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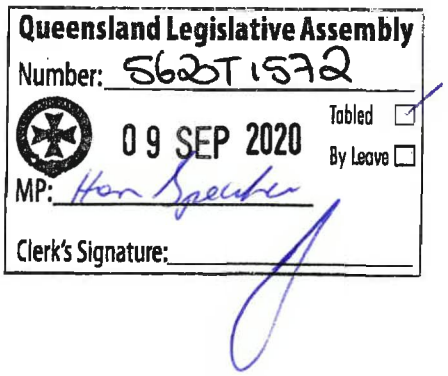

Neil J Laurie

The Clerk of the Parliament
Parliament House
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BRISBANE QLD 4000

OPINION

RE: ALLEGED BREACHES OF QUEENSLAND CONSTITUTION

1. I have been asked to advise the Speaker of the Legislative Assembly on whether provisions of the *Constitution of Queensland 2001* (Qld) *('Constitution')* have been breached by the government moving substantial amendments to Bills after they have been scrutinized by committee.

INTRODUCTION

2. Section 26B of the *Constitution* requires all proposed legislation to be considered by committees before being passed by the parliament.

3. The only exception to section 26B is if a Bill is declared urgent by substantive motion of the House. An urgent Bill is permitted to bypass the committee system or be considered by the committee for less than six weeks.

4. On 17 June 2020, the member for Kawana, Mr Jarrod Bleijie MP, raised concerns with the Speaker in the Legislative Assembly about non-compliance with section 26B. He followed this up with a letter to the Speaker dated 15 July 2020.

5. Mr Bleijie's concern related to two Bills: the Community Services Industry (Portable Long Service Leave) Bill 2019, ('the CSI Bill'), and the Electoral and Other

Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 ('the Electoral Amendment Bill').

6. Similar concerns have been raised about a third Bill: the Agriculture and Other Legislation Amendment Bill 2019 ('the Agriculture Amendment Bill').

7. In each case, the Bills were sent to and reported on by the relevant portfolio committees, and the government then circulated major amendments, including amendments which were outside the long title of the relevant Bills, after committee consideration. The Parliament subsequently passed these Bills into law with the amendments, without sending them back to the committee for review.

8. The central issue is whether the government's actions in moving, and the Legislative Assembly agreeing to, significant amendments to these three Bills breached section 26B of the *Constitution.*

SUMMARY OF ADVICE

9. The questions posed (as I understand them), and my answers, are as follows:

Q1. Were the government's actions in moving, and the Assembly in agreeing to, 51 pages of amendments to the CSI Bill during consideration in detail of the Bill without those amendments being scrutinized by a committee in breach of section 26B of the *Constitution?*

A. No. While the government's actions in relation to amendments to the CSI Bill might be regarded as contrary to the spirit of section 26B of the *Constitution*, they were not in breach of that section.

Q2. Were the government's actions in moving, and the Assembly in agreeing to, 229 amendments to the Electoral Amendment Bill during consideration in detail without those amendments being scrutinized by a committee in breach of section 26B of the *Constitution?*

A. No. While the government's actions in relation to amendments to the Electoral Amendment Bill 2019 might be regarded as contrary to the spirit of section 26B of the *Constitution*, they were not in breach of that section.

Q3. Were the government's actions in moving, and the Assembly in agreeing to, amendments relating to Paradise Dam to the Agriculture Amendment Bill 2019 during consideration in detail without those amendments being scrutinized by a committee in breach of section 26B of the *Constitution?*

A. No. While the actions of the government in relation to the Agriculture Amendment Bill 2019 might be regarded as contrary to the spirit of section 26B of the *Constitution*, they were not in breach of that section.

Q4. Is section 26B of the *Constitution* a justiciable manner and form provision or a statutory provision dealing with parliamentary procedures and thus intra-mural?

A. Section 26B of the *Constitution* is not a manner and form provision. It is a statutory provision dealing with internal parliamentary procedures, and hence is non-justiciable. Consequently, an Act passed in contravention of section 26B would not be invalid.

Q5. Are there other considerations relating to the matters that may be relevant?

A. The treatment of the CSI Bill, the Electoral Amendment Bill and the Agricultural Amendment Bill 2019 by the government and the Assembly reveals deficiencies in the operation of section 26B of the *Constitution.* If committees are to function in a way that allows for the scrutiny of proposed legislation, then it would be desirable to explore amending the *Constitution.*

REASONS

Relevant legislative provisions and legislative history

10. Section 26B of the *Constitution* provides:

> ***26B Requirement for proposed legislation to be considered by committees***
>
> *(1) The Legislative Assembly must ensure each Bill for an Act that is proposed for enactment is referred to a portfolio committee, or another committee of the Legislative Assembly, for examination by the committee.*

(2) The period of the referral must be at least 6 weeks from the date of the referral.

(3) This section does not prevent the Legislative Assembly, by ordinary majority, doing any of the following under the standing rules and orders of the Legislative Assembly—

(a) declaring a Bill to be an urgent Bill;

(b) referring an urgent Bill to a committee for less than 6 weeks;

(c) for a Bill declared to be an urgent Bill after it is referred to a committee—discharging the Bill from the committee less than 6 weeks after the referral;

(d) deciding not to refer an urgent Bill to a committee before the Bill is passed by the Legislative Assembly.

11. Section 26B was inserted by the *Constitution of Queensland and Other Legislation Amendment Act 2016* (Qld). As is apparent, it requires that each Bill be referred to either a portfolio committee or another committee for at least six weeks, to be examined in detail. The only exception is if the Bill is deemed to be urgent, in which case it may bypass the committee stage altogether, or be considered by the committee for less than six weeks.

12. Committee review of legislation is important for two main reasons: first, it provides a parliamentary 'check and balance', allowing scrutiny of proposed legislation in detail. Secondly, it allows public consultation on proposed legislation by making submissions and giving evidence before the committee.[1]

13. The explanatory notes to the Bill which inserted section 26B make it clear that it was designed to implement certain recommendations made by the Committee of the Legislative Assembly ('CLA') in a report tabled on 25 February 2016.[2]

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1 These two purposes are frequently referred to in the Finance and Administration Committee, *Inquiry into the introduction of four year terms for the Queensland Parliament, including consideration of* Constitution (Fixed Term Parliament) Amendment Bill 2015 *and* Constitution (Fixed Term Parliament) Referendum Bill 2015, Report No 16 (November 2015). See, for example, [3.1.6].

2 CLA, *Review of the Parliamentary Committee System*, Report No. 17 (February 2016).

14. The CLA had undertaken to inquire into and report on issues raised by two recommendations of Report of the Finance and Administration Committee dated November 2015.[3] The latter Committee had been tasked with inquiring into the proposal to amend the *Constitution* to provide Parliament with fixed four year terms. In this context, it had expressed concern about a reduction in democratic accountability if elections were held less frequently, particularly given Queensland has a unicameral system of parliament. It observed that the system of review of proposed legislation by portfolio committees 'largely performs the essential review and scrutiny roles that an Upper House would undertake.'[4] However, it also noted concerns that the committee review system was not entrenched, and could be abolished by a simple Act of Parliament. It could also be rendered largely ineffective by amending Standing Orders to limit which Bills are referred for committee review, or using existing provisions of the Standing Orders to declare a Bill urgent and thus bypass committee review.[5]

15. The Finance and Administration Committee considered that committee review served as an important safeguard for democracy and accountability. They recommended that committee review be expressly included in the *Constitution*. Specifically, they recommended that:[6]

> *Every Bill introduced into the Legislative Assembly must be referred to and reviewed by a committee of the Legislative Assembly, for a period of not less than six weeks, unless –*
>
> - *a special majority of the Assembly agrees to the Bill not being referred to a committee or being referred for a period less than six weeks; or*
> - *the resolution for the Bill not being referred to a committee is passed without division or dissent.*

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3 Finance and Administration Committee, *Inquiry into the introduction of four year terms for the Queensland Parliament, including consideration of* Constitution (Fixed Term Parliament) Amendment Bill 2015 *and* Constitution (Fixed Term Parliament) Referendum Bill 2015, Report No 16, (November 2015), vii.

4 Ibid, [1.10.9].

5 See concerns expressed by the Clerk of Parliament: ibid at 55; Don Willis, at 53.

6 Ibid, xii (recommendation 9).

16. The Finance and Administration Committee also recommended that the review by parliamentary committee be put to the voters for approval and constitutionally entrenched.[7]

17. The CLA did not agree with these recommendations. It supported statutory recognition of parliamentary committees and their core functions. It relevantly stated:[8]

> *The CLA supports statutory recognition that there will be a parliamentary committee system in Queensland and that the provision also include the core principles of that committee system.*
>
> *The CLA concludes that the appropriate statute for the provision which contains the "core matters" detailed below is the Constitution Act 2011. The location of the provision in the Constitution Act 2001 will not only emphasise its importance, but place a psychological impediment to its alteration without just cause.*

18. The CLA framed its recommendation as follows:[9]

> *The CLA recommends that the basic principles and structure of the committee system be recognised in the Constitution of Queensland Act 2001, but emphasises that:*
>
> - *only the core matters should be in the Constitution, leaving each Assembly the flexibility to adopt a committee system that suits that Assembly and which allows the committee system to adapt and evolve;*
> - *the core matters to be included in the provision are:*
>   - *The Legislative Assembly must, at the commencement of every session, establish a minimum number of committees of the Legislative Assembly. The CLA recommends that six (6) committees be set as the minimum number.*

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7 Ibid, [1.10.9].
8 CLA, *Review of the Parliamentary Committee System*, Report No. 17 (February 2016), [6.11].
9 Ibid.

- *Committees established by the Legislative Assembly will be allocated areas of responsibility that collectively cover all areas of government activity.*
- *Every Bill introduced into the Legislative Assembly must be referred to a committee of the Legislative Assembly for a review period. The Committee suggests that the minimum review period be six (6) weeks.*
- *The annual Appropriation Bills (the budget) must be:*
  - *accompanied by the estimates of expenditure; and*
  - *referred to a committee or committees of the Legislative Assembly for examination in a public hearing.*

19. The Government, in its response, supported these recommendations.[10]

20. Section 26B embodies that part of the recommendation dealing with the referral of a Bill introduced into the Legislative Assembly.

Proper construction of Section 26B

21. Section 26B of the *Constitution* (set out in full above) contains two requirements. First, each Bill which is proposed for enactment must be referred to a portfolio committee (or another committee) for examination.[11] Secondly, the referral must last for at least 6 weeks.[12] There are exceptions for Bills which are considered 'urgent', but they are not material on the facts of the present case.

22. Nothing in the text of section 26B requires that, after a committee has reported, any amendments to a Bill proposed to be enacted (whether they be substantive or minor) again be referred to a committee for examination. Nor does the text of section 26B purport to restrict the kinds of amendments that can be moved by the government after a Bill has been examined by a committee.

23. It is, moreover, difficult to see how, consistently with the language employed, these matters could be implied. While the process of statutory construction may allow words to be read into a statutory provision, the extent to which the courts can do so is limited.

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10 Government Response to the Committee of the Legislative Assembly Report No. 17, February 2016; https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T512.pdf

11 Subsection 26B(1) of the Constitution.

12 Subsection 26B(2) of the Constitution.

As French CJ, Crennan and Bell JJ explained in *Taylor v The Owners – Strata Plan No 11564*:[13]

> *The question whether the court is justified in reading a statutory provision as if it contained additional words or omitted words involves a judgment of matters of degree. That judgment is readily answered in favour of addition or omission in the case of simple, grammatical, drafting errors which if uncorrected would defeat the object of the provision. It is answered against a construction that fills "gaps disclosed in legislation" or makes an insertion which is "too big, or too much at variance with the language in fact used by the legislature".*

24. In this case, it would be a large departure from the language of section 26B to read it as requiring that a Bill already examined by a committee must be referred again to a committee if the government moves, and the Assembly agrees, that it be substantially amended. Similarly, it would be a large departure from the language of section 26B to construe that provision as restricting the capacity of the government to move amendments to a Bill after a committee has reported on it. The terms of section 26B do not support such tortured and unrealistic constructions.[14]

25. Two factors reinforce these conclusions.

26. First, there is no support in the extrinsic materials for a different reading of section 26B. The recommendation of the CLA to which section 26B gave effect spoke of 'every Bill introduced into the Legislative Assembly'. That is consistent with the ordinary and natural meaning of section 26B. The CLA report, moreover, did not suggest that a Bill had to be referred to a committee again if substantially amended. Nor did the CLA suggest that there was to be a restriction on the power of the government to move amendments.

27. Secondly, the *Standing Rules and Orders of the Legislative Assembly of Queensland*[15] ('the Standing Orders') make it clear that the Legislative Assembly does not require all

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13 (2014) 253 CLR 531 at [38] (citations omitted). See also at [39]

14 Compare *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85 at 113 (McHugh J): '[I]f the legislature uses language which covers only one state of affairs, a court cannot legitimately construe the words of the section in a tortured and unrealistic manner to cover another set of circumstances.' See also *Taylor v The Owners – Strata Plan No 11564* (2014) 253 CLR 531 at [39] (French CJ, Crennan and Bell JJ) (endorsing McHugh J's comment in *Newcastle City Council v GIO General Ltd*).

15 31 August 2004, as amended effective 21 May 2020.

amendments, or all significant amendments, to be reviewed by a portfolio committee before passing into law.

28. The Standing Orders anticipate that amendments may be made to Bills after they are introduced. Standing Order 147 anticipates that amendments to a clause of a Bill may be proposed.

29. Further, the Standing Orders envisage that amendments may be made concerning matters which are outside the original scope of the Bill. Standing Order 151 provides: 'A member shall not propose an amendment outside the long title of the Bill, without first obtaining the leave of the House.' Standing Order 152 goes on to require that '[i]f an amendment is agreed to which is not within the long title of the Bill, the House shall amend the long title of the Bill accordingly.'

30. It is also anticipated that in Standing Order 154 that amendments to a number of clauses of a Bill may be moved 'en bloc', by leave of the House.

31. There is no provision in the Standing Orders requiring that amendments outside the scope of the long title or amendments moved en bloc must be subject to further scrutiny by the portfolio committee.

32. Given that these Standing Orders were in place before s 26B was inserted into the *Constitution*, they further suggest that s 26B should be given its ordinary and natural meaning. In other words, they suggest that s 26B should not be construed as implicitly requiring amendments (whether substantial or not) to be referred to a committee for examination. Nor do they suggest any restriction on the amendments that may be moved by the government after a Bill has been examined by a committee.

Was section 26B complied with in relation to the CSI Bill?

33. The CSI Bill, as originally introduced, aimed to introduce a scheme providing portable long service leave entitlements for community service industry workers in Queensland, including contract workers. It established the Community Services Industry (Portable Long Service Leave) Authority, with functions to keep a register of workers, a register of employers, and to collect levies imposed on employers to fund workers' long service leave entitlements.

34. The CSI Bill was referred to the Education, Employment and Small Business Committee (the 'EESB Committee') on 27 November 2019. This satisfied the requirements of section 26(1) of the *Constitution.*

35. The EESB Committee reported to the Assembly after 11 weeks, on 14 February 2020,[16] in compliance with section 26(2) of the *Constitution.* Its report contained one recommendation; namely, that the Bill be passed.[17]

36. After this, on 16 June 2020, the relevant Minister, Grace Grace MP, circulated 51 pages of amendments to the Bill. These amendments included:

- amendments to the *Bail Act 1980* (Qld);
- amendments to validate regulations made during the COVID-19 Emergency Response;
- amending the *Holidays Act 1983* (Qld) to observe the Ekka public holiday on Friday 14th August instead of Wednesday 12th August;
- the insertion of a new chapter 15A in the *Industrial Relations Act 2016* (Qld) deferring wage increases that would otherwise be payable under certified agreements, providing for wage adjustments and modifying the collective bargaining process in response to the COVID-19 pandemic;
- the insertion of a new part in the *Public Health Act 2005* (Qld) to require returning travellers to pay fees to stay in hotel quarantine;
- increasing penalties for certain offences under the *Work Health and Safety Act 2011* (Qld) relating to abusive and threatening behaviour towards inspectors;
- amending the *Youth Justice Act 1992* (Qld) relating to release of child offenders from custody to clarify that community safety is a paramount consideration.

37. These amendments related to a number of disparate matters, none of which is directly or indirectly related to the portable long service leave scheme established by the CSI Bill. Leave was granted to move these amendments outside the long title of the Act,[18] pursuant to Standing Order 151.

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16 Report No 28, 56th Community Services Industry (Portable Long Service Leave) Bill 2019 (14 February 2020)

17 Ibid, 4.

18 Parliament of Queensland, Legislative Assembly, *Parliamentary Debates*, Community Services Industry (Portable Long Service Leave) Bill 2019, 17 June 2020, 1289.

38. The scope and quantity of the amendments can be regarded as incompatible with the spirit of section 26B, for no committee was able to consider the proposed amendments before they were made.

39. However, as outlined above, nothing in section 26B of the *Constitution*, properly construed, requires these matters to be introduced in separate Bills. Nor can that section be construed as requiring the CSI Bill to be referred to a committee a second time.

40. It follows that there was no breach of section 26B of the *Constitution*.

Was section 26B complied with in relation to the Electoral Amendment Bill?

41. The Electoral Amendment Bill, as originally introduced, contained amendments relating to increasing public funding for State elections, introducing caps on political donations and caps on electoral expenditure, and imposing limits on signage around polling booths at State elections. It also contained provisions concerning dishonest conduct of Ministers and local councillors.

42. The Electoral Amendment Bill was referred to the Economics and Governance Committee (the 'EG Committee') on 28 November 2019, in compliance with section 26(1) of the *Constitution*.

43. The EG Committee examined the Bill for 10 weeks and reported to the Assembly on 7 February 2020.[19] This satisfied the requirements of section 26(2) of the *Constitution*.

44. The EG Committee recommended that the Bill be passed,[20] with one substantive amendment, addressing concerns about the regulatory burden on small not-for-profit third party organisations.[21]

45. The government formally responded to the EG Committee's report on 17 June 2020. It supported the recommendation to amend the Bill in relation to third parties, and proposed a number of amendments to record-keeping and compliance obligations, including increasing the donation caps for those third parties.

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19 Report No 37, 56th Parliament, Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (7 February 2020)

20 Ibid, 6.

21 Ibid, 64.

46. On 16 June 2020, the Attorney-General, Yvette D'Ath circulated, and on 18 June 2020 tabled, 100 pages containing 229 amendments to this Bill. The vast majority of these amendments related to the existing content of the Electoral Amendment Bill. The amendments to Chapter 2 of the Bill aimed to reduce the regulatory burden on third parties by increasing the donation caps and reducing the record keeping and audit requirements for those entities. These amendments may be considered to be a response to the EG Committee's recommendation.

47. However, the 16 June 2020 amendments also included a number of substantive amendments to provisions related to a register of political donations, caps on non-monetary gifts, signage on election day, and measures related to councillors' personal interests. Further, they included the insertion of a new Part 12B in the *Electoral Act 1992* (Qld) relating to measures to hold the 2020 general election in a COVID-safe way.

48. With the exception of the new Part 12B of the *Electoral Act 1992* (Qld), all these amendments related directly to matters within the long title of the Electoral Amendment Bill.[22] However, they dealt with numerous matters of substance that were not the subject of proper scrutiny by the EG Committee, or consultation with the public.[23]

49. Despite that fact, in my view, there has been no breach of section 26B of the Constitution. As explained above, section 26B cannot be construed as requiring a Bill to be referred to a committee a second time or as restricting the capacity of the government to move amendments.

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22 Leave was granted for the amendments that were outside the long title of the bill: see Parliament of Queensland, Legislative Assembly, *Parliamentary Debates*, Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill, 18 June 2020, 1449. The long title of the bill was amended in accordance with Standing Order 152: see Parliament of Queensland, Legislative Assembly, *Parliamentary Debates*, Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill, 18 June 2020, 1486.

23 The Explanatory Notes to the Amendments moved by Yvette D'Ath to the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 note that there was some limited consultation on provisions relating to local councillors with the Local Government Association of Queensland, and on certain other amendments with the Electoral Commission of Queensland. The amendments relating to the 2020 State general election were considered urgent, and community consultation was not deemed feasible: at 14-15.

Was section 26B complied with in relation to the Agriculture Amendment Bill?

50. The Agriculture Amendment Bill, an omnibus bill containing amendments to 17 Acts and four regulations,[24] was introduced on 22 August 2019 and referred to the State Development, Natural Resources and Agricultural Industry Development Committee (the 'SDNRAID Committee'). This satisfied the requirements of section 26(1) of the *Constitution.*

51. The SDNRAID Committee examined the Bill for almost 7 weeks and reported to the Assembly on 8 October 2019, complying with the requirements of section 26(2) of the *Constitution.*

52. The SDNRAID Committee's report contained five recommendations. The first was that the Bill be passed. The second was that provisions relating to new offences commence on a date to be fixed by proclamation. The third was to clarify the operation of a specific clause of the Bill (clause 132). The final two recommendations relate to public information and intergovernmental cooperation concerning animal welfare policy. None of these amendments required substantial amendments to the Bill.

53. The government tabled its response to the SDNRAID Committee's report on 5 February 2020, agreeing to all the SDNRAID Committee's recommendations.

54. After the Assembly received the SDNRAID Committee's report, the government made a number of amendments to facilitate works on Paradise Dam near Bundaberg occurring prior to the 2020-2021 flood season,[25] and closing down agricultural training colleges at Emerald and Longreach.[26] Neither of these groups of amendments related to the SDNRAID Committee's recommendations.

55. The Bill was passed on 6 February 2020 without re-examination by the SDNRAID Committee.

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24 Parliament of Queensland, Legislative Assembly, *Parliamentary Debates*, Agriculture and Other Legislation Amendment Bill 2019, 5 February 2020, 164 (Mark Furner).

25 Parliament of Queensland, Legislative Assembly, *Parliamentary Debates*, Agriculture and Other Legislation Amendment Bill 2019, 6 February 2020, 267 (Mr Lynham).

26 Parliament of Queensland, Legislative Assembly, *Parliamentary Debates*, Agriculture and Other Legislation Amendment Bill 2019, 5 February 2020, 196 (Mr Last)

56. Again, while this might be said to offend against the spirit of section 26B of the *Constitution*, there was no breach of that provision.

Is section 26B a manner and form provision?

57. The next question is whether section 26B is a manner and form provision.

58. In my view, section 26B is not a manner and form provision but is a provision that deals with the intra-mural activities of Parliament. Breach of the provision therefore does not invalidate any Act passed in breach of the section.

59. Section 6 of the *Australia Act 1986* (Cth) relevantly provides:

> *[A] law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.* (Emphasis added.)

60. The effect of s 6 is that if a State law is one respecting the 'constitution, powers or procedures of Parliament', then it must comply with any 'manner and form' requirements have been enacted by a State Parliament; otherwise, it is invalid.

61. In Queensland, manner and form requirements apply to several types of laws.[27]

62. First, any provision which alters or abolishes the office of Governor, or affects the constitution of the Parliament, must be passed by a majority of electors voting at a referendum.[28] The *Constitution* expressly states that any Bill which is presented for assent which has not been approved by a majority of voters at a referendum 'shall be of no effect as an Act.'[29]

63. Secondly, an amendment to the provisions of the *Constitution* setting out the duration of the Legislative Assembly must be passed by the Parliament, then passed by a

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27 A useful discussion of such provisions is found in CLA, *Review of the Parliamentary Committee System*, Report No. 17 (February 2016), [6.3]-[6.4.2]

28 Section 53 of the *Constitution Act 1867* (Qld).

29 Section 53(1) of the *Constitution Act 1867* (Qld).

majority of electors voting at a referendum.[30] Again, the *Constitution* specifically states that a Bill presented in contravention of this requirement 'has no effect as an Act'.[31]

64. Thirdly, section 78 of the *Constitution* stipulates that a Bill to end the system of local government may only be introduced if a majority of electors has voted on it, although it is not specified that this must be at a referendum.[32] Once again, the *Constitution* specifically states that a Bill presented in contravention of this requirement 'has no effect as an Act',[33] and an elector may seek a declaration or injunction or other remedy to enforce this requirement.[34]

65. In addition to these provisions which can only be amended by referendum, a Bill to amend the Constitution 'respecting the constitution, powers or procedure of the Parliament' must be passed by an 'absolute majority' of the Legislative Assembly (that is, a majority of the 93 elected members of Parliament).[35] This means 47 of the elected members must vote to pass the Bill. Like the above-mentioned provisions concerning referenda, the *Constitution* expressly states that a Bill presented in contravention of this requirement for an absolute majority 'has no effect as an Act'.[36]

66. There is no express provision in the *Constitution* stipulating that a Bill presented in contravention of the requirement for committee review in section 26B 'has no effect as an Act'. Nor is there any express provision stipulating that it would be unlawful to present such a Bill for assent.[37] The contrast with existing manner and form provisions in Queensland and elsewhere is stark. This suggests that section 26B is not a manner and form provision but is instead a 'procedural provision governing the intra-mural activities of the Parliament' in respect of which the courts will not intervene.[38] Any failure to comply with section 26B will not result in invalidity of the Acts passed.

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30 Section 19I(2) of the *Constitution.*
31 Section 19I(3) of the *Constitution.*
32 Section 78 of the *Constitution.*
33 Section 78(2) of the *Constitution.*
34 Section 78(6) of the *Constitution.*
35 See section 4A and section 11 of the *Constitution*
36 Section 4A(3) of the *Constitution.*
37 Compare *Attorney-General (WA) v Marquet* (2003) 217 CLR 545
38 Compare *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 578; *Western Australia v Commonwealth (Native Title Act Case)* (1995) 183 CLR 373 at 482; *Permanent Trustee Australia Ltd v Commissioner of State Revenue (Vict)* (2004) 220 CLR 388 at 409 [41]; *Wilkie v Commonwealth* (2017) 263 CLR 487 at [63] (holding that ss 53, 54 and 56 of the Commonwealth Constitution are not justiciable).

67. Section 79 of the *Constitution* does not alter this conclusion. It provides:

> *Without affecting the justiciability of any other issue under this Act, it is declared that the issue of compliance with sections 31, 40, 41, 48 or 50 is not justiciable in any court.*

68. Section 26B is not explicitly declared to be non-justiciable. However, in my view, nothing can be drawn from that fact. This is because section 79 explicitly states that the declaration of certain sections to be non-justiciable does not affect 'the justiciability of any other issue under this Act'. Whether compliance with another provision of the Queensland Parliament is non-justiciable will depend on the particular provision. The fact that section 26B relates to the obligations of the Legislative Assembly in relation to proposed legislation suggests that it does not raise a justiciable issue.[39]

69. In any event, whether section 26B is justiciable or not is immaterial in the present case, because the facts disclose that the requirements of section 26B were complied with.

Consequences of non-compliance with non-justiciable provisions

70. In 2016, the Speaker of the Legislative Assembly ruled on an issue of non-compliance with section 68 of the Constitution.[40] That section requires that the Legislative Assembly must not originate or pass an appropriation Bill. Appropriation Bills must be initiated by a message from the Governor. It was not in dispute that in relation to the Heavy Vehicle National Law and Other Legislation Bill 2016, the procedures in section 68 applying to appropriation Bills had not been complied with. The question was the legal effect of this non-compliance.

71. After receiving advice from Crown Law and the Solicitor-General, it was concluded that section 68 was non-justiciable and intra-mural.[41] Nevertheless, it was recommended that the Legislative Assembly should follow constitutionally prescribed procedures, and to avoid any uncertainty, the Speaker ruled that the Bill in question

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39 See *Prebble v Television New Zealand* [1995] 1 AC 321 at 332; *Parliament of Queensland Act 2001* (Qld), ss 8 and 9.

40 Parliament of Queensland, Legislative Assembly, *Hansard*, 3 November 2016, p 4107.

41 Ibid.

should be withdrawn and reintroduced, complying with correct constitutional procedures.

72. There are material differences between the Speaker's Ruling in this case and the present case. In the former case, there was a clear breach of the mandatory provisions of section 68 of the *Constitution*. In the present case, the terms of section 26B have technically been complied with. Each of the three Bills was referred to the relevant portfolio committee for consideration in detail. Although the Bills were subsequently subject to significant amendment before passing the Parliament, there is nothing in the terms of section 26B which requires that the Bill as passed be wholly or substantially in the form which was examined by the committee. Although this practice of introducing major amendments after the committee stage might be said to be contrary to the spirit of section 26B of the *Constitution* (as the committee is unable to exercise its oversight and scrutiny function and hence provide the intended 'check and balance' on the power of the Legislative Assembly), it does not contravene the terms of the provision. This is a case of non-compliance with the spirit of the law rather than non-compliance with the letter of the law.

73. A further and significant difference is the stage at which the alleged breach is identified. In the case of the non-compliance with section 68 in 2016, the Heavy Vehicle National Law and Other Legislation Bill 2016 had not yet been passed. Therefore, it was possible to withdraw the Bill and reintroduce it after complying with the constitutionally mandated procedure. By contrast, in the present case, the three Bills in question have already been enacted into law. It is not possible to rectify any breach by withdrawing the legislation and having it sent anew to the portfolio committee for review.

CONCLUDING OBSERVATIONS

74. In my view, the treatment of the CSI Bill, the Electoral Amendment Bill and the Agricultural Amendment Bill 2019 by the government and the Assembly exposes deficiencies in how section 26B of the *Constitution* operates. In its current form, section 26B allows the government, by moving amendments to a Bill that has been examined by a committee, to avoid scrutiny of those amendments through the committee process. It is irrelevant whether the amendments are substantial and whether they pertain to the subject matter of the Bill.

75. If committees are to scrutinise and review Bills effectively, then it would be desirable to explore amending the *Constitution* to address this deficiency.

76. Please do not hesitate to contact me if you have any questions about this advice.

Gim Del Villar QC

Chambers