



REPORT OF THE

STANDING COMMITTEE ON
CONSTITUTIONAL AFFAIRS

IN RELATION TO

CORRECTION TO REPORT 38: A SEMINAR
ON THE ROLE OF PARLIAMENTS IN
TREATY MAKING: CANBERRA
JUNE 24 AND 25 1999

Presented by Hon Murray Nixon JP MLC (Chairman)

Report 49

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

December 21 1989

Terms of Reference:

- 1 The functions of the committee are to inquire into and report on:
 - a) the constitutional law, customs and usages of Western Australia;
 - b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - d) any petition.
- 2 A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

Members as at the time of this inquiry:

Hon Murray Nixon JP MLC (Chairman)

Hon Ray Halligan MLC

Hon Ken Travers MLC

Staff as at the time of this inquiry:

Ms Felicity Beattie, Advisory Officer

Mr David Driscoll, Committee Clerk

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CANBERRA JUNE 24 AND 25 1999**

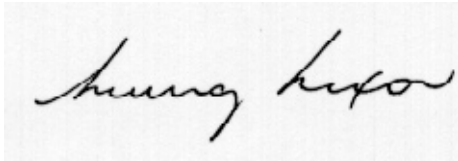
1 INTRODUCTION

- 1.1 On July 26 1999 the Standing Committee on Constitutional Affairs tabled its 38th report by presentation to the Clerk of the Legislative Council. The report was in relation to *A seminar on the Role of Parliaments in Treaty Making: Canberra June 24 and 25 1999*.
- 1.2 It has been drawn to the Committee's attention that two references in the report convey the impression that the High Court decision in *Croome v Tasmania* (1997) 191 CLR 119 determined that Commonwealth legislation over-rode provisions of the Tasmanian *Criminal Code*.
- 1.3 The High Court only determined preliminary matters in favour of the plaintiff Croome, but the Tasmanian Parliament shortly afterwards repealed the provisions of the *Criminal Code* being challenged, they being provisions concerning the illegality of homosexual activity. With the provisions repealed, there was no further basis to the litigation which came to an end.

2 CORRECTION

- 2.1 The Committee brings to the attention of the House the following qualification to its report in relation to *A Seminar on the Role of Parliaments in Treaty Making: Canberra June 24 and 25 1999* (Report 38).
- 2.2 Contrary to pages 4 and 5 of Report 38, in the case of *Croome v Tasmania* (1997) 191 CLR 119 the High Court did not decide that Commonwealth legislation over-rode any portion of the Tasmanian *Criminal Code*. Rather, the High Court decided that the litigation, seeking a declaration that certain sections of the *Criminal Code* were invalid, involved a "matter" within the meaning of that term in section 76 of the Commonwealth Constitution and section 30 of the *Judiciary Act 1903 (Cth)*, and could therefore proceed.

- 2.3 Shortly after the decision of the High Court, the Tasmanian Parliament repealed the sections of the *Criminal Code* in contest in *Croome*, those sections being provisions proscribing sexual activity “against the order of nature”, and those between men. The *Croome* litigation thus became moot, and did not proceed to final resolution

A handwritten signature in cursive script, appearing to read "Murray Nixon".

**Hon Murray Nixon JP MLC
Chairman**

Date: April 6 2000