



Speech by

**Andrew Cripps**

**MEMBER FOR HINCHINBROOK**

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## **CONSTITUTION (PREAMBLE) AMENDMENT BILL**

**Mr CRIPPS** (Hinchinbrook—LNP) (12.48 pm): I rise to make a contribution to the debate on the Constitution (Preamble) Amendment Bill. The bill proposes to amend the Constitution of Queensland to retrospectively insert a preamble into the Queensland Constitution. On 3 September 2009 in response to a referral from the Queensland parliament, the Law, Justice and Safety Committee tabled its report No. 70 titled *A preamble for the Constitution of Queensland 2001*, which recommended a draft text for insertion into the Queensland Constitution. The Law, Justice and Safety Committee, of which I am a member, was required, as part of its terms of reference from the parliament, to draft an aspirational statement in commemoration of the 150th anniversary year of the establishment of Queensland and to provide due recognition to Queensland's Aboriginal and Torres Strait Islander peoples.

The bill adopts the text of the committee's proposed preamble with some amendments. I wish to make two observations about some of the work of the committee not picked up in this bill. Firstly, I note the government has seen fit not to proceed with the recommendation provided to the parliament in report No. 71 of the Law, Justice and Safety Committee relating to options for modernising the oaths and affirmations of allegiance in the Constitution of Queensland 2001.

Although this issue formed part of the referral from the parliament to the committee, the committee reported to the parliament separately on this issue in the form of report No. 71. I very much welcomed the government's response to report No. 71, which indicated the government did not support the committee's recommendations supported by Labor members in the majority on that committee.

Indeed, the government response described the recommendation put forward by the Labor members on the Law, Justice and Safety Committee as not presenting a sensible alternative to the current oath or affirmation of allegiance. I table the government's response for the record.

*Tabled paper:* Government response to the Law, Justice and Safety Committee report No. 71—Options for modernising the oaths and affirmations of allegiance in the Constitution of Queensland 2001 [[1759](#)].

The Labor members on the committee sought to make optional reference to the sovereign, currently Her Majesty Queen Elizabeth II, in the oaths and affirmations of allegiance taken by members of the Legislative Assembly, the Governor, ministers, members of the Executive Council and judges. The recommendation ignored obvious features underpinning Queensland's constitutional arrangements. No wonder the only responsible course of action left open to the government was to describe the recommendation as nonsensical. The LNP opposition members of the committee registered a very strong dissenting report alongside report No. 71.

I want to acknowledge that the committee members worked hard amongst themselves to hammer out the wording of the draft preamble that appeared in report No. 71. Notwithstanding that hard work, the LNP opposition members of the committee still saw fit to lodge a statement of reservation with respect to issues of process that the committee encountered during its consideration of this matter. These concerns are outlined in detail in the statement of reservation from LNP members of the committee attached to report No. 71.

The explanatory notes accompanying the bill state that the draft preamble is the result of a widespread consultation process. I come to this debate as the only member of this parliament to have gone through the consultation process in relation to this issue twice. I was a member of the Legal, Constitutional and Administrative Review Committee of the 52nd Parliament that undertook consultation after that committee received a referral on 4 December 2008 to do exactly what the Law, Justice and Safety Committee would eventually do in the 53rd Parliament. Our referral lapsed with the calling of the state election in February 2009.

Notwithstanding the efforts of both committees to travel around Queensland, accept public submissions and hold public hearings, doing something as profound and as serious as retrospectively inserting a preamble into a constitution in my view ought not to be done without a referendum of the citizens in the relevant jurisdiction. This is not occurring in this case. The referral from the parliament required the committee to develop a draft preamble for insertion into the Constitution of Queensland. While the committee has fulfilled its obligations to the parliament with respect to the referral, the majority of public submissions did not support the inclusion of a preamble into the Queensland Constitution and felt that a preamble was neither required nor necessary.

The simple fact is that there was relatively little public support for a preamble in the wider community in the first instance, especially one not approved by the people of Queensland by way of a referendum. As such, I am not convinced that the parliament in turn has fulfilled its obligation to the people of Queensland. Indeed, this matter has been given some consideration by the predecessor committee to the Law, Justice and Safety Committee, the Legal, Constitutional and Administrative Review Committee in its report No. 46 tabled in November 2004 which actually recommended against the insertion of a preamble in the Queensland Constitution.

The committee made the following observations in support of its recommendation—

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

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

As the LNP opposition members pointed out in their statement of reservation attached to report No. 70, a cursory examination of the public submissions and other material considered by the committee reveals that many, if not all, of the matters outlined by the Legal, Constitutional and Administrative Review Committee in 2004 remain relevant and yet to be resolved.

The government's acceptance of the recommendation of report No. 46 in respect of its decision not to proceed with the insertion of a preamble into the Queensland Constitution at that time should inform and instruct members of the 53rd Parliament in respect of these recommendations from the Law, Justice and Safety Committee. Public submissions received by the committee demonstrated minimal support for a preamble. There was a clear desire and preference for any proposed preamble to be approved by the people of Queensland by way of a referendum. In the absence of a comprehensive public consultation process a referendum is the only way to ensure any proposed preamble can claim to legitimately enjoy the support and approval of the people of Queensland.

Accordingly, I believe that it is important that any proposed preamble ought to be put to the people of Queensland by way of a referendum. It is true that the Constitution of the state of Queensland is an act of the Queensland parliament. It is true that the Constitution of the state of Queensland may be lawfully amended without a referendum, unlike the Constitution of the Commonwealth of Australia which may only be amended by way of agreement of the people of Australia through a referendum. Whilst I acknowledge that the Queensland Constitution can be lawfully changed without reference to the people of Queensland,

that does not mean that it always should be. The Queensland Constitution is not just any ordinary act of the Queensland parliament; it is a special act. Indeed, that the Queensland Constitution is a special act is acknowledged by the fact that the government itself is seeking to insert a preamble on a very special anniversary in the history of the great state of Queensland which is designed to be aspirational. Surely those who the government hopes will be inspired and motivated are the people of Queensland. Surely, in that case, the people of Queensland ought to decide whether or not they are sufficiently inspired and motivated by the proposed wording of the preamble by being themselves asked that very question by way of a referendum.

I say let the people of Queensland have ownership of their Constitution and their preamble when we are proposing to make such an important change, a change that expresses views and attitudes on a wide range of matters. I say let the people of Queensland decide and determine the direction of this great state. Quite frankly, civil, social or cultural attitudes cannot be manufactured by parliamentarians alone determining the form of words. Anything less, in fact, is the antithesis of that ideal when we are dealing with such an important proposal that involves what is a change to a special act of this parliament. This parliament ought not to make that mistake.

In accordance with the referral from the parliament, the committee consulted the Aboriginal and Torres Strait Islander Advisory Council in respect of the incorporation into the draft preamble of a statement of due recognition to Queensland's Aboriginal and Torres Strait Islander people. This was duly incorporated by the committee. However, a letter dated 27 June 2009 from the Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships in her capacity as the chair of the advisory council stated that the council required the committee to make certain changes to its draft proposed preamble and went so far as to say that it requested the committee accept the recommendations of the council in full without further amendment. Although the committee ultimately accepted the advice of the advisory council, I am concerned about the way in which this advice was provided. In particular, I was concerned about the expression of this advice by the minister. The referral from the parliament required the committee to consult relevant stakeholders including, specifically, the advisory council. However, the referral did not direct the committee to adopt the submission from any stakeholder group, including the advisory council.

Sitting suspended from 1.00 pm to 2.30 pm.

**Mr CRIPPS:** Before the lunch adjournment, I was discussing correspondence from the Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships to the committee. My reservation and concern in relation to this issue derives from the degree to which the minister's correspondence sought to direct the committee. The Law, Justice and Safety Committee, as a committee of the parliament, cannot be directed by any entity save for the parliament itself. If anyone should be aware of that, it should be a minister of the Crown serving in the executive of the government of Queensland and being a member of the Queensland parliament. The point I am trying to make is that it is important to have respect for the committees of this parliament, which is the same as having respect for the parliament itself.

Indeed, we have seen something similar in more recent days. Members and, I assume, others in the wider community have received invitations issued jointly by Minister Boyle and Minister Palaszczuk on behalf of the Queensland government to a reception marking the introduction of a new preamble to the Constitution of Queensland honouring Aboriginal and Torres Strait Islander peoples and acknowledging the achievements of people from diverse backgrounds.

I do not disapprove of the reception in and of itself, but the reception is scheduled for this Thursday, 25 February and the RSVP date was yesterday, the day before the Queensland parliament even began considering this bill. The current political realities of this place make the outcome of this debate something of a foregone conclusion. It will be passed by this parliament, and I understand and acknowledge that. However, it continues to be incumbent upon all of us as members of this place to respect the institution of parliament and its processes. Therefore, I register my concern at the outcome of its deliberations being so clearly presumed. I table the invitation for the record.

*Tabled paper:* Invitation on behalf of the Queensland government to attend a reception at Parliament House on Thursday, 25 February 2010, to mark the introduction of a new preamble to the Constitution of Queensland honouring Aboriginal and Torres Strait Islander peoples, and acknowledging the achievements of people from diverse backgrounds [1760].

It is disrespectful to pre-empt the deliberations of the parliament in such an obvious way. Again, serving ministers of the Crown should know better.

The referral to the committee from the parliament states that regard should be had to ensuring that the text of the preamble does not purport to include information to be used as an aid in statutory interpretation. No submission or advice received by the committee could discount the argument that under the Acts Interpretation Act the preamble can be used to interpret the Queensland Constitution and other statutes.

My concern is underpinned by recommendation 2 of the committee's report No. 70, where the committee recommends the government obtain expert legal advice in respect of this matter. The government has acted on this recommendation by consulting with the Solicitor-General and has drafted a clause contained in this bill which claims to explicitly clarify that the preamble is an aspirational statement only and that it is not parliament's intention for it to either grant any legal right or create any liability, or to be used as an aid to statutory interpretation of either the Constitution or any other law in Queensland. That is all well and good for the government to say. The Acts Interpretation Act applies to all acts of the Queensland parliament. Should a preamble be inserted into the Constitution of Queensland, it is arguable that a preamble could be used as an aid in statutory interpretation of the Queensland Constitution and other statutes.

I am concerned about a preamble, without being first considered and approved by the people of Queensland by way of a referendum, being used to interpret statute. Indeed, others more recognised for their expertise in this field than I am share this point of view. In his submission to the committee, Professor George Williams noted—

Although a preamble does not create substantive rights or obligations, its symbolic aspect may assist in the interpretation of the construction itself by providing normative guidance. Thus, in its second reading, justiciable aspect, a preamble can be used in constitutional interpretation and in the construction of statutes in the development of the common law as a legally useful statement of fundamental values.

In summary, the central point I wish to reiterate is that the people of Queensland ought to make the decision about whether or not this preamble should be retrospectively inserted into the Queensland Constitution. Such an approval by the people of Queensland would overcome my concerns relating to the proposed preamble's necessity and legitimacy, and subsequently dispose of my concerns relating to the implications that possible statutory interpretation could cause. Given that this will not occur in respect of the proposed preamble contained in the bill, I cannot support it.

I am a strong supporter of our Westminster system of government and I support the concept of parliamentary sovereignty in that system. However, in respect of one of the cornerstones of that system, being the particular role and purpose of our Constitution, we ought to reserve for it a special place and have an abiding and enduring deference in terms of the content of its provisions, including any preamble, to the sovereignty of the people, in this case, the people of the state of Queensland.