



**LAW, JUSTICE AND SAFETY COMMITTEE**

**Options for modernising the oaths and affirmations of  
allegiance in the *Constitution of Queensland Act 2001***

**September 2009**

**Report No. 71**



## LAW, JUSTICE AND SAFETY COMMITTEE

### 53<sup>RD</sup> PARLIAMENT

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## 1. INTRODUCTION

On the 23 April 2009, the Law, Justice and Safety Committee received a referral from the Legislative Assembly. That referral, as well as renewing a lapsed referral to the previous Committee to draft a preamble for the *Constitution of Queensland 2001*, (which is the subject of a separate report), asked the Committee to “*develop options for modernising the oaths or affirmations of allegiance as outlined in Schedule 1 of the Constitution of Queensland 2001....*”

## 2. THE CURRENT OATHS AND AFFIRMATIONS OF ALLEGIANCE

The oaths and affirmations as currently contained in schedule 1 of the *Constitution of Queensland 2001* are set out at the appendix to this report. They are to be taken, before undertaking the duties of office, by:

- members of the Legislative Assembly;
- the Governor;
- ministers and members of Executive Council; and
- judges.<sup>1</sup>

All the oaths, in summary:

- are in what might be considered relatively modern language;
- include a statement of allegiance to the Sovereign, (in identical terms in each case); and
- include an oath of office or of service – generally being a statement along the lines of pledging faithful performance, to the best of one’s abilities, of duties and service to the people of Queensland (in the case of the Governor – service to the Sovereign) or, for judges, performance of duties with equal justice to all without fear or favour.

The oath for members of Executive Council includes an oath of secrecy. In every case, there is an option for an affirmation to be made in lieu of taking an oath.

As an example, the current oath for members of the Legislative Assembly reads:

*I, ..(name).., do sincerely promise and swear (or, for an affirmation - do sincerely promise and affirm) that*

*I will be faithful and bear true Allegiance to Her (or His) Majesty..(name of Sovereign).. as lawful Sovereign of Australia and to Her (or His) heirs and successors, according to law; and*

*I will well and truly serve the people of Queensland and faithfully perform the duties and responsibilities of a member of the Legislative Assembly to the best of my ability and according to law.*

*So help me God! (or omitted for an affirmation).*

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<sup>1</sup> In Queensland, it is customary for Executive Councillors to be those who comprise the Ministry and Cabinet. Whilst section 50 of the *Constitution of Queensland 2001* provides for the Governor to attend and preside at all meetings of the Council, the Governor is not a member of Executive Council.

### 3. OATHS AND AFFIRMATIONS IN QUEENSLAND

As mentioned, the current oaths and affirmations of allegiance are contained in the *Constitution of Queensland 2001*. It is clear from the relevant sections of the Constitution itself that the oaths are mandatory. Most of those sections are in terms that a person “must” take the oath [or make the affirmation] before assuming the duties of the relevant office.<sup>2</sup> [Section 22(1) provides that no member shall sit or vote in the Legislative Assembly unless the member has taken or made the oath or affirmation. Section 22(3) provides that a member “takes” their seat upon taking or making the oath or affirmation.]

The current wording of the oaths and affirmations was newly drafted when the *Constitution of Queensland 2001* was enacted, with slightly more modern language being used than for the previous forms in the *Constitution Act 1867*. The various oaths (or affirmations) of office were added in 2001.

In August 2005, the Constitution and Other Legislation Amendment Bill 2005 was introduced in the Queensland Parliament. The bill included, *inter alia*, provision for members, ministers and judges to have the option of whether or not to take an oath or make an affirmation of allegiance to the Sovereign.<sup>3</sup> [The bill also gave similar options to magistrates and justices of the peace.]

The bill however did not become law, lapsing upon the dissolution of the Legislative Assembly in August 2006, prior to the general Queensland election of September 2006.

The introduction of the provisions in that bill making optional the oath or affirmation of allegiance to the Sovereign followed a process of consideration of the oaths and affirmations over some years.

The Legal, Constitutional and Administrative Review Committee of the 50<sup>th</sup> Parliament had reviewed the oath or affirmation of allegiance made by members of the Legislative Assembly. (This review was upon a request made by the then Premier.) [That Committee had received advice from Professor Gerard Carney on a number of issues. He advised that there was no constitutional or legal impediment to the oaths being made optional.]

In its report, tabled in October 2001, a majority of the Committee recommended:

1. that the relevant legislative provision (then section 4 of the *Constitution Act 1867*) be amended to require members to make an oath or affirmation *of office* [the report pre-dated the *Constitution of Queensland 2001*]; and
2. that the Legal, Constitutional and Administrative Review Committee conduct further public consultation on the issue of whether an oath of allegiance to the Crown should be optional for members.<sup>4</sup>

The first recommendation was supported by all members of the Committee. However, three members tabled a dissenting report in which they disagreed with the second recommendation.

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<sup>2</sup> See various sections 22 (members), 31 and 41 (governors and deputy governors), 43 and 46 (ministers and acting ministers), 59 (judges).

<sup>3</sup> Constitution and Other Legislation Amendment Bill 2005, clauses 5, 9, 11, and 15.

<sup>4</sup> Legal, Constitutional and Administrative Review Committee, Report No. 31, *Review of the Members' Oath of Affirmation of Allegiance* October 2001, page 10. [In Report No. 44, tabled in September 2000, the then Members' Ethics and Parliamentary Privileges Committee had recommended a review of members' oaths be included as part of the consolidation of the Constitution then underway.]

Rather, they were of the view that the issue of whether members of the Legislative Assembly should swear allegiance to the Crown was “*essentially an issue about whether Australia should become a republic.*” The dissenting members noted that a referendum on a republic had recently been defeated and they expressed the view that the only appropriate form of consultation was a referendum of the people on changing the system of government, stating that “*removing the mandatory requirement for members to swear or affirm allegiance to the Crown should only occur as a result of a successful referendum for an Australian republic.*”

One member of the Committee, in another dissenting report, expressed the view that there did not need to be any further consultation, and favoured moving directly to making the oath of allegiance to the Sovereign optional for members of the Legislative Assembly.

The same Committee – the Legal, Constitutional and Administrative Review Committee of the 50<sup>th</sup> Parliament - subsequently canvassed a number of constitutional reform issues, including the outstanding issue from the second recommendation in its report 31 above regarding the members’ oath.

The Committee released an issues paper in April 2002 calling for submissions on numerous areas of Constitutional reform. The issues paper included the following content, which sets out some possible arguments for and against giving members of the Legislative Assembly an option regarding swearing or affirming allegiance to the Crown:

*In LCARC report no 31, this committee considered the mandatory requirement that members of the Queensland Legislative Assembly swear or affirm allegiance to the Crown. There is currently no Constitutional impediment to repealing the requirement. Further, as discussed in report 31, an oath or affirmation is a commitment which is morally, not legally, binding.*

*The arguments against such a mandatory requirement, as set out in LCARC report no 31, include the following:*

- *Some members might have difficulties with swearing or affirming allegiance to a person who is a foreign national, living in a foreign country and whose position is attained by genetic inheritance.*
- *A compulsory oath or affirmation of allegiance to the Crown is contrary to the notion of a modern, independent, and democratic Australia.*
- *Removing a requirement to swear or affirm allegiance to the Crown is not solely an issue related to the republican debate. Nor does it deny Australia’s history with Great Britain, the strong relationship between the two countries, or respect for the Queen and the position she holds. Rather, it concerns members properly acknowledging where their allegiance and duties lie and whom they are required to serve—that is, the people of Queensland who elected them.*
- *Members currently have a choice as to whether they swear an oath or make an affirmation and likewise should have a choice as to whether they swear allegiance to the Crown. This would enable respect to be given to members’ different opinions, and enable members to make a promise which truly reflects their moral commitment.*

*The arguments in favour of such a mandatory requirement include the following:*

- *Under our current system of government we are a constitutional monarchy and the Queen remains Queensland’s Head of State. Queensland’s Constitution provides that the Parliament of Queensland consists of the Queen and the Legislative Assembly.*

- *The issue of whether members should swear or affirm allegiance to the Crown is essentially an issue about whether Australia should be a republic. Australians recently defeated a referendum on becoming a republic. The people at the recent referendum did not vote to change the Constitution and, thus, to remove the mandatory requirement that members swear or affirm allegiance to the Crown would be presumptuous. Removal of the oath or affirmation of allegiance is an issue for the people, not for members of Parliament.*
- *Giving members a choice not to swear or affirm allegiance might also require consideration of whether all other oaths of allegiance taken by public officers and judges in Queensland should likewise be altered. People who are currently required to, or by practice, make an oath or affirmation of allegiance include the Governor, ministers and judges of the Supreme Court. (Although, few public officers are required by statute to swear or affirm allegiance to the Crown.)*

*Members of the ACT Legislative Assembly and various judicial officers in the ACT have a choice as to whether they swear or affirm allegiance to the Crown (although slightly different constitutional arrangements exist in the ACT). The Tasmanian Parliament has recently passed an Act to remove the oath or affirmation of allegiance from judicial oaths in that state.*

*This committee stated in LCARC report no 31 that it believed the most appropriate course of action is for the committee to conduct public consultation regarding whether there should be a mandatory requirement for members to swear or affirm allegiance to the Crown or only to the people of Queensland and made a recommendation to this effect.<sup>5</sup>*

In its Report No. 36, tabled in August 2002, that Committee recommended (by majority) that the *Constitution of Queensland 2001* be amended so that members have the option whether or not to take the oath of, or make an affirmation of, allegiance to the Crown.<sup>6</sup> The Committee quoted from submissions received and concluded:

*The committee, like the majority of submitters, does not support retention of the compulsory requirement that members swear or affirm allegiance to the Crown. Rather, members should have a choice in this regard. Members currently have a choice as to whether they swear an oath or make an affirmation and likewise should have a choice as to whether they swear or affirm allegiance to the Crown. This enables respect to be given to members' different opinions, and enables members to make a promise which truly reflects their moral commitment.*

*Enabling members to choose not to swear or affirm allegiance does not in any way alter the Queen's role in the State's constitutional system. Moreover, as Mr Geoffrey Fisher pointed out in his submission, allowing individual members this choice is clearly distinct from the issue of whether Australia should become a republic. It is far more important that members be required to take or make the oath or affirmation of office now contained in the Constitution. This ensures that members properly acknowledge where their allegiance and duties lie and whom they are required to serve — that is, the people of Queensland who elected them.<sup>7</sup>*

Three Committee members, in a statement of reservation, stated that they did not consider that any amendments should be made to the members' oath, saying:

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<sup>5</sup> Legal, Constitutional and Administrative Review Committee, Report No. 36, *The Queensland Constitution: Specific content issues*, Issues Paper, April 2002, at page 10.

<sup>6</sup> Legal, Constitutional and Administrative Review Committee, Report No. 36, *The Queensland Constitution: Specific content issues*, August 2002, recommendation 11, at page 27.

<sup>7</sup> Report No. 36, at page 27.



*We do not consider that any amendments should be made to the Oath or affirmation of allegiance and of office - member of the Legislative Assembly contained in schedule 1 of the Constitution of Queensland 2001. The view expressed in submissions, while informative, is not necessarily representative of community sentiment on this issue.*

*It is appropriate that all members of Parliament swear or affirm allegiance to the Sovereign, as the Head of State in Queensland. The requirement for this oath or affirmation, which reflects Queensland's status as a constitutional monarchy, should only be removed with the support of the people of Queensland. It is not appropriate for individual members to decline to officially recognise the Sovereign as the Head of State through an oath or affirmation of allegiance.<sup>8</sup>*

In a response tabled on 28 April 2004, the Government supported the Committee's recommendation. This support was reflected in the provisions of the lapsed bill referred to earlier.

#### 4. OATHS AND AFFIRMATIONS IN OTHER JURISDICTIONS

In 2001, the then Legal, Constitutional and Administrative Review Committee observed that, at that time, an oath of allegiance was prescribed for members of all Australian Parliaments, other than in the Australian Capital Territory.<sup>9</sup>

Since that time, an oath (or affirmation) of allegiance to the Queen has been made optional in New South Wales for members of Parliament.<sup>10</sup> Members are required to take a pledge of loyalty to Australia and to the people of New South Wales.

In Victoria, the Parliamentary Accounts and Estimates Committee recommended in April 2008 a legislative amendment to in effect make the oath of allegiance to the Sovereign optional for members, by providing for an alternative oath of allegiance to Australia and to the people of Victoria. The response of the Government was in favour of an amendment which would include reference to the people of Victoria as an *addition*, but not as an *alternative*, with the Government expressing the view that should be a single oath sworn by all members of Parliament rather than an option of different oaths.

#### 5. SUBMISSIONS TO THE CURRENT INQUIRY ON THE OATHS AND AFFIRMATIONS

Relatively few of the submissions to the Committee's current inquiry canvassed the issue of the oaths and affirmations of allegiance.

In a submission, the Chief Justice referred to the judicial oath or affirmation of allegiance and office. He stated:

*As to the judicial oath or affirmation of allegiance and office, the current form encapsulates relevant matters and in relatively contemporary language. If there is to be any redraft, and I do not presently see any need for it, then it would be extremely important to retain reference to the notions of doing "equal justice to all persons", discharging the duties of the office "according to law", and doing so "without fear favour or affection". These are matters which go to the heart of judicial duty, and are well understood notions.*

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<sup>8</sup> Report No. 36, at page 70.

<sup>9</sup> Legal, Constitutional and Administrative Review Committee, Report No. 31, *Review of the Members' Oath of Affirmation of Allegiance*, October 2001, page 5.

<sup>10</sup> By virtue of a 2006 amendment to the *Constitution Act 1902* (NSW).

## 6. COMMITTEE ANALYSIS

The Committee has noted a divergence of views as expressed in submissions as to whether it is appropriate that it be mandatory to swear an oath of allegiance to the Sovereign.

The Committee believes that making it optional to take an oath of allegiance to the Sovereign best caters for these differences of opinion. This allows each individual to make a decision that reflects their own beliefs. Such a decision mirrors the current choice available to all those who are about to take office to either take an oath or make an affirmation, based on their personal beliefs.

At the same time, the Committee sees it as important that there be an oath (or affirmation) of allegiance. The Committee therefore proposes that, where an election is made to not swear (or affirm) allegiance to the Sovereign, there be a requirement to swear allegiance in terms “to Australia” and to Australia’s “Head of State”.

The Committee further believes that it is consistent that all office-holders have such an option, to take account of the differing beliefs held by those about to assume any office for which an oath of allegiance must be taken (or affirmation made).

The Committee supports the retention of the current oaths (or affirmations) of office, as they appropriately reflect the reality that those assuming the various offices owe a duty to perform their official responsibilities according to the law and to faithfully serve the people of Queensland.

## RECOMMENDATION

THAT THE *CONSTITUTION OF QUEENSLAND 2001* BE AMENDED SO THAT:

- ALL OATHS (AND AFFIRMATIONS) OF ALLEGIANCE CURRENTLY CONTAINED IN THE ACT BE WORDED SO THAT ALLEGIANCE IS TO BE SWORN (OR AFFIRMED) TO AUSTRALIA **AND** TO **EITHER** (AT THE OPTION OF THE PERSON TAKING THE OATH (OR MAKING THE AFFIRMATION)):
  - HER (OR HIS) MAJESTY..(NAME OF SOVEREIGN).. AS LAWFUL SOVEREIGN OF AUSTRALIA AND TO HER (OR HIS) HEIRS AND SUCCESSORS;
- OR**
- AUSTRALIA’S HEAD OF STATE AND TO HIS OR HER SUCCESSORS IN OFFICE.

## APPENDIX - CURRENT OATHS AND AFFIRMATIONS

### **Oath or affirmation of allegiance and of office—member of the Legislative Assembly**

I, ..(name).., do sincerely promise and swear (*or, for an affirmation—do sincerely promise and affirm*) that

I will be faithful and bear true Allegiance to Her (*or His*) Majesty..(name of Sovereign).. as lawful Sovereign of Australia and to Her (*or His*) heirs and successors, according to law; and

I will well and truly serve the people of Queensland and faithfully perform the duties and responsibilities of a member of the Legislative Assembly to the best of my ability and according to law.

So help me God! (*or omitted for an affirmation*).

### **Oath or affirmation of allegiance and of office—Governor and Acting Governor**

I, ..(name).., do sincerely promise and swear (*or, for an affirmation—do sincerely promise and affirm*) that

I will be faithful and bear true Allegiance to Her (*or His*) Majesty..(name of Sovereign).. as lawful Sovereign of Australia and to Her (*or His*) heirs and successors, according to law; and

I will well and truly serve Her (*or His*) Majesty..(name of Sovereign).. in the office of Governor of Queensland (*or, for an Acting Governor — in the office of Acting Governor of Queensland*) in the Commonwealth of Australia, and will duly perform the functions and exercise the powers of the office according to the best of my ability, skill and knowledge; and

I will, in all things associated with the office, duly and impartially administer justice in Queensland.

So help me God! (*or omitted for an affirmation*).

### **Oath or affirmation of allegiance and of office—Minister of the State and acting Minister of the State**

I, ..(name).., do sincerely promise and swear (*or, for an affirmation—do sincerely promise and affirm*) that

I will be faithful and bear true Allegiance to Her (*or His*) Majesty..(name of Sovereign).. as lawful Sovereign of Australia and to Her (*or His*) heirs and successors, according to law; and

I will well and truly serve the people of Queensland in the office of (*portfolio title*) (*or, for an acting Minister of the State—acting in the office of (portfolio title)*).

So help me God! (*or omitted for an affirmation*).

**Oath or affirmation of office and of secrecy—member of Executive Council**

I, ..(name).., do sincerely promise and swear (*or, for an affirmation—do sincerely promise and affirm*) that

I will, to the best of my judgment and ability, faithfully advise and assist the Governor or other officer performing a function or exercising a power of the Governor as Deputy Governor or Acting Governor, in all matters brought under my consideration as a member of the Executive Council of Queensland; and

I will not disclose the confidential deliberations of the council.

So help me God! (*or omitted for an affirmation*).

**Oath or affirmation of allegiance and of office—Judge**

I, ..(name).., do sincerely promise and swear (*or, for an affirmation—do sincerely promise and affirm*) that

I will be faithful and bear true Allegiance to Her (*or His*) Majesty..*(name of Sovereign)*.. as lawful Sovereign of Australia and to Her (*or His*) heirs and successors, according to law; and

As a judge of the Supreme Court of Queensland (*or District Court of Queensland*) (*and/or as (title of other office, for example, Chief Justice of Queensland)*), I will at all times and in all things do equal justice to all persons and discharge the duties and responsibilities of the office according to law to the best of my knowledge and ability without fear favour or affection.

So help me God! (*or omitted for an affirmation*).

## DISSENTING REPORT

We, the undersigned, dissent from the following recommendation contained in the report put forward by the majority of committee members:

*The Constitution of Queensland 2001 (“the Constitution”) be amended so that:*

*All oaths (and affirmations) of allegiance currently contained in the Act be worded so that Allegiance is to be sworn (or affirmed) to Australia AND to either (at the option of the person taking the oath) or making the affirmation):*

- (a) Her (or His) Majesty...(name of Sovereign)...as lawful Sovereign of Australia and to Her (or His) heirs and successors; or*
- (b) Australia’s Head of State and to his or her successors in office.*

The Committee was required by way of referral from the Parliament to consider ways of modernising the oath or affirmation taken by members of the Legislative Assembly of Queensland,<sup>11</sup> the Governor of Queensland,<sup>12</sup> Deputy Governors of Queensland,<sup>13</sup> Members of the Queensland Executive Council,<sup>14</sup> Ministers of the Crown for Queensland,<sup>15</sup> Acting Ministers of the Crown for Queensland<sup>16</sup> and Judges of the Courts of Queensland.<sup>17</sup>

The task of “modernising” the oath or affirmation has been interpreted narrowly by members of the committee supporting the majority recommendation as an opportunity to make optional for individuals assuming these positions, the requirement to take an oath or affirmation of allegiance to Her Majesty Queen Elizabeth II and Her heirs and successors.

It is regrettable that the referral from the Parliament has resulted in a latent republican exercise by members of the committee supporting the majority recommendation. Equally regrettable was the apparent motivation of members supporting the majority recommendation based on a personal difficulty swearing allegiance to the Queen as a person and Her heirs and successors, rather than any genuine attempt to improve or “modernise” the wording of the oaths or affirmation of office that was the subject of the referral from the Parliament.

The undersigned members dissent from the committee’s majority recommendation on the following primary grounds.

1. We object to the latent republican exercise pursued by the committee members supporting the majority recommendation. Her Majesty Queen Elizabeth II is Queen of Australia and Queen of Queensland. The concept of the Crown as represented by the Queen is enshrined by both legislation and principle in Queensland. The Sovereign’s role is outlined clearly and unambiguously in the *Constitution of the Commonwealth of Australia* and the *Constitution of Queensland Act 2001*.

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<sup>11</sup> S22 Constitution of Queensland 2001 (Qld).

<sup>12</sup> *Ibid* at s31.

<sup>13</sup> *Ibid* at s41 (5).

<sup>14</sup> *Ibid* at s48 (3).

<sup>15</sup> *Ibid* at s 43 (5).

<sup>16</sup> *Ibid* at s 46 (3).

<sup>17</sup> *Ibid* at s 59.

The issue of whether the abovementioned Crown officers should swear or affirm allegiance to the Crown is essentially an issue about whether or not Australia should be a republic, rather than whom they should swear allegiance to as a matter of law. Australians defeated (emphatically so in Queensland) the republican referendum in 1999. This was the last authoritative public consultation undertaken on this question.

Widespread public support for a recommendation to provide an option for the abovementioned officers not to swear or affirm allegiance to the Crown can not be substantiated. Making reference to the Queen optional in the oath or affirmation of allegiance by the abovementioned officers is a matter for the people of Queensland.

Regardless of the personal opinions of members of the Legislative Assembly, until such time as Australia changes, by referendum, its system of government, we are a constitutional monarchy and our head of state is Queen Elizabeth II and Her heirs and successors.

The argument advanced by committee members supporting the majority recommendation, providing for oaths and affirmations to be made to Australia's (and Queensland's) Head of State, effectively provides for Crown Officers to swear or affirm allegiance to the Queen, without having to actually say the Sovereign's name, is a petty, frivolous and spurious argument and confirms that the recommendation is a latent republican exercise and erroneous in law.

Members supporting the majority committee recommendation also put forward the argument that having the option to swear or affirm an allegiance to the Queen is comparable to having an option to take an oath or an affirmation. This argument is fundamentally flawed in that there is a clear difference between having a choice to swear an oath or take an affirmation (pursuant to our rights of freedom of religion) and swearing allegiance to the Queen as per the provisions of our current Constitution.

2. We contend that the majority committee recommendation fails to “modernise” the oaths and affirmations required to be taken by the abovementioned officers. We fully agree with the submission to the committee during its public consultation from Mr Andrew Michael Curtin on 18 May 2009 where he concludes that:

*The effect of ss10 and 7(5) of the Australia Acts (1986) was to transfer sovereignty over Queensland from the Queen of the United Kingdom to the Queen as Queen of Queensland.*

*Since pursuant to s7(2) of the Australia Acts (1986), the Governor of a State exercises the powers and functions of the Queen in relation to that State, it would be most appropriate for the Governor of Queensland to pledge allegiance to the Queen as Queen of Queensland because is the sovereignty of the Queen of Queensland which, under the Queensland Constitution, the Governor of Queensland will exercise.<sup>18</sup>*

Mr Curtin goes on to make the point that the same analysis applies to Ministers, Judges and Members of the Legislative Assembly.

We agree with Mr Curtin's recommendation for the Queen to be styled in the oath and affirmation as lawful sovereign both of Australia and Queensland, to reflect our current constitutional arrangements. As such we recommend that:

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<sup>18</sup> Submission 185, Andrew Michael Curtin.

*The Constitution of Queensland 2001 (“the Constitution”) by amended so that:*

*“All oaths (and affirmations) of allegiance currently contained in the Act be worded so that Allegiance is to be sworn (or affirmed) to Her (or His) Majesty (name of Sovereign) as lawful Sovereign of Australia and of Queensland and to Her (or His) heirs and successors, according to law....”*

The addition of the words “and of Queensland” reinforces the commitment that the allegiance of all officeholders, belongs to not only the Queen as Queen of Australia but more specifically, to the Queen as Queen of Queensland under whose Sovereignty the office will be discharged as contained in the Australia Act.<sup>19</sup>

Otherwise, we consider that the current language used is perfectly modern and appropriate. In support of this view, we refer to correspondence to the committee from the Chief Justice of the Supreme Court of Queensland, the Honourable Justice Paul de Jersey, who advised as follows in respect of the language used in the oath and affirmation of office for Judges of the Courts of Queensland:

*As to the judicial oath or affirmation of allegiance and office, the current form encapsulates relevant matters and in relatively contemporary language. If there is to be a redraft, and I do not presently see any need for it, then it would be extremely important to retain reference to the notions of doing “equal justice to all persons”, discharging the duties of office “according to law” and doing so “without fear, favour or affection”.*

Given that the style of language used for the oath and affirmation of allegiance and office for Judges of the Courts of Queensland is largely consistent for the other officers listed above, we contend that no further modernisation is required.

3. We contend that providing an option for oaths and affirmations to be made to Australia’s (and Queensland’s) Head of State creates a scenario whereby individuals may sit in the Parliament, Cabinet, or Executive Council with other individuals who have elected to take a fundamentally different oath or affirmation of allegiance and office. It is totally inconsistent for one MP, Minister or Executive Councillor to elect to swear an oath or affirmation of allegiance to the Queen, to serve alongside another who has elected to take a fundamentally different oath or affirmation, but is acting in the same capacity.

Indeed, the above recommendation supported by the majority of the committee may facilitate the spectacle of an individual who is an MP, a Minister and an Executive Councillor, taking a different oath or affirmation of allegiance in different capacities. Such a scenario is clearly undesirable and an unnecessary risk created as a result of this recommendation.

Significantly, the proposal is that the oath or affirmation of allegiance and office be taken to the Australian Head of State. Fundamentally, the Crown Officers referred to above owe their primary legal obligation to Queensland and not to Australia. The distinction is an important legal one.

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**Mr Andrew Cripps MP**  
**Member for Hinchinbrook**

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**Mr Jarrod Bleijie MP**  
**Member for Kawana**

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**Mr Aidan McLindon MP**  
**Member for Beaudesert**

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<sup>19</sup> 1986 (Cth).