds ministerial office'.

As a matter of practice, when Ministers resign their portfolio, they also tender their resignation as a member of the Executive Council if they no longer remain in the Ministry. The Committee's recommendation to explicitly state this practice is supported.

Recommendation 4 – The Governor's Right to Request Information

The *Constitution of Queensland 2001* should include a provision recognising the Governor's right to request information. This provision should be drafted along the following lines: '*The Governor is entitled to request from the Premier or a Minister information on any particular matter relating to the government that is relevant to the performance or exercise of the Governor's functions or powers*'.

The Government supports the Committee's recommendation.

The convention that the Governor is entitled to ask questions and seek further information from his or her advisers should be formally recognised. This recommendation would do no more than codify in the Constitution what is already the status quo.

Recommendation 5 – The Governor's Power to Apply for Court Declarations

The *Constitution of Queensland 2001* should not include a provision stating that the Governor has the power to apply to the Supreme Court (or the Court of Appeal) for a declaration concerning possible illegal or corrupt activities by the Premier or a member of the Ministry.

The Government supports the Committee's recommendation.

Recommendation 6 – Appointing and Dismissing Ministers

The *Constitution of Queensland 2001* should not provide that the Governor shall act on the advice of the Premier in appointing and dismissing Ministers.

The Government does not support the Committee's recommendation.

The *Constitution of Queensland 2001* should provide that "the Governor shall, in accordance with constitutional convention, act on the advice of the Premier in appointing and dismissing Ministers".

The Constitution should reflect the existing convention that the Governor will generally act on the advice of the Premier in appointing and dismissing Ministers, without making this requirement absolute, as this would have a detrimental effect on the flexibility of Queensland's system of government. A reference to existing 'constitutional convention' will provide sufficient flexibility to allow a Governor to take action to deal with a constitutional crisis.

Recommendation 7 – Requirements for Ministers to be Members of the Legislative Assembly

The *Constitution of Queensland 2001* should provide that a person appointed as a Minister must either be, or must become within 90 days of their appointment, a member of the Legislative Assembly.

The relevant provision should be drafted so as to avoid the theoretical possibility of a Government cycling non-elected Ministers through the Cabinet indefinitely by terminating each Minister's commission after 89 days.

The Government supports the Committee's recommendation.

A key aspect of Queensland's constitutional system is that Ministers must be members of the Legislative Assembly. This is fundamental in maintaining the core principle of responsible government, namely that Ministers are accountable to and rely on the support of the Parliament. The convention should be explicitly recognised in Queensland's Constitution.

Recommendation 8 – Appointment of the Premier

The *Constitution of Queensland 2001* should include a provision designating the office of Premier. This provision should state that:

- the Governor appoints as Premier the member of the Legislative Assembly who, in the Governor's opinion, is most likely to command the confidence of a majority of members of the Legislative Assembly; and
- the Premier is a Minister.

The Constitution of Queensland 2001 should also provide that:

- the appointment as Premier of the person who immediately before the commencement of the appropriate provision was the Premier is not affected (as a transitional provision); and
- the Governor's power to appoint a member as Premier in accordance with the above provision is non justiciable.

The Government supports the Committee's recommendation in principle. While the *Constitution of Queensland 2001* makes reference to the office of Premier, the role is not defined or explained. It is desirable that the Constitution should explain how the Premier comes to office and define, in general terms, what the Premier's role is.

The Government will also consider including a general definition of the role of the Premier as Chief Minister, Chairperson of Cabinet, and Chief Advisor to the Governor.

However, the Government does not support the inclusion of a direct statement that the Premier be a Member of the Legislative Assembly. Instead, the provision should require the Premier to be a Minister and therefore subject to the 90 day 'grace period' to become a Member as per the response to Recommendation 7 above.

Recommendation 9 – Dismissal of the Premier

The *Constitution of Queensland 2001* should include a provision stating that the Premier shall hold office, subject to this Constitution, until he or she dies or resigns, or the Governor terminates his or her appointment in accordance with the constitutional conventions relating to the exercise of that power.

This clause should be complemented by a provision providing for the continuing evolution and non-justiciability of the conventions regarding this reserve power. The additional provisions recommended by the committee in recommendation 2 would suffice in this regard.

The Government supports the Committee's recommendation. There are compelling arguments against attempting to codify the Governor's reserve power to dismiss a Premier.

Recommendation 10 – A Lieutenant-Governor for Queensland

A Lieutenant-Governor should again be appointed for Queensland.

The Government supports the Committee's recommendation. The appointment of a Lieutenant-Governor will release the Chief Justice from the responsibility of administering the State in the Governor's absence. The existing arrangement leaves open the possibility of a constitutional crisis or politically controversial decision that could potentially compromise the position of Chief Justice.

Recommendation 11 – Oath or Affirmation of Allegiance to the Crown

The *Constitution of Queensland 2001* should be amended so that members of the Legislative Assembly have the option as to whether to take or make the oath or affirmation of allegiance to the Crown.

The Government supports the Committee's recommendation.

Recommendation 12 – Indicative Plebiscites

The *Referendums Act 1997* (Qld) should not be amended at this point in time to provide for the conduct of indicative plebiscites.

The Government supports the Committee's recommendation. However, the Government will leave open the possibility of a review of this recommendation at a later date when residential internet access is extensively available to the Queensland community.

Recommendation 13 – A Petitions Committee

A Petitions Committee of the Queensland Legislative Assembly should not be established.

The Government supports the Committee's recommendation.

Recommendation 14 – Ministerial Responses to Petitions

The relevant Standing or Sessional Orders of the Legislative Assembly should:

- state that the Minister responsible for an issue the subject of a petition must forward a detailed and reasoned response to the Clerk for presentation to the Assembly (unless the petition is in similar terms to a petition previously presented to the Assembly and to which the Minister has already responded);
- prescribe a time limit of 30 calendar days in which a Minister must provide a response to a petition; and
- expressly recognise the Assembly's ability to refer a particular petition to a particular committee.

The Government believes that the Committee's recommendation should be considered as part of the current review of the *Standing Orders of the Legislative Assembly*.

While the right of citizens to petition Parliament is important, there is insufficient justification for compelling Ministers to respond to a petition that has been addressed to

the Parliament. No other Australian jurisdiction prescribes that a response by a Minister to a petition to Parliament is mandatory.

One of the endorsed recommendations from the evaluation of the Government's recent E-democracy initiatives is to pursue a process to ensure that Ministerial responses to petitions are provided by Ministerial offices. It is proposed to implement this recommendation by the provision of detailed information about the petitions process and training to Ministerial and relevant departmental staff. There is also no evidence to suggest that there is a problem with regard to responses to petitions. In any case, a time limit of 30 days may be insufficient for the preparation of a considered response to a particularly complex issue.

Recommendation 15 – The Objects of Statutory Committees

Section 78(1) of the *Parliament of Queensland Act 2001* should be amended to reflect that the objects of statutory committees of the Legislative Assembly include extending democratic government and enhancing the transparency of public administration.

The Government supports the Committee's recommendation.

Recommendation 16 – Summoning Parliament

The *Constitution of Queensland 2001* should include a requirement that the Legislative Assembly shall meet no later than 60 days after the day of a general election.

The Government supports the Committee's recommendation in principle. Support is subject to extending the proposed time limit to 90 days if the 60 day period would include the Christmas recess, or within one week of the date of return of the writ, if a later date has been substituted under s.82 of the *Electoral Act 1992.*

In the normal course of business 60 days is an appropriate time period that would provide a new Government with a reasonable amount of time to make the transition to office. However, there should be provision to extend the period to 90 days if a 60 day period would extend into the Christmas recess.

Section 82 of the *Electoral Act 1992* permits the Governor, by gazette notice, to substitute a later day for dates specified in the writ. It is possible that if a later date was substituted for the date for return of the writ, 60 days may not be a practicable time frame for summoning Parliament. The purpose of section 82 is to allow for exigent circumstances such as natural disasters.

A requirement such as that proposed by the Committee should not be seen as precluding consideration by the Government of fixed four-year Parliamentary terms.

Recommendation 17 – Waste Lands of the Crown

Sections 30 and 40 of the *Constitution Act 1867* (Qld) should be repealed. As a consequence, s 69 and attachment 4 of the *Constitution of Queensland 2001* should also be repealed.

The Government does not support the Committee's recommendation at this time.

In the absence of any compelling justification for repealing the provisions, sections 30 and 40 should be retained. As noted by the Department of Natural Resources and Mines, sections 30 and 40, while being mainly of historical significance, remain foundation principles of the Constitution. The Department also noted the view of EARC, expressed in its 1993 Report, that repealing the sections may "inadvertently disturb the constitutional

status quo surrounding land ownership and native title". The Acting Crown Solicitor agrees with this statement.

Recommendation 18 – Number of Parliamentary Secretaries

The *Constitution of Queensland 2001* should provide that a limit of five parliamentary secretaries may be appointed at any one time.

Subsequent to the tabling of its Report No. 36, the Committee effectively revisited this issue in its Report No. 41 regarding constitutional entrenchment. The Committee's Recommendation 5 of Report No. 41 proposes that the Constitution should provide for 'a maximum combined number of Ministers and parliamentary secretaries equal to one-third of the total number of members of the Assembly' (the Committee did not advocate an increase in the number of Ministers or parliamentary secretaries).

The Government does not support this recommendation or Recommendation 5 of Report No. 41. There is compelling justification for imposing a constitutional limit on the total combined number of Ministers and parliamentary secretaries. The Constitution already limits the number of Ministers to 19.

Recommendation 19 – Role of Parliamentary Secretaries

The *Constitution of Queensland 2001* should contain a broad description of the main role of a parliamentary secretary, such as, 'to assist a Minister in the performance of his or her functions'.

The Government supports the Committee's recommendation.

It is appropriate that the *Constitution of Queensland 2001* contains a general description of the role of a parliamentary secretary. Detail about the role and its limits can be outlined in the Annotated Constitution, along the lines of the notes already included there.

Recommendation 20 – Validation of Assent

The *Constitution of Queensland 2001* should not make provision for the validation of assent where the document presented to the Governor for assent contains errors such that it is not the Act as was passed by Parliament. Such matters are more appropriately dealt with by Parliament itself.

The Government supports the Committee's recommendation. Existing mechanisms and processes are sufficient to rectify any errors contained in a document that is presented for Assent.

Recommendation 21 – Requirements for Appropriation Bills

The *Constitution of Queensland 2001*, s 68 should be amended to require a recommendation by a message from the Governor *in Council* before the Legislative Assembly is able to originate or pass a vote, resolution or bill for the appropriation of an amount from, or an amount required to be paid to, the consolidated fund unless a bill or motion that would appropriate money from the consolidated fund is introduced or moved by a Minister.

The Government does not support the Committee's recommendation. The status quo requiring that a Governor's message be received should be retained. There is insufficient justification for dispensing with this long-standing Westminster principle.

Recommendation 22 – Fresh Election of Local Councillors after Dissolution

The *Constitution of Queensland 2001* should include a provision stating that a fresh election of the councillors of a local government that has been dissolved should be held as soon as possible after the dissolution of the local government.

The Government does not support the Committee's recommendation.

There would be significant practical difficulties in drafting a provision such as the one proposed without imposing a legally enforceable obligation to hold an election 'as soon as possible'. As the Committee itself noted, such an obligation would be undesirable as it would potentially involve the courts in the political process.

Recommendation 23 – Constitutional Recognition of Statutory Office Holders

The *Constitution of Queensland 2001* should not identify certain statutory office holders as requiring special provision.

The Government supports the Committee's recommendation. The independence of statutory office holders is more properly recognised in individual empowering statutes.

Recommendation 24 – Procedures for Removal of Statutory Office Holders

The *Constitution of Queensland 2001* should not provide that certain statutory office holders be removed by a procedure comparable to that provided for the removal of judges.

The Government supports the Committee's recommendation. This issue will be examined further as part of the proposed review of legislation relating to statutory office holders (Recommendation 26, below).

Recommendation 25 – Parliamentary Committee Responsibility

The *Parliament of Queensland Act 2001* should not require that appropriate statutory committees ensure that certain statutory office holders be given sufficient resources to discharge their responsibilities adequately.

The Government supports the Committee's recommendation. Appropriate statutory obligations regarding the resources of statutory office holders are already in place.

Recommendation 26 – Provisions Relating to Statutory Office Holders

The Premier should ensure that some guidance is provided on a whole-of-government basis regarding matters such as the appointment, termination, suspension, tenure, salary and budget of statutory office holders.

The Government will conduct a review of the legislation governing independent statutory office holders.

Some guidance on a whole-of-government basis regarding such matters as the appointment, termination, tenure and salary of statutory office holders is desirable in the interests of consistency.

Recommendation 27 – Independence of Statutory Office Holders

The *Legislative Standards Act 1992* (Qld), s 4 should include a fundamental legislative principle to the effect that '*an Act which creates an office must contain provisions which secure the independence of the holder of the office to a degree appropriate to the office*'.

The Government supports a statement along the lines of that proposed by the Committee, but does not support the suggestion that this statement be included as a fundamental legislative principle.

Fundamental legislative principles (FLPs) are the fundamental principles underlying a democracy based on the rule of law. They concern (i) individual rights and freedoms; and (ii) the institution of Parliament. The statement proposed by the Committee, while representing an important principle, is not suitable as a FLP. The Queensland Legislation Handbook is a reference for departmental officers that outlines relevant policies,

recommendations, information, and procedures for the realisation of policy in the form of Acts of Parliament or subordinate legislation. The Handbook would be the appropriate location for a statement along the lines of those suggested by the Committee.

A statement along the lines of that proposed by the Committee is not appropriate for inclusion in the Constitution itself, as this would not allow for the flexibility that is necessary given the differences between various statutory offices and the Acts that establish them.

It is appropriate that the issue of independence of statutory office holders is addressed at the legislative drafting stage. Accordingly, the proposed statement should be included in the Queensland Legislation Handbook.

Recommendation 28 – Judicial Independence

The *Constitution of Queensland 2001* should contain express recognition of the principle of judicial independence by including a provision along the following lines:

'Judges appointed under Queensland law are independent and subject only to the law which they must apply impartially'.

The Government does not support the Committee's recommendation, based on the advice of the Acting Crown Solicitor.

Judicial independence is already a well established and fundamental feature of Queensland's system of government. Express recognition of the principle of judicial independence may have the unintended consequence of constraining the Parliament's legislative power by formalising the doctrine of the separation of powers in the Constitution, and subjecting the performance of non-judicial functions by judges to legal challenge.

Recommendation 29 – Review of Certain Matters Relating to the Judiciary

Before finalising the current process of constitutional reform, a comprehensive review should be undertaken in relation to:

(a) the process for, and extent of, consultation prior to judicial appointments;

(b) mechanisms for investigating complaints against the judiciary; and

(c) the constitutional recognition and protection of the independence of magistrates.

The review body should also have jurisdiction to consider other related matters.

The Government does not support the Committee's recommendation at this time.

In their submission to the Committee, the Judges of the Supreme Court did not consider that there was a need for a review concerning consultation for judicial appointments, and that there is no need for change to the present system by which complaints may be made to the head of the jurisdiction. The Government supports this view.

Recommendation 30 – Form of Inquiry into Certain Matters Relating to the Judiciary

The Government should establish a commission, constituted by former judges, former magistrates and appropriate community representatives, specifically to inquire into the issues outlined in recommendation 29.

If the government does not establish such a commission, the Legal, Constitutional and Administrative Review Committee should inquire into the issues outlined in recommendation 29.

As noted above in response to Recommendation 29, the Government does not support conducting an inquiry into certain matters relating to the judiciary at this time.

Recommendation 31 – Acting Judges

Provisions for the appointment of acting judges should be relocated from the *Supreme Court of Queensland Act 1991* and *District Court of Queensland Act 1967* to the *Constitution of Queensland 2001* and amended to ensure that a person who qualifies for appointment as a judge may be appointed as an acting judge only:

- for fixed, short-term periods;
- with the consent of the Chief Justice or Chief Judge as the case may be;
- in circumstances where the appointee does not continue to practice as a solicitor or barrister during the term of the appointment; and
- provided that the acting appointment is not terminable or revocable during its term unless the judge is removed pursuant to the procedures generally provided for removal of a judge.

Acting appointments should be renewable.

The Government does not support the Committee's recommendation.

In their submission to the Committee, the Judges of the Supreme Court submitted that there was no reason why provisions for acting judges should not be retained in the *Supreme Court of Queensland Act 1991* and the *District Court of Queensland Act 1967*, as opposed to being relocated to the *Constitution of Queensland 2001*. The Government supports this view.

Recommendation 32 – Compulsory Retirement Age for Judges

A compulsory retiring age of 70 years for judges should be retained. The *Constitution of Queensland 2001*, the *Supreme Court of Queensland Act 1991*, the *District Court of Queensland Act 1967* and the *Anti-Discrimination Act 1992* should be amended as necessary to include this compulsory retiring age in the *Constitution of Queensland 2001*.

The Government supports the Committee's recommendation. A compulsory retirement age for judges of 70 years is an appropriate and justified provision, and is supported by the Anti-Discrimination Commissioner, Queensland.

Recommendation 33 – Removal of Judges from Office

Section 61 of the *Constitution of Queensland 2001* should be redrafted to require the Legislative Assembly to refer specific allegations to the tribunal. The tribunal's jurisdiction should be confined to a consideration of these allegations. The tribunal should be required to report to the Legislative Assembly on:

- whether the allegations referred to the tribunal are proved on the balance of probabilities; and/or
- whether the allegations, if proved, are capable of constituting misbehaviour justifying removal from office or incapacity to perform the functions of office.

The Government supports the Committee's recommendation. A requirement along the lines of that recommended would formalise the process by which a judge may be removed from office, ensure that judges may not be removed by parliament or the Executive on political grounds, and ensure that a tribunal has jurisdiction to investigate only specific allegations against a judge.

Government Response to the

Legal, Constitutional and Administrative Review Committee

Report No. 41 - Review of the Queensland Constitutional Review Commission's recommendations regarding entrenchment of the Queensland Constitution

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The Committee's Recommendations

Recommendation 1 – Enforceability of entrenching provisions

Despite certain doubts as to the legal effectiveness of entrenching provisions of state constitutions, the Parliament should nevertheless consider entrenching provisions of the *Constitution of Queensland 2001* as recommended in this report.

The Government does not support the Committee's recommendation.

While the Government considers that the general principle of further entrenchment of Queensland's Constitution is worthy of consideration, the Government does not support consideration of entrenchment in specific circumstances where there is doubt as to the legal grounds on which certain provisions can be effectively entrenched.

The Committee recognised that there is some uncertainty as to the legal grounds on which certain provisions of State Constitutions can be effectively entrenched. As noted by the Crown Solicitor, s.6 of the *Australia Act 1986* allows a State Parliament to referendum entrench provisions dealing with the 'constitution, powers or procedure of the Parliament', but not other provisions.

The Committee recommends that, despite these significant doubts, Parliament should nonetheless consider entrenching certain provisions of the Constitution, as recommended in the Report. In light of the accepted uncertainty as to the legal grounds for entrenching provisions that do not relate to the 'constitution, powers or procedure of the Parliament', and in accordance with the views of the Crown Solicitor, the Committee's approach is not supported.

Recommendation 2 – The committee's approach

While change to a republican system of government remains on the public agenda, there should be no further referendum entrenchment of provisions of the *Constitution of Queensland 2001* which relate to the current monarchical system of government.

The Government supports the Committee's recommendation.

While finalising the constitutional reform process is desirable, it would be impractical to seek referendum entrenchment of provisions relating to the monarchical system of government while the prospect of a change to a republican system of government remains on the agenda.

Recommendation 3 – Referendum entrenchment

As a matter of general principle, the *Constitution of Queensland 2001* should referendum entrench provisions which:

- establish the essential structure of the State's constitutional system; or

- provide for the fundamental principles of the State's constitutional system.

This includes provisions which:

- prescribe a system of representative and responsible government;
- provide for the legislature, the executive and the judiciary as the three arms of government; and
- maintain a balance of power between these arms of government, appropriate for a system of representative and responsible government.

However, for the reasons discussed in chapter 4, the committee does not support referendum entrenching provisions which relate to the current monarchical system of government.

Applying the above test in light of the committee's proviso, provisions (or components thereof) of the Constitution of Queensland 2001 which should be referendum entrenched concern:

- the Legislative Assembly (s.7);
- members of the Legislative Assembly (s.10);
- division of the State into electoral districts (s.12);
- one member for each electoral district (s.13);
- a minimum sitting requirement for the Legislative Assembly (s.19);
- a maximum limit on the combined number of ministers of the state and parliamentary secretaries (s.43 redrafted as recommended by the committee: see section 5.2.3);
- various provisions relating to the judiciary (ss.57-63);
- the consolidated fund (s.64);
- requirement to pay tax, impost, rate or duty (s.65);
- payment from consolidated fund (s.66); and
- the system of local government (s.70).

The above test should also be used to identify which essential elements of the currently entrenched provisions should be referendum entrenched whether or not Queensland retains its monarchical system of government.

The discussion in section 5.2 and the table in appendix B outline this aspect of the committee's recommendation in more detail.

Provisions (or components thereof) which the committee recommended in LCARC Report No. 36 - *The Queensland Constitution: Specific content issues* should be included in the *Constitution of Queensland 2001* and which should be referendum entrenched concern:

- the requirement that ministers be members of the Legislative Assembly (recommendation 7);
- a maximum limit on the combined number of ministers of the state and parliamentary secretaries (recommendation 18);
- acting judges (recommendation 31);
- the compulsory retirement age for judges (recommendation 32); and
- certain aspects of the procedure relating to removal of judges from office (recommendation 33).

The discussion in section 5.2 and the table in appendix C outline this aspect of the committee's recommendation in more detail.

In accordance with recommendation 15 (Future referendum entrenchment), provisions should only be referendum entrenched following approval of that entrenchment by referendum.

The Government supports the Committee's general approach.

It is appropriate that the Constitution should referendum entrench those provisions which establish the essential structure of and provide for the fundamental principles of the State's

constitutional system, and which can be validly entrenched as provisions dealing with the 'constitution, powers or procedure of the Parliament'.

The Government will reserve the right to decide, when the time comes, which specific constitutional provisions it will put forward for referendum entrenchment (based in part on its legal advice at the time).

Recommendation 4 – The District Court

The existence of the District Court should not be referendum entrenched. However, judges of the District Court should be given the same protection in the *Constitution of Queensland 2001* in relation to appointment, tenure, removal and salary as judges of the Supreme Court. In appendices B and C the committee recommends referendum entrenchment of relevant provisions.

Some redrafting of provisions in chapter 4 of the *Constitution of Queensland 2001* is required to ensure that referendum entrenchment of the provisions relating to the appointment, tenure, removal and salary of judges of the District Court can not be subverted by amendment of the definition of 'judge' in s.56. In this redrafting process it should also be made clear that s 61 (Removal from office for misbehaviour or incapacity) is subject to s.63 (Protection if office abolished).

The Government supports the Committee's recommendation concerning the existence of the District Court. Provisions relating to the existence of the District Court should not be referendum entrenched, as to do so may unnecessarily restrict the capacity of future governments to modify the structure of the court system.

As noted in the response to Recommendation 3, the Government will reserve the right to decide, when the time comes, which specific constitutional provisions it will put forward for referendum entrenchment. Provisions relating to the appointment, tenure, removal and salary of judges will be considered as part of that process.

Recommendation 5 – The number of Ministers of the State and parliamentary secretaries

While the committee is not advocating an increase in the number of Ministers or parliamentary secretaries, the *Constitution of Queensland 2001* should provide that the maximum combined number of Ministers of the state and parliamentary secretaries that may be appointed at one time be equal to one-third of the total number of members of the Legislative Assembly. This provision should itself be referendum entrenched.

The Government does not support the Committee's recommendation.

The Government does not consider that there is compelling justification for imposing a constitutional limit on the total combined number of Ministers and parliamentary secretaries. The Constitution already limits the number of Ministers to 19.

Recommendation 6 – Local government

The statement in s.71(1) of the *Constitution of Queensland 2001* that a local government '*is charged with the good rule and local government of a part of Queensland allocated to the body*' should be incorporated into s.70.

Section 70 (System of local government) of the *Constitution of Queensland 2001*, as amended, should be referendum entrenched. As a consequence, s.78 can be repealed.

The Government does not support the Committee's recommendation, based on the advice of the Crown Solicitor.

There are doubts that the proposed entrenchment of the system of local government would meet the requirements of *Australia Acts 1986* (Cmwth and UK), as it would not relate to

the 'constitution, powers and procedures of the Parliament' (as discussed above in response to Recommendation 1).

The Government recognises the important role played by local government as an elected third tier of government in Queensland and Australia. However, referendum entrenchment of the system of local government, even if legally valid, would detract from a State government's power to make changes to the details of the system.

Recommendation 7 – Parliamentary entrenchment

The *Constitution of Queensland 2001* should be amended to provide that any bill which seeks to amend or repeal the Constitution, including a referendum entrenched provision:

- cannot be passed within 27 calendar days of being introduced;
- must be the subject of an inquiry and report to Parliament by a committee of the Queensland Parliament before being passed;
- must contain the words 'Constitution Amendment' in its title; and
- must be passed by a majority of the Legislative Assembly equal to a majority of the number of seats in the Assembly (an absolute majority of the Legislative Assembly).

The bill inserting the requirements of parliamentary entrenchment should:

- itself comply with the requirements of parliamentary entrenchment: see recommendation 16 (Future entrenchment other than referendum entrenchment); and
- double entrench those requirements so that their amendment or repeal must follow the same requirements.

To address the possibility of inadvertent non-compliance with the requirements of parliamentary entrenchment, this recommendation is conditional upon the Scrutiny of Legislation Committee of the Queensland Parliament:

- having statutory jurisdiction to scrutinise all bills and amendments to bills for consistency with the Constitution (including compliance with the requirements of parliamentary entrenchment) and constitutional validity;
- having the statutory jurisdiction to scrutinise bills which have received Royal Assent for consistency with the Constitution and constitutional validity (to cover circumstances where a bill or an amendment to a bill has been passed urgently and the Scrutiny of Legislation Committee has not had time to consider the relevant bill or amendment for consistency with the Constitution and constitutional validity); and
- being sufficiently funded to effectively perform the above functions.

Section 4 of the *Legislative Standards Act* should be amended by adding 'consistency with the Constitution and constitutional validity' as an example of a fundamental legislative principle.

The operation of the parliamentary entrenchment requirements should be assessed before the next constitutional referendum is held. At that time, consideration should be given to referendum entrenching the provisions effecting parliamentary entrenchment.

The Government does not support the Committee's recommendation.

In accordance with the Crown Solicitor's advice, and in light of the practical difficulties that would be likely to arise if the recommendation was implemented, the proposed approach is not supported.

The Crown Solicitor has expressed concerns that, firstly, this proposal may not fall within s.6 of the *Australia Acts 1986*, and may therefore not be valid; and, secondly, that increased scrutiny of legislation will not ensure that all legislation which might arguably amend a provision of the Constitution by implication will be identified. Inadvertent non-

compliance with the proposed requirements (for example, in relation to Bills that may not, on their face, appear to be of a constitutional nature) could provide a platform on which to challenge the validity of resulting legislation. This very situation has occurred in Victoria, where inadvertent amendments to provisions in that State's Constitution have led to litigation.

The proposed requirement that a Bill amending the Constitution cannot be passed within 27 calendar days of being introduced is restrictive, and would prevent a government from moving quickly to make machinery-of-government amendments if required.

Recommendation 8 – LCARC's areas of responsibility

The *Parliament of Queensland Act 2001*, s.87 should be amended to expressly recognise that the Legal, Constitutional and Administrative Review Committee's area of responsibility about constitutional reform includes any bill expressly or impliedly repealing *or amending* any law relevant to the State's Constitution.

The Government supports the Committee's recommendation.

Recommendation 9 – Drafting of provisions effecting referendum entrenchment

Any referendum entrenching provisions inserted in the *Constitution of Queensland 2001* should be drafted:

- specifically to preclude *amendment or repeal* of referendum entrenched provisions of the Constitution without approval at a referendum; and
- so as to invalidate only those provisions of an amending bill which fail to comply with the entrenching provision, rather than the bill as a whole.

The Government supports the Committee's recommendation.

Recommendation 10 – Relocation and renumbering of referendum entrenched provisions

Any referendum entrenching provisions inserted in the *Constitution of Queensland 2001* should allow entrenched provisions to be relocated and renumbered, and allow consequential amendments necessary to effect such relocation and renumbering to be made, without approval at a referendum. However, these provisions should not allow the entrenched provisions to be redrafted.

Parliamentary entrenchment requirements should apply to legislation relocating or renumbering any provision of the Constitution.

The Government supports the Committee's recommendation.

Recommendation 11 – Relocation and renumbering of parliamentary entrenched provisions

A bill seeking to relocate and renumber provisions of the *Constitution of Queensland 2001* which are parliamentary entrenched should comply with the requirements of parliamentary entrenchment.

The Government supports the Committee's recommendation.

While parliamentary entrenchment would mean that more time is required for a government to relocate or renumber constitutional provisions, the requirement is consistent with the Committee's general approach to constitutional legislation, and is not so onerous that it would in any way prevent Parliament from proceeding with making amendments.

As the Committee noted, potential delay is an acceptable cost of ensuring that proper consideration is given to proposed constitutional reforms.

Recommendation 12 – Amendment requests to the Commonwealth Parliament

The *Constitution of Queensland 2001* should provide that bills requesting amendment of the Queensland Constitution by the Commonwealth Parliament be subject to the same parliamentary entrenchment or referendum entrenchment requirements as amending legislation passed by the Queensland Parliament.

The Government supports the Committee's recommendation in principle.

Further inter-governmental consultation regarding the details and potential implications will be undertaken prior to any amendment to the Constitution.

Recommendation 13 – Statement that the Constitution is the paramount law

The issue of whether the *Constitution of Queensland 2001* should include a statement that it is the paramount law of Queensland should be considered as part of any review of a preamble for the Constitution.

The Government supports the Committee's recommendation in principle.

Given the uncertainty concerning the practical effect and operation of such a statement, it is appropriate that its inclusion in the Constitution should be considered as part of any review of a preamble for the Constitution.

Recommendation 14 – Constitutional review

No specific provision regarding constitutional review should be included in the *Constitution of Queensland 2001*.

The Government supports the Committee's recommendation. There is no compelling reason supporting the inclusion of any provision regarding constitutional review.

The fact that the *Constitution of Queensland 2001* is now consolidated will mean that it is easier for citizens to refer to constitutional provisions and identify which areas they believe should be reformed.

Recommendation 15 – Future referendum entrenchment

The *Constitution of Queensland 2001* should provide that provisions can only be referendum entrenched following approval of that entrenchment by referendum. This provision should itself be referendum entrenched.

The Government supports the principle that provisions should only be referendum entrenched following approval of that entrenchment by referendum.

The requirement that referendum entrenchment of constitutional provisions be itself approved by referendum is a fundamental democratic principle, and recognises the sovereignty of the people of Queensland. The Government will examine how best to provide for the principle in the Constitution during the drafting process.

Recommendation 16 – Future entrenchment other than referendum entrenchment

The *Constitution of Queensland 2001* should require that all entrenching provisions (whether in the Constitution or other legislation) only be enacted in accordance with the same special procedure which they prescribe. However, referendum approval should be required of any special requirements which are incapable of being satisfied by an absolute majority of the Legislative Assembly. This provision should itself be referendum entrenched.

The Government supports the Committee's recommendation.

Recommendation 17 – A constitutional referendum

Unless compelling justification for an earlier constitutional referendum arises, referendum approval to relocate the currently entrenched provisions to the *Constitution of Queensland 2001* and to referendum entrench other provisions of the Constitution should occur only when the people are asked to approve a change to a republican system of government in Queensland.

The Government supports the Committee's recommendation, while reserving the right to decide the subject matter and timing of any referendum.

27/4/04

Government Response to the

Legal, Constitutional and Administrative Review Committee

Report No. 42 – 'Hands on Parliament' – A Parliamentary committee inquiry into Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes

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The Committee's Recommendations

Recommendation 1 – Monitoring and evaluation of recommendations

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

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

The Government notes the Committee's recommendation that the Committee carry out the proposed evaluation. The Government will request that the Committee also undertake an interim evaluation after the first full electoral cycle, with a full evaluation after three electoral cycles (or nine years).

It is important that Aboriginal and Torres Strait Islander peoples' participation in Queensland's democratic processes be evaluated after an appropriate period to ensure the recommendations are having their intended impact.

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

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

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

The Government notes the Committee's recommendation that the Committee give further consideration to this issue as part of the Committee's consideration of a preamble for the Constitution.

Any request by the Committee for increased resources should be considered by the Cabinet Budget Review Committee against all competing priorities. Determining funding priorities is ultimately a question for the Government and more specifically the CBRC.

Recommendation 3 – Political parties

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

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

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

The Government notes the Committee's recommendation.

The Government will write to the leaders of Queensland's political parties to bring their attention to the Committee's recommendation and encourage their participation in examining measures to increase the participation of Aboriginal and Torres Strait peoples' participation in the political process.

The Government will request that the Committee also undertake an interim evaluation after the first full electoral cycle, with a full evaluation after three electoral cycles (or nine years).

Recommendation 4 – Enhanced and inclusive civics education

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

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

The Government supports the Committee's recommendation.

The Government is committed to ensuring that Indigenous children and young people are prepared for the challenges of the future and are able to participate actively in the processes of democracy in Queensland.

The Government notes the need to record Queensland's history accurately and to be aware of cultural sensitivities regarding the teaching of citizenship education to Aboriginal and Torres Strait Islander students.

Recommendation 5 – Testing inclusiveness in civics education

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

The Ministerial Council for Education, Employment, Training and Youth Affairs has recently commenced national testing in civics and citizenship education. The Government supports the Committee's recommendation that, to enhance accountability for the teaching of civics in the context of inclusive history, the national civics test should be expanded to test knowledge of civics from an Indigenous perspective, including knowledge of Indigenous systems of governance.

The Minister for Education will raise this issue with the Ministerial Council for Education, Employment, Training and Youth Affairs, noting that the Australian Council for Educational Research is in the process of developing and trialling a series of assessment instruments for the purpose of nationally comparable measurement and reporting on the achievement of primary and secondary school students in civics and citizenship education.

The Government acknowledges that testing Indigenous peoples' knowledge of these issues would need to contend with the diverse views on these topics held by different Indigenous communities.

Recommendation 6 – Parliamentary Education Services

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

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

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

The Government supports the Committee's recommendation in principle.

The Government will examine the possibility of establishing a project taskforce to consider the Committee's recommendation and to develop and implement a plan to provide the relevant material and deliver the services proposes by the Committee.

Funding of the Parliamentary Service should be considered by the Cabinet Budget Review Committee against all competing priorities. Determining funding priorities is ultimately a question for the Government and more specifically the CBRC.

Recommendation 7 – Youth participation in local government processes

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

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

The Government supports the Committee's recommendation.

Recommendation 8 – Australian Electoral Commission voter education activities

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

The Government supports the Committee's recommendation.

Recommendation 9 – Electoral Commission Queensland voter education activities

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

The Government supports the Committee's recommendation in principle. The Government has committed $75,000 to the Electoral Commission for Aboriginal and Torres Strait Islanders specific campaigns in the 2003-04 financial year.

Recommendation 10 – Employment and training in democratic institutions and processes

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

a) the Speaker of the Queensland Parliament should review the Parliamentary Service's employment and training policies to ensure that those policies encourage the employment and training of Aboriginal and Torres Strait Islander people in the Parliamentary Service, including in electorate offices;

b) the Queensland Electoral Commissioner should review the Electoral Commission Queensland's employment and training policies to ensure that those policies encourage the employment and training of Aboriginal and Torres Strait Islander people; and

c) the Minister for Local Government and Planning should request all local governments to: (i) review their employment and training policies to ensure that those policies encourage the employment of Aboriginal and Torres Strait Islander people; and (ii) report back to the Minister regarding the results of their review.

The Government supports the Committee's recommendation, and notes a number of initiatives in this area which are already in place.

For example, a program has been established whereby Indigenous community members are being trained as Justices of the Peace, and allowing the constitution of local Magistrates Courts to deal with breaches of the law. This approach empowers remote communities and

enables them to manage breaches of the law in a more effective and often more culturally-appropriate manner.

In addition, many local governments have developed policies and training programs that incorporate multicultural and anti-discrimination awareness, and already participate in employment schemes directed towards breaking the unemployment cycle in Indigenous communities.

Recommendation 11 – Leadership training

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

The Government notes the Committee's endorsement of the proposed Cape York Institute for Policy and Leadership.

Recommendation 12 – Enhancing local government participation

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

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

The Government supports the Committee's recommendation in principle.

Community governance for Aboriginal councils has been identified as a key area for reform under the *'Meeting Challenges, Making Choices'* initiative. The Government will work towards ensuring that more Aboriginal and Torres Strait Islander people are encouraged to stand for election in local government to bring strong leadership, new ideas and skills to Aboriginal and Island councils.

The Department of Local Government, Planning, Sport and Recreation is currently well advanced in providing a training/supporting role for intending candidates through a seminar program, dedicated handbook and sponsorship of the *'Councillors as Leaders in Local Communities'* accredited course, offered through the Open Learning Institute of TAFE.

One of the aims of the current training is to provide candidates with information on the roles and responsibilities of being a Councillor to help them make an informed decision as to whether they wish to nominate for election. The Minister for Local Government and Planning and Minister for Women will review current training programs to ensure that they include material that is particularly suited to Aboriginal and Torres Strait Islander intending candidates.

However, mentoring of potential candidates at the local government level is more appropriately carried out by political parties and experienced independent candidates. The Government will include reference to training and mentoring in correspondence to be sent to the leaders of each political party, as detailed in the response to Recommendation 3 (Political Parties).

The Local Government Association of Queensland, appropriately, does not have a role in training and mentoring potential candidates.

Recommendation 13 – Evaluation of participation in local government

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

The Government notes the Committee's recommendation that the participation of Indigenous peoples in local government be considered as part of the Committee's evaluation as proposed in recommendation 1.

The Government will request that the Committee also undertake an interim evaluation after the first full electoral cycle, with a full evaluation after three electoral cycles (or nine years).

The Local Government Association of Queensland supports this recommendation, and noted that monitoring of participation of minority groups, including Indigenous peoples, could be achieved through data collection details for new Councillors after each local government election. The LGAQ intends to survey all Councillors after the next elections on 27 March 2004, and has undertaken to consider these matters in the survey.

Recommendation 14 – The role of ATSIC and efficient service delivery

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

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

The Government supports the Committee's recommendation.

A Memorandum of Understanding was established between ATSIC and the Queensland Government in 2002 that requires that the Minister for Aboriginal and Torres Strait Islander Policy and the Premier routinely meet with ATSIC. Local elected members and Ministers regularly meet with regional ATSIC/ATSIS representatives to discuss grass-roots and strategic issues. The Government has prepared a shared responsibility agreement between ATSIC (with and for Indigenous communities), the Queensland and Commonwealth Governments for enhanced collaboration within the Council of Australian Governments Cape York trial.

Recommendation 15 – Indigenous Community Cabinets

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

The Government supports the increased participation of Indigenous peoples in the Community Cabinet process. The Government does not support the concept of Community Cabinets held exclusively for Indigenous peoples.

The Government encourages culturally sensitive meetings of Cabinet Ministers and Indigenous communities, and will consider a selection of Community Cabinet meetings to be held in areas highly populated by Indigenous people, including extending personal invitations to Indigenous people, organisations and businesses. The Government will

undertake more research on how Indigenous people are most comfortable to engage with Government Ministers. As noted in the Government's response to recommendations 16 and 17, the Government recognises the important role of Indigenous leaders in their communities, and encourages their participation in the Community Cabinet process.

The Community Cabinet process already provides opportunities for Indigenous groups and individuals to participate and contribute. While greater participation by Aboriginal and Torres Strait Islander Peoples' is encouraged, this should not occur to the exclusion of other members of the community. Isolating a particular cultural group is not in keeping with the philosophies that underpin the main purpose of Community Cabinet.

Recommendation 16 – The role of community leaders

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

The Government notes the Committee's recommendation, and supports encouraging Aboriginal and Torres Strait Islander leaders to take an inclusive approach to engaging their communities.

The negotiation table process has been initiated by the Queensland Government whereby Community members and representatives in discrete Aboriginal communities (and some other communities) engage with Queensland and Commonwealth Governments and ATSIC to negotiate on priorities for their communities. The centrepiece of the negotiation table process is the development of a community development plan (the Government provides $30,000 to communities to assist in the development of this plan). This plan sets out the priorities and requirements of the community and also identifies the roles and responsibilities of Government and the community. Government CEOs have been appointed as Government Champions to these communities so that community members have access to the highest levels of Government to assist in implementing their community plans.

As part of the *'Meeting Challenges Making Choices'* program implementation, and through a number of other initiatives across departments, Government is actively encouraging and supporting the development of leadership capacity in Aboriginal and Torres Strait Islander communities. In addition, as part of the Community Engagement Improvement Strategy, a guide is being produced to assist public servants to improve engagement with Indigenous communities and the role of community leaders will be taken up in that document.

Furthermore, Community Justice Groups have been established within Indigenous communities to enable appropriate local, community-based responses to justice issues. The Groups have been particularly responsible for the development of local Alcohol Management Plans to manage the impact of alcohol misuse and related violence and other crime within their communities.

Recommendation 17 – Governments' appreciation of cultural differences

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

The Government supports the Committee's recommendation. The Government appreciates and respects cultural differences and, to the greatest extent possible, will adapt processes to show an appreciation of, and respect for, these differences.

Recommendation 18 – Fundamental legislative principles

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

The Government does not support the Committee's recommendation. The proposed amended fundamental legislative principle is very different in nature to the current list of examples in s.4 of the *Legislative Standards Act 1992*, and is not consistent in nature with the concept of fundamental legislative principles generally.

The Government leaves open the possibility of a further examination of this issue to explore ways to improve the existing FLP requirement regarding Indigenous peoples' culture and tradition.

Recommendation 19 – LCARC's area of responsibility

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

The Government supports the Committee's recommendation. This expansion of the Committee's area of responsibility is an appropriate initiative.

Recommendation 20 – LCARC's agenda

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

The Government notes the Committee's recommendation that the Committee should more actively consider its area of responsibility.

Recommendation 21 – Parliamentary Indigenous Liaison Officers

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

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

The Government does not support the Committee's recommendation.

There is insufficient justification for the appointment of Parliamentary Indigenous Liaison Officers. The Government considers that existing staffing levels within the Parliamentary Service are sufficient for the provision of advice to Committees concerning Aboriginal tradition and Island custom.

Recommendation 22 – Aboriginal and/or Torres Strait Islander Assembly

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

The Government supports the Committee's recommendation. The Committee has not identified compelling justification for establishing a separate Aboriginal and/or Torres Strait Islander assembly.

Recommendation 23 – Greater autonomy in the Torres Strait

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

The Government supports the Committee's recommendation. It is anticipated that this issue will be raised during a green paper on Torres Strait Community Governance in 2004.

Recommendation 24 – Dedicated seats

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

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

The Government supports the Committee's recommendation. A system of dedicated seats cannot be supported at the State or local government level given the opposition to dedicated seats which currently exists in the Indigenous community.
The Government will request that the Committee also undertake an interim evaluation after the first full electoral cycle, with a full evaluation after three electoral cycles (or nine years).

Recommendation 25 – Queensland's electoral system

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

The Government notes the Committee's recommendation that the Committee will further investigate this matter as part of its future inquiries. The question of whether the current system is the most effective system to represent the diverse interests of the Queensland community should be evaluated at a later date.
The Government will request that the Committee also undertake an interim evaluation after the first full electoral cycle, with a full evaluation after three electoral cycles (or nine years).