Queensland Constitutional Review Commission

Report

on the Possible Reform of and Changes to The Acts and Laws that relate to the Queensland Constitution

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CHAPTER 1

Introduction

The multiplicity of constitutional instruments

In its Issues Paper (p.102) the Commission reproduced the Table of Contents from the volume compiled (to 31 January 1998) by the Office of Parliamentary Counsel, *Acts, Laws and Documents Relating to the Constitution of the State of Queensland.* To indicate the complexity of the present "Constitution of Queensland" it is an appropriate introduction to this Report to reproduce that table again:

Australian Constitutions Act 1850
New South Wales Constitution Act 1855
Letters patent dated 6 June 1859 – constituting the Colony of Queensland (Imperial)
Australian Constitutions Act 1862
Constitution Act 1867
Legislative Assembly Act 1867
Letters patent dated 10 June 1868 – Queensland Coast Islands and Waters
Letters patent dated 30 May 1872 – Queensland Coast Islands and Waters
Deed poll dated 22 August 1872 – Queensland Coast Islands and Waters
Proclamation dated 22 August 1872 – Queensland Coast Islands and Waters
Letters patent dated 10 October 1878 – Queensland Coast Islands and Waters
Queensland Coast Islands Act 1879
Proclamation dated 18 July 1879 – Queensland Coast Islands and Waters
Constitution Act Amendment Act 1890
Constitution Act Amendment Act 1896
Officials in Parliament Act 1896
Constitution Act Amendment Act 1922
Statute of Westminster 1931
Constitution Act Amendment Act 1934
Statute of Westminster Adoption Act 1942 (Cwlth)
Commonwealth Powers (Air Transport) Act 1950
Royal Powers Act 1953
Senate Elections Act 1960
Commonwealth Places (Administration of Laws) Act 1970
Coastal Waters (State Powers) Act 1980 (Cwlth)
Coastal Waters (State Title) Act 1980 (Cwlth)
Australia Acts Request Act 1985
Constitution (Office of Governor) Act 1987
Commonwealth Powers ((Family Law – Children) Act 1990

The *Constitution Act 1867 (Qld)* which is the central and most important document accounts for only 38 of the 349 pages in that volume. If the *Legislative Assembly Act 1867 (Qld)* is added, then their total is still only 66 pages out of the 349. That total is much the same as the 62 pages taken up by the 19th century coastal islands and waters documents. It

should also be noted that whilst the *Australia Acts Request Act 1985 (Qld)* is included, being a Queensland statute, the *Australia Acts 1986 (Imp, Cwlth)* are not, although their importance is such that they are usually reprinted with the Commonwealth Constitution (e.g. CCF 1997). Neither does the most recent collection include the *Mutual Recognition (Queensland) Act 1992 (Qld)*.

Items come and go from such collections and sometimes change their names. Thus, for example, a similar collection made in 1969 included the *Colonial Laws Validity Act 1865 (Imp)* which was the predecessor of the *Australia Acts 1986 (Imp, Cwlth)* the omission of which in 1998 was just noted. It also included peripheral legislation like the *Badge, Arms and Floral Emblem of Queensland Act 1959 (Qld)* and the *Governor's Salary Acts 1872-1968 (Qld)* and an extract from the *Criminal Code*. On the other hand, the 1969 collection does not include the *Statute of Westminster 1931 (Imp)* and the *Statute of Westminster Adoption Act 1942 (Cwlth)* or the *Commonwealth Powers (Air Transport) Act 1950 (Qld)* and the *Senate Elections Act 1960 (Qld)*. Identifying a collection as "relating to the Constitution of the State of Queensland" ought to warn the reader to be cautious. But arbitrariness as to what ought to be included may well reduce the visibility of the *Constitution Act 1867 (Qld)* as the most important item in a large bundle.

The Commission notes the numerous items that relate to the State's boundaries. Statements of the geographical boundaries of their jurisdictions are often included in constitutions, for example for many states of the United States of America. Whilst recognising the inherent difficulty of drafting a composite document (Lumb 1964), the Commission believes that a single, definitive statement would be useful if it could be prepared. Rather than make a formal recommendation, it would record its hope that the possibility should be considered at a convenient time.

History of the consolidation process

The Electoral and Administrative Review Commission (EARC), of which two members of this Commission were also members, was required by its establishing legislation, the *Electoral and Administrative Review Act 1989 (Qld)*, to review and report on, *inter alia*, the preservation of individuals' rights and freedoms and the functions and powers of Committees of the Legislative Assembly. When reporting on parliamentary committees (EARC 1992), EARC remarked that there were some 20-30 documents bearing on the Constitution of Queensland and their "colonial style" was both outdated and obscure, whilst the principal statute, the *Constitution Act 1867*, contained many provisions which related to parliamentary detail rather than "strict constitutional matters". It recommended that many of the provisions relating to the Legislative Assembly be consolidated into a Parliament Act, and the remaining provisions of the *Constitution Act 1867* and "relevant provisions of other Acts having a bearing on the Constitution" be reviewed and redrafted for consolidation in a Constitution Act. Its later review of the preservation and enhancement of individuals' rights and freedoms (EARC 1993b) noted that these objectives also led to "the constitutional problem".

On 12 December 1992 EARC announced that it would conduct a consolidation and review of the Queensland Constitution. It published an Issues Paper on the subject, over 600

copies of which were distributed, and sought submissions from the public. A total of 45 submissions and comments in response to submissions were received. In August 1993 EARC issued a *Report on Consolidation and Review of the Queensland Constitution* (EARC 1993a) which contained a draft Queensland Constitution Bill 1993, the first consolidation since 1867. That consolidation, and the versions that have followed it, did not attempt to sweep up every instrument that could be included in a list like that above. It was directed to producing "a Constitution" that dealt with the principal structures and processes of the government of the State of Queensland. As part of the previous inquiry about parliamentary committees (EARC 1992), it had already produced a draft Bill that collected and consolidated comparable provisions that related to the State Parliament. That draft Bill became a second, major but subordinate, component of the constitutional consolidation process.

As was required with all EARC's Reports, its Report on consolidation of the Queensland Constitution was referred to the Parliamentary Committee for Electoral and Administrative Review (PCEAR) of the Legislative Assembly. PCEAR advertised for submissions in September 1993 and received 22. It reported in November 1994, and its *Report on Consolidation and Review of the Queensland Constitution* (PCEAR 1994) contained a revised draft Queensland Constitution Bill 1993.

EARC and PCEAR were then wound up, and as a consequence of the reform of the parliamentary committees system a new statutory committee of the Legislative Assembly, the Legal, Constitutional and Administrative Review Committee (LCARC) was established. In May 1996 it resolved to conduct a fresh inquiry "as to how all Acts and Laws relating to the Queensland Constitution may be consolidated, as far as possible, into one Act" with the rider that the inquiry should "not extend to recommending any major changes of substance to the current Constitution". As implementation of EARC's proposed Parliament Act 1993 (contained in its parliamentary committees report) was incomplete, LCARC included the introduction of a consolidated Parliament Bill in its inquiry.

LCARC, with the assistance of a consultant, Associate Professor Gerard Carney, produced an Interim Report (LCARC 1998) in May 1998, that included new drafts of what were now called the Constitution of Queensland Act (Reprint) and the Parliament of Queensland Bill 1998. It sought submissions and received 58 "many in the form of slight deviations to a pro forma letter" (LCARC 1999: 6). Following the 1998 general election, new members of LCARC were appointed, and the new committee resolved to complete the inquiry. It reported in April 1999 (LCARC 1999) and its Report included drafts of a Constitution of Queensland Bill 1999 and a Parliament of Queensland Bill 1999.

At each stage of the successive inquiries efforts were made to consult the public and interested bodies, and suggestions and arguments received as a result were incorporated in the successive reports and draft legislation.

An inordinate amount of effort was expended on trying to find solutions to the problems presented to the consolidation process by the existing entrenched provisions of the Queensland Constitution. A summary of the final stages is available in the Queensland

Government's *Consolidation of the Queensland Constitution: Drafts* (QG 1999: 5-12). The Commission differs from the conclusion reached at the last stage, that existing entrenchments should be removed by the referendum that would also adopt the Constitution. The Commission will recommend in Chapter 12 that

- existing entrenchments be preserved,
- where they are thought to be defective those entrenchments be rectified, and
- that certain other provisions be similarly entrenched.

But the same procedure will have to be employed to two ends: a referendum is needed to clear the decks for an effective and readable consolidation of existing provisions *and* to entrench an extended list of provisions that will thereafter require a referendum to repeal or amend.

LCARC's Final Report was considered by the Queensland Government which in July 1999 issued a document entitled *Consolidation of the Queensland Constitution: Discussion Drafts* (QG 1999) which included its revised versions of the Constitution of Queensland and Parliament of Queensland Bills (QPD, 21 July 1999, 2741). Its release was reported in the press (*Courier-Mail*, 22 July 1999) in conjunction with the Commission's appointment. As this has been the latest consolidated draft of the Queensland Constitution available to the public up to now, Chapter titles which follow will indicate the chapter of that draft to which they relate as well.

QCRC's terms of reference

Meanwhile, in May 1999 the Queensland Government had appointed this Commission, the Queensland Constitutional Review Commission (QCRC), under the *Commissions of Inquiry Act 1950 (Qld)* with the following terms of reference:

Subject to paragraph (e) below to:-

(a) Research and investigate whether there should be reform of and changes to the Acts and laws that relate to the Queensland Constitution;

(b) Seek submissions from the public as to whether there should be reform and changes to the Acts and laws that relate to the Queensland Constitution;

(c) If the Australian people at a referendum held in accordance with Section 128 of the Commonwealth Constitution approve a proposed law to amend the Commonwealth Constitution and thereby Australia as a Republic, to also research and investigate what alterations would be necessary to the laws of Queensland to enable the State of Queensland to sever its links with the Crown;

(d) By 1 February 2000 to make full and faithful report and recommendations touching the subject matter of inquiry including:-

  (i) any recommended draft legislation in respect of the issues raised by paragraph (a) above; and

  (ii) any recommended draft legislation in respect of the issues raised by paragraph (c) above;

  and to transmit same to the Honourable the Premier;

(e) The subject matter of this inquiry does not include the undertaking of a review of the unicameral nature of the Queensland Parliament.

The defeat of the federal referendum in November 1999 rendered inoperative paragraphs (c) and (d)(ii), and the Commission does not report on the matters to which they refer.

It should be noted that this Report will say s. (section) rather than cl. (clause) when referring to the drafts of the proposed Queensland Constitution (Bill) and Parliament of Queensland Bill to assist readers unfamiliar with the practice of saying clause where Bills are involved.

Timetable

In July 1999 the Commission published its *Issues Paper for the possible reform or and changes to the Acts and Laws that relate to the Queensland Constitution* (QCRC 1999). It invited submissions to be lodged by 17 September 1999. Advertisements (see Appendix B) explaining the inquiry and notifying the public of the availability of the Issues Paper at Public Libraries and from the Commission and on its web-site (see below) were published in daily and weekly newspapers around the State. In the event, some persons sought extensions of time in which to lodge submissions, and others came forward who had heard of the Commission's inquiry too late to meet the deadline. At 17 September the Commission had received only 15 submissions and it agreed to accept late submissions. These were received up to 4 January 2000.

The unexpectedly small number of submissions led the Commission to supplement its program for public hearings (at which those persons who had lodged written submissions would appear) with a more extensive series of public meetings to which the public would be invited. These were held outside Brisbane over the four weeks commencing 4 October 1999 together with two public hearings in Nambour and Cairns. One public meeting was held in Brisbane in conjunction with a public hearing.

Members

The members of the Commission are Colin Hughes, Manfred Cross AM, Virginia Hall, Jackie Huggins and Sir James Killen KCMG.

Commissions of Inquiry Order (No.1) 1999 appointed Colin Hughes to be chairperson of the Commission. Commissions of Inquiry (Queensland Constitutional Review Commission) Regulation 1999 fixed the quorum at the chairperson and two or more other commissioners. The Regulation survived a disallowance motion in the Legislative Assembly by 41 votes to 39 (QPD, 19 August 1999, pp. 3301-09). The Scrutiny of Legislation Committee did not report upon the Regulation (QPD, 20 July 1999, pp.2656-57).

Administrative arrangements

The Commission occupied premises at 126 Margaret Street, Brisbane for the duration of its inquiry. It was supported by a secretariat comprising two members of staff seconded from the Department of Premier and Cabinet, together with a temporary clerical assistant when the dispatch of material required. A temporary administrative officer was employed to

move and maintain the shopping centre display unit from site to site over the four weeks of public hearings outside Brisbane. A consultant firm was employed for publicity and public relations advice and assistance, and a total of $47,500 was expended on advertising and publicising the inquiry. After completion of the Report, documents that relate to the Commission's inquiry will be held by the Department of Justice to whom Freedom of Information applications may be made.

Submissions

As previously noted, the Commission requested submissions in newspaper advertisements and in the Issues Paper that it distributed widely around the State and made available on its website. Copies of the Issues Paper were accompanied by copies of the Queensland Government's *Consolidation of the Queensland Constitution: Discussion Drafts.* This removed the need to reproduce the two draft Bills, the Constitution of Queensland Bill and the Parliament of Queensland Bill, in the Issues Paper.

Eventually 34 submissions were received; they are listed in Appendix C. Five (S.12, S.24, S.26, S.32, S.33) were supplementary submissions from persons who had previously lodged a submission. Three (S.4, S.6 and S.17) came from elsewhere in Australia in response to Issues Papers sent to authors who had written on relevant topics. Three (S.16, S.21 and S.22) came from State instrumentalities: the Criminal Justice Commission, the Anti-Discrimination Commission and the Auditor-General. Three (S.5, S.30, S.34) came from statewide associations: the Bar Association, the Local Government Association and the Aboriginal Co-ordinating Council.

One submission (S.28) was devoted to regretting the Commission's decision not to include the possibility of a Bill of Rights in its inquiry, and setting out what would have been the case for a Bill of Rights. Another submission (S.21) made the same point, but also dealt with other issues. The Commission also received a letter enclosing submissions to earlier inquiries endorsing restoration of an upper house in Queensland, but in the light of the injunction in item (e) of its Terms of Reference this has not been treated as submission for the purposes of this Commission.

The Commission's Issues Paper had invited comments in response to initial submissions, but none were received.

Website

The Commission established a website at http://constitution.qld.gov.au/ to make available the Issues Paper, the text of submissions and transcripts of public hearings. It also added certain British historic documents that it thought might be raised in the light of expectations mentioned in Chapter 2. The *Consolidation of the Queensland Constitution: Discussion Drafts* was available on http://www.premiers.qld.gov.au/constitution/constitution.htm. The Commission received only one complaint about material being placed on a website and that early in its inquiry. The ground of that complaint was that not all the public had access to computers, but the Commission's advertising invariably stated that many Public Libraries now provided access to the Internet.

Monitoring of the use of the Commission's website by Web Trends from 1 July to 12 December 2000 reported 21,200 successful hits, 2,200 user sessions and an average of 12 user sessions and 34 page views per day. Although any such approximation must be suspect, it would be not unreasonable to suppose from the number of kilobytes downloaded (638,000) that the equivalent of a couple hundred Issues Papers were secured from this source. A large part of the use measured in kilobytes downloaded occurred in October, whilst the existence of the site was being publicised by shopping centre displays and distribution of brochures.

It remains an open question whether these figures encourage the use of websites for future inquiries of this nature. Over two months (June-July 1998) around the most recent State election, Electoral Commission Queensland had 1.07 million successful hits on its site (ECQ 1999: 48) but that site contained information about a competitive and rapidly changing activity. This Commission's site was not interactive, an option which might have stimulated some interest. However the Commission noted evidence from a recent constitutional review in Denmark. Visitors to its site, which had a number of subject areas available for interactive discussion, were not interested in process matters (e.g. should the constitutional provision for impeachment be retained) but in outcomes (e.g. wanting a constitutional provision to stop the production of genetically-modified food). (Löfgren, Andersen and Sørenson 1999: 500) It also noted that the British Government's recent white paper on modernising government concluded with a list of relevant websites that ran to three pages (CO 1999). An interim assessment for the local scene might be that websites are now necessary for public consultation, but not sufficient to ensure that more than a fraction of the public will be interested.

The Commission did not open an Email facility for receipt of submissions and received one complaint that it had not done so. It had been concerned about potential misuse; such an incident did occur during the federal referendum campaign (*Sydney Morning Herald*, 22 October 1999, p.6).

Public meetings

Responding to the small number of submissions received up to that time and the geographical concentration of those that had been received in the south-east corner of the State, the Commission decided to add a series of public meetings to its consultation process. Locations were selected that had a substantial hinterland from which to draw interested persons: Surfers Paradise, Nambour and Bundaberg in the first week; Toowoomba and Roma in the second week; Rockhampton, Emerald and Mackay in the third week; and Cairns and Townsville in the fourth week.

In addition to an advertisement of the meeting in the principal local newspaper, a display unit publicising the inquiry and the local meeting was created and placed in a major shopping plaza (or another well-attended public place if a plaza could not be arranged) in the urban centre for a couple of days prior to the meeting. Brochures and flyers describing the Commission's inquiry and calling attention to its website could be collected from the

unit. Local government councils in each area, a total of 47, were approached to provide the names and addresses of potentially interested local associations, and when these could be secured the organisations were sent a written invitation to attend the meeting. Councillors of the local government authorities were also invited through their mayor. Whenever possible, interviews on radio or in the press were arranged in advance of the meeting.

To the Commission's regret, very few persons attended the meetings. Those who did contributed usefully to the Commission's knowledge, and its members are most grateful to them. The occasion of the meetings (and in some instances subsequent reportage of the poor attendance) provided news stories in the local media that would not otherwise have been produced. And (as mentioned above), there is reason to believe the shopping centre display and distribution of material extended community knowledge of the inquiry and its subject matter, the Queensland Constitution.

Assessment of public consultation

In its regular monitoring and assessment of its efforts to consult the public as widely as possible, the Commission turned to comparative statistics from similar inquiries into constitutional questions over the past decade. It noted, for example, the activities of a blockbuster like the federal Constitutional Commission of 1988 and its Advisory Committees. They held meetings, mostly public, over 92 days in 27 cities and towns, 670 persons made submissions at those meetings, and over 4,000 written and oral submissions were received. They printed 205,000 copies of the Commonwealth Constitution for distribution, thirteen Background Papers and a series of Bulletins reporting on their work in progress, produced a half-hour videotape that was sent to 180 people who asked for it, and ran an essay contest, with 14 prizes of a free trip to Canberra and a place at the opening of the new Parliament House, that secured over a thousand entries.

The Commission also noted that the Western Australian Constitutional Committee of 1995 had held twelve public meetings, all well attended, plus a talkback TV conference, and received 162 written submissions. It had distributed 28,000 copies of each of two Issues Papers. However the first five of its terms of reference concerning the federal system and the distribution of powers and functions, and the next three the republic question as it concerned the Commonwealth. The ninth and tenth terms concerning the republic question as it concerned Western Australia, and the last how to ensure adequate consultation of the people of the State on the previous items.

The Commission suspects, though it might be difficult to prove, that Commonwealth-State relations is a much more popular and controversial subject than State constitutional structures, unless perhaps some immediate and readily understandable consequence is involved. That was not the case in Queensland on this occasion.

In any event, the well publicised campaign for the federal referendums on proposals to adopt a republican form of government and introduce a new preamble for the Commonwealth Constitution overlapped the Commission's inquiry. It attracted attention to well-known and highly controversial matters that were to be settled in the near future, and away from relatively unknown and consequently not especially controversial matters that

were to be settled in a year's time. This was unfortunate, but the *possibility* existed that the referendum on converting the Commonwealth Constitution to a republican form of government might be carried. It was essential that consideration of the options available to the State of Queensland if that happened progress at a pace that would have allowed any necessary action at the State level to take place by 1 January 2001. This was the target date already set for implementation at the federal level.

Acknowledgements

The Commission wishes to express its appreciation to the persons and organisations who made submissions in response to the matters raised in its Issues Paper or who otherwise provided their views. A list of all persons and organisations who made submissions to the Commission appears as Appendix C. All submissions and opinions expressed have been taken into account.

The Commission also wishes to thank for their assistance – in chronological order: members of the staff of the Department of the Premier and Cabinet who assisted in the establishment of the Commission - Simone Webbe, Patrick Vidgen, Harold Thornton and Robert Ahern, J.S Douglas QC for advice, and the Office of Parliamentary Counsel for the preparation of the draft Bills which appear at the end of this Report.

The Commission is greatly indebted to the other members of the staff of the Department of Premier and Cabinet who constituted the Commission's Secretariat and contributed so much to both the conduct of its inquiry and the compilation of this Report – Megan Bayntun, Tracy O'Bryan, Tanya Blackman, Michele Robinson and Henny van Dyk.

CHAPTER 2

The case for constitutional reform

The Commission has been charged to "research and investigate whether there should be reform of and changes to the Acts and laws that relate to the Queensland Constitution". The word "reform" implies improvement, and unfortunately some are likely to see any suggestion that improvement is possible as an attack on existing institutions. In particular, they may claim it is a repudiation of a "British heritage" which extends from colonial times to the present day or of a "Westminster model" which is the best form of government.

Such is certainly not the Commission's intention. It is confirmed in its belief that reform that preserves the best of that inheritance and of that model is possible by the words of one of the most distinguished writers on Conservatism in this century and an experienced Minister in Conservative Cabinets (and subsequently Lord Chancellor), written 30 years ago:

> I wish to raise the question of constitutional reform, which I regard as urgent. I do so with reluctance because I am a Conservative and as a Conservative I believe that the institutional framework of a society which works should be run as long as it will go without breaking down. I believe that ours is breaking down or at least is on the verge of breaking down. I have no love for change for the sake of change; quite the reverse. But I must say frankly that I believe that there are a large number of our problems which baffle us only so long as certain constitutional assumptions are retained, and cannot be solved so long as they remain unchanged.
>
> …
>
> There is surely a case here for the application of coherent political thought. This leads to a discussion of constructive proposals. I do not suggest that these should be adopted as part of an election manifesto. Government by mere majority has its limitations. There are moments in a free society when a more general consensus is required to achieve a radical change without violence. This is recognised in most created constitutions by making constitutional change dependent on something more than the majority in a legislative chamber. We have no such machinery, since our constitution is a growth and not an artefact. But I seriously suggest that the time has come for some government – and if so why not us when we get into power – to call a constitutional conference to discuss certain more or less definite proposals. (Hogg 1969: 5,9)

His own proposals were later spelled out in the radio lecture that popularised the phrase "elective dictatorship" to characterise what had gone wrong with the Westminster model. That lecture concluded:

> My object is continuity and evolution, not change for its own sake. But my conviction remains that the best way of achieving continuity is by a thorough reconstruction of the fabric of our historic mansion. It is no longer wind or weather proof. Nor are its foundations secure. (Hailsham 1976: 17)

Constitutional reform in Britain continues to be the *ad hoc* product of expert committees and parliamentary action, but at a pace which has quickened recently. The point that the Commission wishes to emphasise is that reform may sometimes have to concern foundations and still be directed to the preservation of an historic mansion that has served its occupants well.

Status of the present Constitution

Knowledge of the State Constitution

To say that the Commission has been handicapped by evidence of a lack of public awareness of "the Queensland Constitution", either in its totality or as to its constituent parts, understates the problem. It would be more accurate to say that there is no hard evidence on the matter at all, though there is a modest amount of survey data reporting familiarity with the Commonwealth Constitution (Goot 1995). One recent survey showed only 36% of respondents (combining responses of "a little bit", "a moderate amount" and "a lot") claimed knowledge of what the Commonwealth Constitution covers and 52% claimed to know how it may be changed (CEG 1994: Appendix 3). Another recent survey, using true-false questions, found that 98% of respondents correctly identified the Hon. John Howard as leader of the Liberal Party, and 65% knew Australia became a federation in 1901. (A third survey reported "a quite substantial increase" in awareness of federation over the last couple years, from 2% to 34% (deJersey 1999: 1) so the 65% may reflect current centenary-directed campaigns.) But only 31% of the second survey's respondents recognised as false the proposition that the House of Representatives had a four-year term and only 21% recognised as false the proposition that the House then had 75 members (McAllister 1997: 18). The Commission knows of no equivalent material for the state constitution of Queensland, or indeed any other Australian State.

The Commonwealth Constitution is, and has been, more accessible. Media reports feature arguments about its interpretation more often. A referendum requiring all electors to vote is required to amend it; such a referendum had happened as recently as 1988. The prospect of another federal referendum involving the highly controversial and readily grasped proposal to abolish the monarchy – in the first survey just quoted 76% thought they knew what a republic would mean - has hung over the electorate's head for several years. It would be not unreasonable to guess that the particulars of the State's constitution are less well known than the particulars of the Commonwealth Constitution. Probably its very existence is less well known as well.

It may also be that some characteristics of the Commonwealth Constitution are incorrectly attributed to the State Constitution. For example, letters to the editor often claim that amendment of the State Constitution requires a referendum but only a few parts of the State Constitution are so protected.

Others who have been involved with the recent consolidation process agree there is a problem. The chairperson of the Parliamentary Committee for Electoral and Administrative Review (PCEAR), Dr L.A. Clark, wrote:

> While few Australians have a detailed knowledge of the contents of the Commonwealth Constitution, they have a basic understanding that it is a legal document which limits the Federal government's power and is incapable of amendment by Parliament in the normal way.
>
> Queenslanders' understanding of their own State Constitution is much hazier, despite the fact that it predates that of the Commonwealth by more than 30 years.
>
> The explanation of this state of affairs lies in lack of education in our schools about our Constitution. However, in the case of the Queensland Constitution there is another major problem; unlike the Commonwealth there is no one document setting out the Constitution. In fact, Constitutional legislation in Queensland is to be found in a large number of different Acts. (PCEAR 1994: i)

At the public hearings similar comments were expressed:

It's really quite disgraceful how people just don't know anything about our system of Government. I'm quite amazed at, you know, the numbers of people and the type of persons who do not know anything about it." - Trewern, J (Cairns Public Hearing 25/10/99)

I think one of the reasons why so few Queenslanders have any knowledge that we have a constitution is that, in fact, in one sense we indeed do not. We have a series of constitution Acts, some of which have constitutional status in giving constitutional the meaning that - know, any European legal theorist or American - in Europe a legal theorist or in America any ordinary person would give it, and that is some binding document which has a higher status that the ordinary Act of Parliament. - Pyke, J (Brisbane Public Hearing 27/09/99)

Such a complaint is not new. The Clerk of the Legislative Assembly and an early chronicler of Queensland's political and constitutional history wrote almost 70 years ago:

> It is perfectly remarkable how little interest the people generally take in the Legislature or its constitution. If one walked down Queen Street to-day and asked the first half-dozen intelligent looking people to describe the constitution of the Queensland Legislature, they would not know and they would be bored to tears by the mere query. Time and again the writer has tested the question. The majority of people do not know the difference between a Legislative Council and a Legislative Assembly and they positively do not know that we abolished our Council, or that it ever existed. Ask them the difference between the bicameral and the unicameral systems, and they would probably reply that they did not speak French. (Bernays 1931: 84-85)

The experience of earlier inquiries, as well as this Commission's, suggests that several variations may be distinguished in the body of knowledge concerning the Queensland Constitution. One, which might be labelled "mainstream", is what the courts are likely to hold, the assumptions on which most parliamentary debates proceed, the basis on which

constitutional problems are resolved if they are, what is set out in scholarly books and articles.

Opposed to the mainstream are what might be called, in a non-pejorative way, "alternative" views which sometimes start from different assumptions, often end with drastically different conclusions, and may turn on different historical evidence. Anticipating a reappearance of the Gothic Constitution of Britain which earlier constitutional inquiries in the State had encountered, the Commission included on its web-site a number of the documents with which the Gothic Constitution is associated by its champions. It hoped thereby to make it more likely that any re-opening of the topic would be soundly based. The documents were Magna Carta (in both an original Latin text and the Holt translation, the latter used with the kind permission of Cambridge University Press), the Petition of Right (1628), the Bill of Rights (1689), and the Act of Settlement (1700), plus the Instrument of Government (1652). In the event the Commission heard nothing from this quarter.

Instead several of its public meetings were attended by advocates of the constitutional doctrine advanced in *Joosse* and more recently in *Helljay Investments*. Aspects of that doctrine were set out at http://www.institutetr.com.au/chronology/htm (accessed 28/10/99 11:19AM) and in a mimeographed document "Alternative Three" given to the Commission at one of its public meetings. This possibility had been anticipated in the Issues Paper (pp. 208-09) on the evidence in *Joosse*, and some authoritative statements on the circumstances surrounding Australia's adherence to the Treaty of Versailles were reproduced there. The Commission relies on the High Court judgments in those two cases and does not pursue the subject further.

Finally attention should be called to the lack of knowledge about the *Australia Acts 1986 (Imp, Cwlth)* and their impact on the constitutional structure of the six States. Certainly there is evidence of deep concern about the legislation's effect and validity. "Alternative Three", for example, says that it "removed all legal claim by the Australian people to liberty and justice and at the same time handed Australia over to unlimited government at the politicians' request" (emphasis in original). The gentleman from the Loyal Constitutional Army who sought prosecution of members of the Commission by the Australian Federal Police concluded his written complaint "I uphold the Constitution of Australia as originally written before the current unlawful alterations such as the Australia Act 1986".

Why knowledge of the *Australia Acts 1986* is important will be discussed below. Before that, it is necessary to emphasise that the Queensland Constitution is not only largely unknown, but it is to a considerable extent unknowable. This point was repeatedly made to the Commission and succinctly expressed in Submission 21:

The laws relating to the Constitution are a statutory maze. A consolidation is long overdue and, if achieved, will represent a significant advancement of the democratic process - ease of access to the rudimentary law setting up our system of government will invariably encourage greater participation in the democratic process. - Anti Discrimination Commission S.21

Content

1867, the year in which the first, and until the present exercise only, consolidation of the Queensland Constitution took place, was also the year in which Walter Bagehot's *The English Constitution* was published. Bagehot recorded the discrepancies and contradictions between what were believed or said to be the formal rules of the unwritten English constitution and the realities of how Britain was actually governed. Because those discrepancies and contradictions have endured to the present day, *The English Constitution* remains in print and is well known to all serious students of Westminster models of government. Give or take a few details, the same discrepancies and contradictions had been exported into the constitutional arrangements of those of Britain's colonies which were virtually self-governing; they were there in 1867 and in Queensland they remain. An indication as to why such a state of affairs could persist so long had been given two years earlier, in Dickens' *Our Mutual Friend* (1865), when Mr Podsnap explained to the foreign gentleman:

> "We Englishmen are Very Proud of our Constitution, Sir. It Was Bestowed Upon Us By Providence. No Other Country is so Favored as This Country."

It is easier to say that in England in the absence of a written constitution (though there are numerous constitutional statutes and other instruments) than in Queensland where what are really two versions, one partly written and one largely unwritten, drift uneasily around each other. It is not only that many important matters are determined by constitutional conventions rather than by the black letter law sections of the *Constitution Act 1867 (Qld)*, a matter discussed at length in the Commission's Issues Paper (Chapter 6). It is also because the detritus of abandoned constitutional regimes is scattered over the constitutional landscape. Powers survive which once might have been regularly exercised in London by British Ministers advised by Colonial Office officials and using the name of the British Sovereign or, later, were still available if needed in exceptional circumstances. Most recently, constitutional doctrines that may have had the ground cut from under them by the passage of the *Australia Acts 1986* remain a ghostly, troubling presence. And it is also because certain drafting assumptions about colonial constitutional legislation that existed at the middle of the 19th century are still reflected in an unrevised text. So basic institutions like the Premier and Cabinet go unmentioned and functions are identified tersely if at all.

During the recent debate about the Commonwealth Constitution, one citizen of Brisbane listed some of its obsolete provisions and continuing omissions and concluded:

> If readers of our Constitution have no other information, their conclusion must be that Australia is an English colony with limited autonomy. That conclusion is wrong as Australia is a proud and independent democracy, but only because the Queen and the Governor-General do not use the powers so clearly defined in our Constitution. Surely 100 years is far too long to have the "basic rules for the government of Australia" (the Constitution) so at odds with the reality of our system of government and our independence that it is almost irrelevant. (*Courier-Mail*, 25 September 1999, p.18)

Similar sentiments were expressed in the submissions:

At present, the main Constitution Act 1867 leaves the conduct of the executive government a mystery, and the Constitution (Office of Governor) Act tells some solemn and traditional lies. A Constitution ought to be something that can be put on a poster in a school room and understood by the children. - J Pyke S.20

The present Queensland Constitution is apparently recognised as being incompatible with our modern Democratic Society. Quite obviously it has developed over the years without any real sense of coordinated approach and certainly with very little concept of modern democratic principles. - G Paterson S.3

A fundamental law?

Bearing in mind these considerable handicaps, before examining the last draft Constitution of Queensland Bill (as printed in (QG 1999) from which section references come) it is necessary to inquire into what is the status of the present State Constitution and what will be the status of the proposed State Constitution. Such an inquiry requires answers to two general questions and one more narrow question.

- Is the Constitution superior to ordinary legislation and overrides their provisions when they conflict with it?
- Does the Constitution contain within itself the basis for its authority or is that authority derived from some external source?
- How much of the text of the Constitution can be entrenched so as to require special procedures to remove or modify designated provisions?

Authoritative answers to such questions have to come from the courts, and for most of this century the best answer was provided by McCawley's Case ((1919) 26 CLR 9, [1920] AC 69). The case is of such significance that the lengthy extracts which follow are essential to an understanding of the present problem.

McCawley had been appointed a judge and the president of the State Court of Industrial Arbitration with a fixed term of seven years under the *Industrial Arbitration Act 1916 (Qld)* which authorised the appointment of such judges to be also judges of the Supreme Court "during good behaviour". The State Supreme Court by a 4-1 majority and the High Court by a 4-3 majority held that his commission was void as inconsistent with the Queensland Constitution. The effect of the legislation, as the Privy Council ultimately held, was to authorise the appointment of a judge of the Supreme Court for a period of seven years if during that period he was of good behaviour *and* retained the office of president or a judge of the Court of Industrial Arbitration.

Those in the minority in Australia were of the opinion that the State Constitution had no special status. For example:

> There is no magic in the words "Constitution Act"; what the Parliament can do is a matter of construction of the relevant Acts in each case. Indeed, the *Constitution Act* appears to be not an organic law in the strict sense, but the creature of the only organic law – the Order in Council made under 18 & 19 Vict. S.54. The Order in

> Council is, as it were, the electric wire which carried the British power to make laws; and the *Constitution Act* is merely one of the laws made under that power. (McCawley v The King, (1919) 26 CLR 9 at 73, per Higgins, J)

Before the Privy Council on appeal, Sir John Simon argued:

> The Legislature of Queensland has power, by ordinary enactment passed by both houses [the Legislative Council still being in existence at that time] and assented to by the Governor in the name of the Crown, to alter the constitution of Queensland, including the judicial institutions of the State, and the tenure of the judges. … The Constitution of Queensland is a "flexible", as distinguished from a "rigid", constitution. The distinction between those two classes of constitutions is pointed out and discussed in Dicey's Law of the Constitution, 8th ed., pp. 122, 123, 141. All the laws applying to Queensland which it is competent to the Queensland Legislature to alter can be altered in the same manner by ordinary enactment. In Queensland as in the United Kingdom there is no law within the competence of the Legislature which can be regarded as fundamental or supreme, or which tests the validity of laws subsequently enacted. The use of the word "constitution" in the title of the Constitution Act of 1867 does not restrict the power of the Queensland Legislature to pass subsequent laws which either expressly or impliedly vary the constitutional arrangements of the State. (McCawley v The King [1920] AC 691 at 693.

The judgment, delivered by the Lord Chancellor, Lord Birkenhead, agreed:

> The first point which requires consideration depends upon the distinction between constitutions the terms of which may be modified or repealed with no other formality than is necessary in the case of other legislation, and constitutions which can only be altered with some special formality, and in some cases by a specially convened assembly.
>
> The difference of view, which has been the subject of careful analysis by writers upon the subject of constitutional law, may be traced mainly to the spirit and genius of the nation in which a particular constitution had its birth. Some communities, and notably Great Britain, have not in the framing of constitutions felt it necessary, or thought it useful, to shackle the complete independence of their successors. They have shrunk from the assumption that a degree of wisdom and foresight has been conceded to their generation which will be, or may be, wanting to their successors, in spite of the fact that those successors will possess more experience of the circumstances and necessities amid which their lives are lived. Those constitution framers who have adopted the other view must be supposed to have believed that certainty and stability were in such a matter the supreme desiderata. Giving effect to this belief, they have created obstacles of varying difficulty in the path of those who would lay rash hands upon the ark of the constitution. It is not necessary, and indeed the inquiry would be a long one, to analyse the different methods which have been adopted in different countries by those who have framed constitutions under these safeguards. But it is important to realize with clearness

> the nature of the distinction. It is not a distinction which depends in the least upon the differences between a unitary and a federal form of Government.
> …
> Many different terms have been employed in the text-books to distinguish these two contrasted forms of constitution. Their special qualities may perhaps be exhibited as clearly by calling the one a controlled and the other an uncontrolled constitution as by any other nomenclature. Nor is a constitution debarred from being reckoned as an uncontrolled constitution because it is not, like the British constitution, constituted by historic development, but finds its genesis in an originating document which may contain some conditions which cannot be altered except by the power that gave it birth. It is of the greatest importance to notice that where the constitution is uncontrolled the consequences of its freedom admit of no qualifications whatever. The doctrine is carried to every proper consequence with logical and inexorable precision. Thus when one of the learned judges in the Court below [Higgins, J according to Powers, J] said that, according to the appellant, the constitution could be ignored as if it were a Dog Act, he was in effect merely expressing his opinion that the constitution was, in fact, controlled. If it were uncontrolled, it would be an elementary commonplace that in the eye of the law the legislative document or documents which defined it occupied precisely the same position as a Dog Act or any other Act, however humble its subject-matter.
> …
> It was not the policy of the Imperial Legislature, at any relevant period, to shackle or control in the manner suggested the legislative powers of the nascent Australian legislatures. Consistently with the genius of the British people what was given was given completely, and unequivocally, in the belief fully justified by the event, that these young communities would successfully work out their own constitutional salvation.
> …
> The Act of 1867 has no such character as it has been attempted to give it. The Legislature of Queensland is the master of its own household, except in so far as its powers have in special cases been restricted. No such restriction has been established, and none in fact exists, in such a case as is raised in the issues now under appeal. (McCawley v The King [1920] AC 691 at 703-04, 707, 714)

It was not inevitable that this would be the answer. Earlier in the century American notions about the status of a Constitution had been in the air:

> The legislation of a body created by and acting under a written charter or constitution is valid only so far as it conforms to the authority conferred by that instrument of government. … Legislation, which cannot be undertaken at all without the antecedent authority of the fundamental law, cannot overstep the bounds set for it by that law and yet stand good. Before it can avail, the bounds must have been lawfully extended. (Cooper v Commissioner of Income Tax for Queensland, 4 CLR 1304 at 1315, per Barton, J)

Such notions had been struck down for the Commonwealth Constitution by the Engineers' Case which accepted the argument put by R.G. Menzies (as he then was) who appeared for

the union. At issue was whether the American doctrine of implied prohibition protected State instrumentalities from the application of Commonwealth legislation, as might have been the case in the United States.

> The [Commonwealth] Constitution, as part of an Imperial Act of Parliament, should be interpreted as a statute ordinarily is. Its meaning is to be deduced from express provision and necessarily implied intention. … It is distinct from the American Constitution by reason of its statutory character, the existence of the royal veto, and the power of easy amendment, and by reason of express provisions such as sec. 51 (xiii) [exempting State banking from the general power] and (xiv) [exempting State insurance from the general power] and sec. 114 [prohibiting a State from raising armed forces or taxing Commonwealth property, and the States from taxing Commonwealth property]. (Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd. (1920) 28 CLR 129 at 132-33)

A majority of the High Court agreed:

> … [W]e conceive that American authorities, however illustrious the tribunals may be, are not a secure basis on which to build fundamentally with respect to our own Constitution. While in secondary and subsidiary matters they may, and sometimes do, afford considerable light and assistance, they cannot, for reasons we are about to state, be recognized as standards whereby to measure the respective rights of the Commonwealth and the States under the Australian Constitution. For the proper construction of the Australian Constitution it is essential to bear in mind two cardinal features of our political system which are interwoven in its texture and, notwithstanding considerable similarity of structural design, including the depositary of the residual powers, radically distinguish it from the American Constitution. Pervading the instrument, they must be taken into account in determining the meanings of its language. One is the common sovereignty of all parts of the British Empire; the other is the principle of responsible government.
>
> …
>
> With respect to the interpretation of a written Constitution, the Privy Council has in several cases laid down principles which should be observed by Courts of law, and these principles have been stated in the clearest terms. In *R. v Burah* [[1878] 3 AC 889 at 904-05] Lord Selborne, in speaking of the case where a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.
>
> …
>
> In two decisions the Judicial Committee has applied these principles to the interpretation of the Constitution, namely *Webb v. Outrim* [[1907] AC 81] and the *Colonial Sugar Refining Co.'s Case* [[1914] AC 237]. In the first mentioned case,

> quite independently of any observations as to the meaning of the word "unconstitutional", it is clear that their Lordships proceeded on the ordinary lines of statutory construction. In the second case the Judicial Committee considered the nature of the instrument itself in order to determine the more satisfactorily the depositary of residual powers, and having arrived at the conclusion, as to which this Court has never faltered, that the Commonwealth is a government of enumerated or selected legislative powers, their Lordships examined the language of sec. 51 to ascertain from its words whether the suggested power could be deduced. The method of arriving at the conclusion is all that is relevant here. We are therefore bound to follow the course of judicial investigation which those two august tribunals of the Empire have marked out as required by law. (Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd (1920) 28 CLR 129 at 146-47, 149, 150)

The High Court then turned to the doctrine of implied prohibition that had been rejected by the Privy Council in Webb v Outrim, since when the High Court had been divided about it as some members of the High Court continued with the doctrine. The present majority thought it incapable of consistent application because it turned on the idea of "necessity" which must vary according to circumstances, and concluded:

> [The doctrine of necessity] means the necessity of protection against the aggression of some outside and possibly hostile body. It is based on distrust, lest powers, if once conceded to the least degree, might be abused to the point of destruction. But possible abuse of powers is no reason in British law for limiting the natural force of the language creating them. It may be taken into account by the parties when creating the powers, and they, by omission of suggested powers or by safeguards introduced by them into the compact, may delimit the powers created. But once the parties have by the terms they employ defined the permitted limits, no Court has any right to narrow those limits by reason of any fear that the powers as actually circumscribed by the language naturally understood may be abused. This has been pointed out by the Privy Council on several occasions, including the case of the *Bank of Toronto v. Lambe* [12 AC 575]. The ordinary meaning of the terms employed in one place may be restricted by terms used elsewhere: that is pure legal construction. But, once their true meaning is so ascertained, they cannot be further limited by the fear of abuse. The non-granting of powers, the expressed qualifications of powers granted, the expressed retention of powers, are all to be taken into account by a Court. But the extravagant use of the granted powers in the actual working of the Constitution is a matter to be guarded against by the constituencies and not by the Courts. When the people of Australia, to use the words of the Constitution itself, "united in a Federal Commonwealth," they took power to control by ordinary constitutional means any attempt on the part of the national Parliament to misuse its powers. If it be conceived that the representatives of the people of Australia as a whole would ever proceed to use their national powers to injure the people of Australia considered sectionally, it is certainly within the power of the people themselves to resent and reverse what may be done. No protection of this Court in such a case is necessary or proper. (Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd (1920) 28 CLR 129 at 151-52)

English ideas, A.V. Dicey's ideas in particular (summarised in the Commission's Issues Paper, pp.304-06), prevailed in both the High Court and the Privy Council. The State's *Constitution Act* subsided to the status of a Dog Act, as vulnerable to deliberate amendment as any other statute and liable even to amendment by implication as McCawley's Case held.

Of particular and immediate concern was the Parliament's capacity to impose restrictive procedures on itself. This was believed to be confined to what the *Colonial Laws Validity Act 1865 (Imp)* permitted ("laws respecting the constitution, powers and procedure of [every representative] legislature") and the *Australia Acts 1986* perpetuated, though alternative possibilities were put forward which rested on the Privy Council decision in Ranasinghe or the breadth of the "peace, order and good government" legislative power. (Elliot 1991, Goldsworthy 1987, 1992, Lee 1992).

One test came in 1996 over a provision of the *Constitution Act 1867 (Qld)*:

> 14.(1) The appointment of all public offices under the Government of the colony hereafter to become vacant or to be created whether such offices be salaried or not shall be vested in the Governor in Council with the exception of the appointment of the officers liable to retire from office on political grounds which appointments shall be vested in the Governor alone.

which a previous Government had purported to entrench in 1977:

> 53.(1) A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely - … 14 … shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.

Doubts had been expressed for some time whether appointments of public servants could fall within the "constitution, powers and procedure of the [Queensland] legislature" and when introducing a new Public Service Bill a subsequent Government acted to cut the knot. The then Premier, the Hon. R. Borbidge, stated:

> The Government has accepted the advice given by successive Crown solicitors, the Solicitor-General and Professor John Finnis of Oxford University, that this provision is not validly entrenched. Whilst there is a place for entrenching core provisions in our constitution, anybody who has read section 14(1) would see that it is written in archaic language, its effect is so vague as to be almost meaningless, and it has nothing whatsoever to do with the Constitution, powers or procedures of this Parliament. It is not in the public interest that our Constitution becomes so rigid and uncertain that proper public administration could be impaired.
>
> …
>
> As I have previously pointed out to this House, my Government intends to update our State's fundamental law so that its terms are clear, its capacity to operate as an educative tool is maximised and its scope is certain. (*QPD*, 25 July 1996, pp.1956-57)

At a later stage of the debate on the Bill, he described the step as an initiative to modernise the Constitution that warranted bipartisan support. (*QPD*, 5 September 1996, p.2568)

As to how the uncertainty might be resolved, the Government chose to legislate and ignore the referendum requirement, and to reject an earlier proposal that first a declaration be sought from the Supreme Court to settle the validity of the 1977 entrenchment. It did so because it had received legal advice that the Attorney-General would not have had the *locus standi* to seek such a declaration.

The constitutionality of that course has not been challenged in the courts so far as the Commission is aware, but if the advice on which that course was followed is correct (which for the time being must be presumed to be the case) then the Queensland Constitution is left in a curious fix. Most matters concerning the Legislative Assembly can be entrenched. As the Constitution says the Governor is part of the Parliament, the existence of that office and some of its functions are brought under the umbrella created by the *Colonial Laws Validity Act 1865* and the *Australia Acts 1986*. But other functions of the Governor, like the appointment of public servants, are not. Neither is local government despite the attempt recorded in Chapter 7 below. Nor, most seriously, are the State's higher courts, the Supreme Court and the District Court, whose existence (in competition, say, with popularly elected People's Tribunals) may depend on the lifeline thrown them by the High Court in Kable's Case as potential recipients of the federal jurisdiction:

> … [A]lthough judges in State courts are part of an integrated system with federal courts, the Commonwealth Constitution does not extend the protection it gives to the appointment, remuneration and tenure of federal judges to State judges (*Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 115). The provisions of the State Constitution must be looked to for this. But the confirmation of an integrated system of law under the Supreme Court (and without the Privy Council any longer) by the *Australia Act 1986*, implies there must be a State Supreme Court (*Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 139). (QCRC 1999: 709, n.1)

Sir Owen Dixon raised some of the wider ramifications of what might be called the McCawley doctrine when speaking of the Commonwealth Constitution in 1935:

> The framers of our own federal Commonwealth Constitution (who were for the most part lawyers) found the American instrument of government an incomparable model. … But, although they copied it in many respects with great fidelity, in one respect the Constitution of our Commonwealth was bound to depart altogether from its prototype. It is not a supreme law purporting to obtain its force from the direct expression of a people's inherent authority to constitute a government. It is a statute of the British Parliament enacted in the exercise of its legal sovereignty over the law everywhere in the King's Dominions. In the interpretations of our Constitution this distinction has many important consequences. We treat our organs of government simply as institutions established by law, and we interpret their powers simply as authorities belonging to them by law. American doctrine treats them as agents for the people who are the source of power and their

> authorities committed to them by a principal. ("The Law and the Constitution" (1935) 51 LQR 597, quoted Lindell 1986: 29)

Prior to 1986 for Queensland, and the other Australian States, the continuing, albeit inactive, supremacy of the Imperial Parliament had settled the fundamental question whence ultimate legal authority derived:

> I would hold therefore that while a bill of the Parliament of Queensland the type scheduled to the Act [Australia Acts (Request) Bill] could not be presented for assent by or in the name of Her Majesty the Queen unless first approved by the electors, s.53 of the Constitution of Queensland says nothing to a request by that Parliament to the Parliament at Westminster to enact provisions which are, without question, within the legislative powers of the latter (R v Minister for Justice & Att-Gen of Qld, ex p. Skyring SC Connolly J unreported [86.04] (1986)).

Left open to argument was only the narrower question, raised in the preceding paragraph, whether a particular limitation on the derivative (by virtue of its creation by the grant of a law-making power) supremacy of a State Parliament came within rules made by that ultimate authority. Those were the rules contained in the *Colonial Law Validity Act 1865*, and preserved by the *Australia Acts 1986*.

Continuing with that problem, a policy question also remained as to how much restraint was appropriate. When in 1990 the Legal and Constitutional Committee of the Victorian Parliament was concerned with "a potential conflict between the demand of constitutional principle, and administrative and legislative practicality", and the weight to be given to each (LACC 1990: 8), one Member could write in a dissenting report that there should be no restraint:

> In Victoria, we have democratically elected Parliaments. The Government is formed from the party with the largest number of members in the lower house. An elected government has the mandate of the people, and is entitled to govern. It should not be frustrated by special majority requirements which protect some provision or other, and which have been imposed by a past Parliament with no right to stand in the way of the most recently elected representatives of the people. There is no matter so fundamental that it should be beyond the reach of elected members of Parliament. (LACC 1990: 56, emphasis added)

That was a common enough view, though it was on that occasion the minority view. It is the approach that Lord Hailsham labelled "elective dictatorship", correctly in the Commission's opinion.

However since 1986, there has been additional uncertainty.

> What is … not so explicit is the answer to the question as to who is the ultimate beneficiary of the legal power previously capable of being exercised by the United Kingdom Parliament to alter the Constitution, notwithstanding the existence of the power to alter the Constitution contained in s.128 of the same document. The efficacy of arguing that the Australian people now enjoy the sole power to alter the Constitution by virtue of s.128 and, on a broader note, that the legally binding

> character of that document is now derived from the will of the people, would seem to be significantly undermined if it can be found that the power to alter the Constitution also resides elsewhere, or that there are important matters, such as the power to alter the Constitution of the States, which lie beyond the scope of s.128.
> …
> So far as the ability to alter State Constitutions is concerned, at least before the enactment of the Australia Acts, it needs to be recalled that although s.128 is directed to "the alteration of the Commonwealth Constitution", s.106 already makes extensive reference to the continued operation of the State Constitutions (including their alteration). This has led a State court to rely on that section of the Constitution as a further reason for requiring State Parliaments to comply with any requirements governing the alteration of their Constitutions contained in those Constitutions. [Western Australia v Wilsmore [1981] WAR 179.] It has even been suggested by some judges that because of s.106, State Constitutions are either part of, or derive their existence by virtue of the Commonwealth Constitution. It is also worth noting that s.128 provides for the "alteration" of the Constitution and not its "amendment". The latter word may prove to be narrower in scope than the former.
>
> The effect of the enactment of the Australia Act by the United Kingdom Parliament appears at first sight to strengthen the impression that s.128 can be used to amend the Constitutions of the Australian States. (Lindell 1986 : 39-40, emphasis added)
>
> The enactment of the *Australia Act* in 1986 may not necessarily have put to rest a contested issue among legal commentators in Australia. The debate still persists because the provisions in s 6 of the *Australia Act* do not, arguably, clarify the issue. … The contested issue simply is whether an Australian State Parliament has to comply with an existing 'manner and form' provision when the Parliament seeks to enact a law which cannot be characterised as a law "respecting the constitution, powers or procedure of the Parliament of the State". (Lee 1992: 516, emphasis added)
>
> There is little judicial authority in Australia on the capacity of a State Parliament to bind later Parliaments by manner and form provisions outside of s.6 [of the *Australia Act 1986*]. The three grounds discussed here [reconstituted legislature; Ranasinghe; Commonwealth Constitution s.106] have been raised in judicial decisions but are by no means fully accepted in Australia. (Carney 1989: 86, emphasis added)

Moreover the uncertainties about the State Constitution extend to some extent to the Commonwealth Constitution as well:

> Perhaps the most profound issue to arise in the wake of the Australia Acts relates to the present legal basis of the Australian Constitution. Traditionally, that basis was thought to lie in the quality of the Constitution as an enactment of the United Kingdom Parliament. However, since the apparent disappearance of the power of that Parliament to legislate for Australia via section 1 of the Australia Acts, the

> triumphant suggestion is increasingly made that the true basis of the Constitution now lies simply in its acceptance by the people. Such a view, which fits well both with understandable feelings of Australian nationalism and, not coincidentally, with a certain vainglory on the part of the Commonwealth Parliament and Executive (which obviously have a degree of proprietorial interest in their own Australia Act) sees these Acts as effecting a final shift of constitutional legitimacy from imperial derivation to popular acceptance.
>
> However, the theorists of popular acceptance have not, perhaps, sufficiently refined their thesis, or appreciated its full potential implications. The problem with any theory of popular acceptance, as has long been realized, lies in the concept of the people: "Which people, and in what units?", the perennial question rings out. The sorry truth is that to say that the Australian Constitution rests on popular acceptance could mean that it derives its validity from any of at least three quite different sources, the selection of any one of which might have profound implications for Australian constitutional law. (Craven 1990 : 360)

Some commentators sought the new foundation, the *Grundnorm* (a concept explained in the Commission's Issues Paper (p.511)), in the Commonwealth Constitution, and a coupling of its s.106 and the guarantee of the State Constitutions "subject to this [Commonwealth] Constitution" with its s.128 and the popular will required to amend the Commonwealth Constitution - and which *might* be available to amend State Constitutions. But, on the narrow question raised at the start of this discussion of the Queensland Constitution as fundamental law, it has also been argued that s.106 does not provide "any further, independent ground for entrenchment" (Goldsworthy 1987: 427), and that:

> The Australia Act cannot possibly have the intention or the effect of removing the power of the State Parliaments to alter their own constitutions; indeed, sub.s.2(2) of the Act is now a further source of that power. The reconstitution alternative is therefore unaffected. But it could be argued that the pure procedure or form alternative has been impliedly excluded, although it was almost equally plausible (or implausible) to argue that it was excluded in 1865 by the enactment of the manner and form proviso in s.5 of the C.L.V. Act. (Goldsworthy 1987: 411)

The Commission believes that such uncertainty should be brought to an end if possible and that the status of the Queensland Constitution should be established as the fundamental law of the State. To achieve that objective requires careful attention and incisive action to, in Alexander Hamilton's (1799) evocative phrase "surround the Constitution with more ramparts". Among the steps it recommends are, first, making an unequivocal statement that the Constitution IS the fundamental law of the State (R2.1) by identifying it as the highest rule of the State's legal system, discussed further in Chapter 4. And, second, it recommends enhancing the amendment procedure so that all the principal elements of the State's constitutional structure are well entrenched by what, it is proposed to call "referendum entrenchment" (R2.2), and the entire text is distinguished from ordinary statutes by a more restrictive amendment procedure (R2.3), which it is proposed to call "parliamentary entrenchment", proposals developed further in Chapter 12. Third, it

welcomes the prospect of the adoption and enactment of the entire text by the forthcoming referendum as another enhancement of the Constitution's status at law.

Given the durability and centrality of the doctrine of the supremacy of the Imperial Parliament in Australian constitutional law, it has to be asked whether the *Australia Acts 1986* have really completely ended the doctrine's implications for Australian jurisdictions. The Commission would not venture into speculation about what the "English" Constitution (using Bagehot's label) may still allow. However, it notes that the High Court has said:

> The effect in the United Kingdom of any amendment or repeal by the United Kingdom Parliament of s 1 would be for those adjudicating upon the constitutional law of that country. But whatever effect the courts of the United Kingdom may give to an amendment or repeal of the 1986 UK Act, Australian courts would be obliged to give their obedience to s 1 of the statute passed by the Parliament of the Commonwealth. (Sue v Hill (1999) 163 ALR 648 at 666 per Gleeson, CJ, Gummow and Hayne, JJ).

The Commission accepts that solutions to our constitutional problems will have to be found in Australia, and to maintain the internal balance of our federal system steps must now be taken to protect the constitutional rights of Queensland. In the 1890s a deliberate decision was taken to avoid the unificationist risks then perceived to be inherent in the Canadian model of federalism. The end of the Imperial link may have the capacity to reopen that question, but it cannot undo the historical fact that whereas truly independent States joined in the American union, Australian States entered the Commonwealth as dependent colonies.

The Commission believes, and thinks that the people of Queensland will agree, that the federal system, the centenary of which is about to be celebrated, requires that the sovereignty of both levels of government be clearly established and preserved. The continuing colonial status of the six federating colonies at the end of the 19th century lingered, mainly at their insistence, until 1986, but it has indisputably been ended. This was done with the consent of the Queensland Government of the day. With hindsight it may be regretted that more was not done at the time to inform the people of Queensland of *all* the implications of what was happening.

The Second Reading speech of the then Premier, the Hon. Sir Joh Bjelke-Petersen, on the Bill that became the *Australia Acts (Request) Act 1985 (Qld)* was reproduced in full in the Commission's Issues Paper (Appendix 2). Its assessment of the consequences of the *Australia Acts 1986* was:

> …[T]he implementation of the agreement will bring the constitutional arrangements affecting the States into conformity with the status of Australia as a sovereign, independent and federal nation, whose States are sovereign within their constitutional sphere.
>
> …
>
> These changes will complete the process of Australia's constitutional development commenced at the beginning of the century. Laws and procedures which are anachronistic will be eliminated and new arrangements which reflect Australia's status as an independent and sovereign nation will be substituted. The capacity of

> the State [of Queensland] to exercise fully the powers and functions appropriate to its constitutional position in the federation will be brought to full maturity, and the control of the constitutional instrumentalities of the State will be secured to the State's own Parliament and Government and to them alone. (QPD, 26 September 1985, pp.1500, 1506)

The most important consequence was that, to adopt Higgins' words, "the electric wire which carried the British power to make laws" had been cut, and the implications of that for the "sovereignty" claimed for Queensland remain to be seen. A precedent is the argument used when the Commonwealth inherited the jurisdiction beyond low-water mark after the Imperial Parliament withdrew:

> On the passage of the Imperial Act [the *Commonwealth of Australia Constitution Act 1900*], those colonies ceased to be such and became States forming part of the new Commonwealth. As States, they owe their existence to the [Commonwealth] Constitution which, by ss.106 and 107, provides their constitutions and powers referentially to the constitutions and powers which the former colonies enjoyed, including the power of alteration of those constitutions. Those constitutions and powers now continue by virtue of the Constitution of the Commonwealth. But those constitutions and the powers of the States were subjected to the Australian Constitution. They were not the same as they had been before federation. The constitutions were continued "subject to this Constitution". (New South Wales v Commonwealth (1975) 135 CLR 337 at 369-70, per Barwick, CJ)

Because the Commonwealth Constitution meets the basic criteria for a democratic constitutional regime – it was adopted by a popular vote and it can be changed only by a popular vote – it is available as a suitable heir to the abandoned authority of the Imperial Parliament. The present Queensland Constitution fails on the first count and has only a limited claim to meet the second. The Commission believes that the time has come for the Queensland Constitution to stand on its own two feet. Its recommendations are directed to that objective.

Postscript on the two varieties of entrenchment

A postscript is necessary at this point. In Chapter 12 the Commission will set out its views on the process by which the Queensland Constitution should be amended, and make recommendations. That is the appropriate place in the Report to discuss the matter in full. However at a number of places in the preceding Chapters the Commission will be making recommendations for introducing or amending provisions and those recommendations should say immediately how difficult any subsequent amendment or deletion of the provisions should be.

The Commission proposes retaining the requirement of a referendum that already applies to certain matters and extending it to others. This will be called "referendum entrenchment" in the following pages and the Commission recommends that the term appear in the Constitution.

The whole of the Constitution should be, the Commission will recommend, subject for the first time to three restrictions on the amendment process. There must be a delay between the introduction of amending legislation (the First Reading) and the first substantial debate on it (the Second Reading) to allow the public to become informed and make representations on the intended amendment to the Constitution. Second, the Legal, Constitutional and Administrative Review Committee must report on all proposals to amend the Constitution that are introduced. Third, amending legislation must make its purpose clear by containing the words "Constitution Amendment" in its Short Title. This will be called "parliamentary entrenchment" in the following pages and again the Commission recommends that the term should appear in the Constitution.

CHAPTER 3

(Draft Bill Preamble)

In its Issues Paper (p. 1314) the Commission asked:

> Should the proposed Queensland Constitution … have a preamble added to it? What are the arguments for/against having a preamble added?
>
> If there is to be a preamble, should it contain narrative elements? If so, which milestones in the State's constitutional history should be mentioned:
> - Separation from New South Wales?
> - Responsible government?
> - Federation?
> - *Australia Acts 1986*?
> - Adoption of the present text by popular vote?
> - Adoption of a republican form of government?
> - Appreciation of the past/continuing role of the Monarchy?
> - Others?
>
> If there is to be a preamble, should it have aspirational elements? What should those concern? Are there matters which should not be mentioned?
>
> If there is to be a preamble, should it refer to God? In what terms?
>
> If there is to be a preamble, should it make reference to the Aboriginal and Torres Strait Islander peoples and if so, how and in what terms? Alternatively, should there be such a reference elsewhere in the Queensland Constitution?

The outcome of the federal referendum on introduction of a republican form of government disposed of two of those possible items: adoption of a republican form as an historical fact and appreciation for the monarchy's past services.

Should there be a preamble attached to the State Constitution? The submissions on this point were favourable:

Without doubt a Preamble is necessary. It is also necessary for that Preamble to make clear that it belongs to, and is the philosophic base of the Constitution. - McFadyen, R (S.2)

We felt that there should be a preamble. That was another issue that was raised. We think that the preamble should contain some reference to the rule of law and that the preamble should perhaps contain, after hearing Mr Paterson's speech or presentation, some moral basis for our society, the way we deal and the way the government deals with us. We think it should contain words about rights and freedoms of citizens and the responsibility and commitment of all levels of government to those. - McAlister, H (Nambour Public Hearing 5/10/99).

Preamble

There should be a Preamble which recognises our past and provides a vision or aspirations for the future. - Hinterland Shire Steering Committee (McAlister, H) (S.10)

In essence the Preamble of the Constitution should contain a Statement of the Beliefs that represent the foundation of 'our' Society. These founding beliefs should form the basic philosophy which, the majority of people of the State, accept as the basis for living together in a Society. If the Constitution does not attempt to define this philosophy then it will fail to provide the necessary protection for its' Citizens from the misuse of delegated 'powers…The other thing a Preamble must do is to clearly identify its permanent role as part of the Constitution itself by virtue of the fact that it spells out the fundamental beliefs, and principles, that must always be considered in framing and applying Legislation. - Paterson, G (S.3)

The Commission thinks there should be a preamble. It is important, especially for the reasons advanced in the previous Chapter, to emphasise the new foundations of the State's constitutional regime. Thus the preamble which the Commission recommends would state in its opening paragraphs (R3.1):

> Since the Australia Acts 1986 no law made by the Parliament of the United Kingdom shall extend to the State of Queensland.
>
> Previously the Parliament of the United Kingdom was the ultimate authority for the Acts, Laws and Documents relating to the Constitution of the State of Queensland.
>
> We, the people of the State of Queensland, wish to continue as free and equal citizens under the Rule of Law, and to be governed in accordance with the democratic processes contained in this Constitution.
>
> Being within the federal Commonwealth of Australia, we recognise we are subject also to its Constitution.

It is also desirable to affirm certain widely-held values provided it is possible to avoid platitudes, excessive controversy and lengthy shopping lists that are likely to date quickly. The list should be short, compact enough to fit on an instructive wall poster. The Commission recommends that the preamble continue (R3.2):

> In a spirit of reconciliation, we recognise the contribution of both Aboriginal and Torres Strait Islander peoples as the original occupants and custodians of this land.
>
> We declare that we respect the equality of all persons under the law, regardless of class, origin, race, religion or sex, and recognise the contribution they make to the State of Queensland.
>
> We declare we respect the land and the environment we all share.

The Queensland Constitutional Convention held at Gladstone in June 1999 resolved:

1.4 Should State Constitutions have preambles? If so, what should be in them?

7. Each State should desirably consolidate and update its Constitution and include a preamble.
8. There is a need to achieve a broad consensus on shared values to be included in the preamble through genuinely wide consultation with the people.

9. The preamble should be:
   - concise;
   - inspirational; and
   - aspirational.
10. It should acknowledge:
   - the past;
   - the custodianship of indigenous peoples; and
   - equality before the law.
11. It should give a sense of the sort of society we want to be.

The Commission believes that what it recommends meets these criteria. Any concerns about the extent to which those recommendations followed "real and genuinely wide consultation with the people" are dealt with in this Report.

Defeat of the federal preamble

It had always been obvious that the outcome of the federal referendum whether the Commonwealth Constitution should have a new preamble added to it might bear on answers to the Commission's questions. In the event 67.2% of Queensland electors voted "No" to that proposed preamble. Whilst it is extremely difficult to say with any certainty *why* electors voted the way they did on this or any other referendum question, the Commission thinks relevant certain points made in the "The case for voting 'NO'":

- "According to many Aboriginal leaders, the word 'kinship' does not truly reflect indigenous peoples' connection with the land";
- "Migrant groups want a reference to our multicultural nation, one that respects the diversity of cultural traditions."
- the Commonwealth Constitution already had one preamble (which would survive);
- the legal status of the proposed preamble was "unclear";
- the preamble had been written "without PUBLIC INPUT";
- the preamble was being rushed through before the other referendum question, whether there should be a republican form of government at the federal level, had been resolved.

On each of those points, the preamble that the Commission recommends for the Queensland Constitution can be distinguished from the failed federal version.

Aboriginal connections with the land

The words the Commission has chosen:

> "In a spirit of reconciliation, we recognise the contribution of both Aboriginal and Torres Strait Islander peoples as the original occupants and custodians of this land."

correspond to those in the Council for Aboriginal Reconciliation's *Draft Document for Reconciliation:*

> "We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of traditional lands and waters."

That document was prepared over a period of eight years with extensive consultation, much of it in Queensland, with a wide range of persons and organisations. In Queensland alone there were 65 meetings with Aboriginal communities and six with Torres Strait Islanders.

Meetings were attended by approximately 2,500 persons including 1,000 indigenous people and 300 young people.

Following its own consultations, the Commission hopes and believes that those words would be acceptable to the great majority of the people of Queensland.

Migrant groups

The words chosen:

> "… recognise the contribution they [all persons … regardless of class, origin, race, religion or sex] have made to the State of Queensland"

acknowledge "diversity of cultural traditions" amongst the other diversities which characterise Queensland's society.

A pre-existing preamble

Whilst the *Constitution Act 1867 (Qld)* did have a preamble, it recites a constitutional order which has ceased to be and extremely few seek to revive. The *Australia Acts 1986* have ended the possibility of the Queen intervening in the legislative process of Queensland. The conventions of almost a century and a half of responsible government have virtually removed the possibility that the Governor might refuse assent to a Bill passed by the State Parliament. S.7(2) of the proposed Constitution more effectively retains the residual right to refuse assent in exceptional circumstances:

> Every Bill, after its passage through the Legislative Assembly, must be presented to the Governor for the royal assent and has no effect unless it has received royal assent.

The Legislative Constitutional and Administrative Review Committee (LCARC) in its Final Report noted that it had received objections to the deletion of the 1867 preamble from its consolidated text which "suggested that the deletion would alter the Office of Governor and substantially reduce Queenslanders' rights and freedoms". In response it reiterated the opinion "based on legal advice, that the preamble of the *Constitution Act 1867* is of historical significance only and its removal does not alter the constitutional arrangements of the State." (LCARC 1999: 16). The Commission shares that opinion, noting that similar objections were not made during its inquiry although the point had been raised in its Issues Paper (p.1305).

An additional point might now be added. Retention of such language, what was called in the previous Chapter the detritus of long abandoned constitutional arrangements, actively encourages misconceptions about the current constitution. One misconception is that the *Australia Acts 1986* passed by both the Imperial Parliament and the Commonwealth Parliament at the request of all the State Parliaments are void for repugnancy with an ancient preamble adopted by a colonial legislature.

Unclear status

Some of the alleged "uncertainty" about the proposed federal preamble may be attributed to

the novelty of the proposed s.125A that was to accompany it:

> The preamble to this Constitution has no legal force and shall not be considered in interpreting this Constitution or the law in force in the Commonwealth or any part of the Commonwealth.

Despite that provision, fears were expressed during the referendum campaign that expansionist Courts would quarry the terms of the preamble – in particular, to strengthen the foundations of native title.

The defeat of the preamble scraps that imaginative scenario, but it would still be as well to make the point that the situation of a State constitution is quite different. The Commonwealth Constitution allocates specific legislative powers to the Commonwealth Parliament and, it is often complained, the bottom of the section 51 barrel has to be scraped to enable the Commonwealth Government to do what it wants to do. A State parliament, by contrast, has a plenitude of power under the formula "peace, order/welfare, and good government". Subject only to the Commonwealth Constitution not having taken the desired power away to the federal jurisdiction, it is unlikely to have to turn to a constitutional preamble for reinforcement.

Perhaps a Court seeking to strike a balance between the Supremacy of Parliament and the Rule of Law, as in Kable's Case, might be assisted by the reference to the Rule of Law in the proposed preamble. To the extent that the existing predominance of the Supremacy of Parliament would be qualified, that would not be a bad thing. But it is difficult to imagine how the three aspirational paragraphs could have a significant impact on public policy questions before the Courts.

Lack of public input

The Commission's predecessors were able to avoid attempting a preamble by envisaging another stage to the process:

> a more extensive review, either by [the Parliamentary Electoral and Administrative Review Committee], or … some other independent body, with a view to the convening of a Constitutional Convention to draft a new Constitution for the State (EARC 1993: 53, para. 490);

> As regards the mechanism for deriving a new Constitution, …[o]ne option is the establishment of an independent body such as a Constitutional Convention, as recommended by EARC. Another option is the establishment of an all-party parliamentary committee to consult on a draft Constitution. A parliamentary committee would have the power to consult widely with the public and a draft Constitution framed by an all-party parliamentary committee may be more likely to be adopted by Parliament than a Constitution drafted by an independent body, as the former would represent the view of all Queensland political parties and encapsulate community views. (PCEAR 1994: 31, para.119)

> Various submissions to this committee in relation to the present [consolidation] inquiry also suggested areas of State constitutional law that should be reviewed. Federal proposals, like changing the preamble to the *Commonwealth Constitution*,

> invite reconsideration of similar issues at State level. A successful federal referendum on the republic will necessitate reform of Queensland's constitutional arrangements. (LCARC 1999: 25)

The Commission sought in its Issues Paper (Chapter 13) to elicit public input about a possible preamble. For example, having asked (p.1314) "If there is to be a preamble, should it refer to God? In what terms?" copies of the Issues Paper were sent to more than twenty religious bodies spread across the range of Christian denominations and non-Christian religions. However no submissions were received in response. The Commission was well aware that whilst the overwhelming majority of American state constitutions mentioned God it was usually as the source of natural rights. This idea which would run completely counter to the assumptions of a traditionally Diceyan constitution such as Queensland's. To take that initiative might appear to reopen the Bill of Rights issue which the Commission had consciously avoided.

On the other hand, as has just been explained, the Council for Aboriginal Reconciliation had engaged in very extensive public consultation, in Queensland and in the other States, prior to adoption of its *Draft Document* which, to the best of the Commission's knowledge, had been well received. The Commission has concluded that the words proposed for the constitutional preamble had been adequately tested in a process of consultation. It is also aware that there is some interest in also making reference elsewhere in the Queensland Constitution to the Aboriginal and Torres Strait Islander peoples, and these possibilities will be addressed subsequently in Chapter 5.

Undue haste

The process of consolidation of the Queensland Constitution has lasted for six years, and it is not unreasonable to bring adoption of the outcome to the vote in the near future. The Commission recommends that a regular review of the State Constitution be built into the document (see Chapter 12) and that the first such occasion be when a decade has passed. It would certainly be possible to postpone any further action about adopting a preamble until then – just as it would be possible to postpone further consideration of a Bill of Rights for so lengthy a period.

On the other hand, if the proposed Constitution is to be adopted in the near future, then at the very least the first four paragraphs and the final paragraph now recommended should be included. This would achieve the objective of making the State Constitution the fundamental law of the State, after which the aspirational parts of a preamble could be left for further consultation and debate if that were thought necessary.

On balance, the Commission does not find the case for such a postponement convincing. The text it recommends is straightforward and, it believes, relatively uncontroversial. If there are to be regular reviews of the Constitution hereafter, some of the anxieties recently expressed about the danger of saying anything by way of a preamble might be removed.

CHAPTER 4

(Draft Bill Chapter 1 – Preliminary)

A body politic?

The Commission notes a development in recent constitutional drafting practice in Australia: a statement of the establishment of "a body politic" for the jurisdiction concerned. Thus the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* states:

> s.7 The Australian Capital Territory is established as a body politic under the Crown by the name of the Australian Capital Territory.

The final draft of the (unsuccessful) Northern Territory Constitution used a similar expression:

> s.1 There is hereby established a body politic under the Crown in and for the Northern Territory of Australia by the name of the Northern Territory.

The term has a long history e.g. the *Mercantile Act 1867 (Qld)* speaks of "any person or persons bodies politic and corporate" (s.51). The definition of "corporation" in the *Acts Interpretation Act 1954 (Qld)* "includes a body politic or corporate" (s.36). Queensland statutes commonly define "person" or "party" to include a body politic.

More to the present point, it has been used recently in the High Court in the context of federalism and the divisibility of the Crown:

> The point is that the reference to "the Queen" in s.160 to distinguish the sovereign from "the Commonwealth" indicates within the structure of the Constitution itself is recognition of the involvement of the Crown in distinct bodies politic. (Sue v Hill (1999) 163 ALR 648 at 670, per Gleeson, CJ, Gummow and Hayne, JJ)

And in respect to English and Imperial constitutional history:

> The first use of the expression "the Crown" was to identify the body politic ... (at 671)

And:

> The Constitution, in identifying the new body politic which it had established … (at 671)

And:

> The second usage of "the Crown" … identifies that office, the holder of which for the time being is the incarnation of the international personality of a body politic … (at 671)

And with federalism again:

> … [A]lthough the notion of "the divisibility of the Crown" may not have been fully developed at federation, that notion is implicit in the Constitution. It is implicit in the existence of the States as separate bodies politic with separate legal personality, distinct from the body politic of the Commonwealth with its own legal

> personality… The separate existence and the separate legal identity of the several States and of the Commonwealth is recognised throughout the Constitution … (at 693, per Gaudron, J)

The Commission supposes that the phrase when applied to the Australian Capital Territory and the Northern Territory may have been intended to secure the position of the Territories within the Commonwealth of Australia once their constitutional arrangements approximated more closely those of the States. The latter antedate Federation and it has been said of the States:

> The existence of the State as a polity is as essential to the Constitution as the existence of the Commonwealth. The fundamental conception of the Federation as set out in the Constitution is that the people of Australia, who had theretofore existed in several distinct communities under distinct polities, should thenceforward unite for certain specific purposes in one Federal Commonwealth, but for all other purposes should remain precisely as they had been before Federation. (Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd.. (1920) 28 CLR 129 at 174, per Gavan Duffy, J.)

The majority in that case used the phrase "political organism":

> …[T]he expression "State" and the expression "Commonwealth" comprehend both the strictly legal conception of the King in right of a designated territory, and the people of that territory considered as a political organism. (Amalgamated Society of Engineers v Adelaide Steamship Co. Ltd. (1920) 28 CLR 129 at 146-47)

The Commission doubts that use of the "body politic" formula would provide any benefit to Queensland.

Other matters

The Commission recommends three simple alterations to the draft Constitution of Queensland Bill 1999 as circulated.

The first (R4.1) would delete the word "Act" from the Short Title so that it becomes simply *The Constitution of Queensland 2000*. The change would recognise its special status as the fundamental law and distinguish it from other Acts. Whilst it would be possible to delete the year as well to make the document more timeless, retention of a date anchors it at a specific point of time and the Commission believes that preferable.

The second (R4.2) would add to s.3 the words "before this Act is assented to by or on behalf of the Sovereign, the Bill for the Act must first be approved" by a referendum to confirm as explicitly as is constitutionally possible the popular adoption of the Constitution to give it recognition as fundamental law.

The third (R4.3) would add another section following s.3, by way of additional recognition of that status: "The Constitution is the highest rule of the Queensland legal system." An alternative phrase for "highest rule" could have been "fundamental law", but using those

words might be thought by some to import natural law ideas. Recent judicial statements, such as that in *Joosse*, speak of rules:

> … [W]hat is critical is: what is the extent of the supreme legislative authority recognised in this system and what are the rules for recognising what are its valid laws? … That question is resolved by covering cl 5 of the Constitution. It provides:
>
> > "This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State.
>
> It is, then, to the Constitution and to laws made by the Parliament of the Commonwealth under the Constitution that the courts must look. (*Joosse v ASIC* (1998) 73 ALJR 232 at 235-36)

What is recommended is an equivalent to cl.5, to which the State version is of course subject.

The Commission considered whether it should be stated that the Constitution binds the Crown if it were thought desirable to negate the proposition in the *Acts Interpretation Act 1954 (Qld)* s.13 that subsequent legislation did not bind the Crown unless express words so stated. It was concerned, in the light of Bass v Permanent Trustee Co Ltd [1999] HCA 9 (24 March 1999), that such a provision might have unanticipated consequences for Chapter 3, Part 5 of the proposed Constitution relating to the commercial activities of the State, and does not make such a recommendation.

CHAPTER 5

(Draft Bill Chapter 2 – Parliament)

The place of Parliament in the constitutional system

Both history and democratic political theory justify first place in and under this Constitution being given to Parliament which, for Queensland, means the Governor (acting in place of the Sovereign) and the Legislative Assembly. Historically, events in Britain at the end of the 17th century determined the shape of the constitutional settlement that has prevailed for the three subsequent centuries in that country and in British colonies and ex-colonies like Queensland. The possibility of an absolutist, or even a strong, monarchy resting on the doctrine that kings had a pre-ordained right to rule or on a large standing army or on both was ended. The point at which the new regime would finally rest along the line between a narrow oligarchy based on hereditary privilege and great wealth and a wide democracy based on political and social equality of all subjects or citizens remained to be settled. Parliament would be the principal forum in which that question would be contested and the principal actor in achieving and enforcing a decision, as well as the effective manifestation of the people's will which had become the philosophical foundation of nation states.

However to say that was the end of the matter smacks of Whig triumphalism and Diceyean opinions which are no longer believed. Throughout the present century it has appeared that the position Parliament had achieved at the end of the 17th century was being undermined by a new form of executive power. This was based on an extensive and powerful civilian bureaucracy rather than a standing army. It depended on apparently bottomless wells of revenue and expenditure rather than appeals to divine authority. Both developments made the executive composed of Ministers and public servants appear the principal source of benefits to the people who received them. And, most immediately, the new executive power rested on legislators' dependence on their electors' party loyalty, which in turn was directed by the executive's predominant authority within the party. Over the past decade various steps have been taken to try to redress this balance, and progress is undoubted.

One note of concern was raised in this regard:

If the [Q]CRC has justifiably avoided revisiting the question of a State Bill of Rights, this Commission is concerned that including a doctrine of parliamentary supremacy in any consolidated Constitution may unintentionally seal the doomed fate of any future debate about a State Bill of Rights. – Anti-Discrimination Commission (S.21)

The Commission believes that still more can be done to reinforce the position of Parliament within Queensland's constitutional regime by bringing the State's Parliament and people closer together in a cooperative and meaningful sharing of mutual responsibilities. Three proposals are involved.

Should the legislative power be shared?

One submission posed the question differently:

The first issue should be whether parliamentary supremacy should now be abandoned, that is, whether the legislative power should be subjected to limitations, which is the primary purpose of a constitution. - Evans, H (S.4)

Proposals to share the legislative role between Parliament and people have been common in Australia and in Queensland for some years. Chapter 10 of the Issues Paper discussed Direct Democracy. Submissions were lodged with the Commission (Ss. 2, 3, 5, 7, 11, 12, 13, 14, 17, 19, 20, 23 and 27) seeking citizens' initiative and referendum (CIR), and discussions at public meetings confirmed a degree of interest at present.

One submission qualified its response with the comment that:

> *Legislative initiative and referendum should not be introduced into Queensland (at least in the absence of a Bill of Rights). - Williams, G (S.6)*

Moreover, there is a more substantial and serious literature on the topic than the limited advocacy made to the Commission might suggest.

Undoubtedly some advocates of CIR are antipathetic to representative government *per se*, and believe that only a partial transfer of the law-making function from inception to completion into the hands of citizens could achieve a worthwhile improvement in the State's government. Given the awareness in Australia of developments in New Zealand, the Commission noted that New Zealand has introduced CIR as "indicative polls" which are not binding on the New Zealand government which is not obliged to implement the results of such polls. The first poll held concerned only a very specific matter, a class of public sector employees. The second and third, held with the November 1999 general election, were of wider interest. The poll that asked "Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?" was carried with 92% voting "Yes", and the other asking "Should the size of the House of Representatives be reduced from 120 members to 99 members?" was carried with 82% voting "Yes".

Other supporters of CIR in Queensland, the Commission believes, are primarily concerned about what they see as their lack of opportunity to *participate* at any stage in the process of law-making. Legislation, in the public perception so far as that is known, usually emerges from an interaction of pressure groups and public servants, influenced by and occasionally involving Ministers and other political party policy-makers. The Westminster model, in contrast with the Washington model, links closely the executive and legislative branches. The Government of the day has a virtual monopoly of the initiation of legislation. Subsequent amendment (unless the Government has had second thoughts) during its passage through Parliament is extremely rare – except for those times, until recently exceptional in Queensland, when a Government lacks an absolute majority and has to make concessions to secure passage of the legislation in question. Debate is usually limited, often

curtailed at the will of the Government, and almost never reported in the mass media to inform the public what is happening.

Frustration with this process was voiced to the Commission:

Unfortunately the concept of "supremacy of Parliament" is one of the most deceitful and misleading myths of the Westminster system of Government…

It is quite unclear as to the where the crux of this issue lies because the Constitution Bill does not directly address what is at stake. On top of that, most of the relevant details of the Parliamentary system are contained in the Parliament of Queensland Bill which appears separate and independent of the Constitution Bill.

What we need in our Parliamentary system is a better way to communicate ideas and a better way to ensure that the diversity of views are better represented. - Paterson, G (S.3)

Any semblance between actual Representative and Responsible Government and reality, lies totally in the minds of Parliamentarians and the legal profession, it certainly has no relationship to reality, as far as the electors are concerned. There is NO Representative Government in Queensland, nor anywhere else in Australia, unless the definition is changed, to indicate that Representative Government means representing the Party, not the Electorate. - McFadyen, R (S.12)

It would be possible, and relatively simple, to open up the initiation of legislation to the following extent. The right to petition Parliament is ancient and familiar and the Commission recommends that it be used as the vehicle to enable greater public participation in the legislative process. It recommends that a statutory committee, the Petitions Committee, be created and added to the list in the State Constitution (R5.1). At present the fate of a petition to the Legislative Assembly is settled by the Assembly's Standing Rules and Orders:

> 238A. A copy of the material parts of every Petition lodged with the Clerk and received by The House shall be referred by the Clerk to the Minister responsible for the administration of the matter which is the subject of the Petition, and the Minister may take appropriate action or may comment thereon in the House.

The mechanism for the new procedure would be appropriately located in the Parliament of Queensland Bill and will be discussed in Chapter 16.

Duration of the parliamentary term

One of the few provisions of the present State Constitution protected from alteration by an entrenched requirement for a referendum is the three-year term of the Legislative Assembly. When a proposal to extend the term to four years was put to the people in 1991 it was defeated.

However the case for a longer term remains valid. It has been said that under a three-year term, the first budget is devoted to paying off the promises made at the previous election and the third budget to anticipating the promises to be made at the forthcoming election.

Consequently, only one budget out of three, the second, is likely to address important, long term policies without the contamination of short-term political considerations. Queensland is now the only State that still has a three-year term.

It is significant that three of the five States that have gone over to a longer term have coupled it with a fixed term element, the so-called "maximum term with qualified fixed term component". So long as the government of the day can call a general election at the best time for its own political advantage – because the Opposition is in disarray, or because of the distant prospect of unpleasant economic developments or the immediate prospect of good news, there is another unwelcome consequence. Once 12-18 months have passed since the previous general election, political and governmental affairs start to move into election mode. Speculation about an early election intensifies. Hard decisions are avoided by the Government and long-term decisions by the business community.

Extension of the maximum term is likely to be unpopular because it appears to give the Government of the day even more opportunity to look after itself when picking a date to go to the people. But where the "maximum term with qualified fixed-term components" is introduced, that period of uncertainty and indecision can be restricted to the final year of four, that it is one-quarter of the Parliament's term instead of the *de facto* half that it is in Queensland and the Commonwealth. It should be added that a qualification, "largely restricted" is especially necessary in States which are bicameral because there is always the possibility that a hostile upper house may set off the additional necessary escape mechanism that a bicameral system requires – and Queensland would not.

Despite Queensland's unicameralism some further escape mechanism is necessary. The essence of responsible government, a principle that is and should be embodied in the State Constitution, is that the political executive (the Cabinet) commands the support of a majority of the legislature (the Legislative Assembly). If it does not, effective government becomes difficult if not impossible. There are two principal types of evidence when it does not.

One involves "confidence": a vote of no confidence in the Premier or their Government may be carried by the Legislative Assembly, or a vote of confidence sought by the Government is defeated. The second is "appropriation": the Legislative Assembly may reject an appropriation bill or fail to pass such a bill. Failure to pass can introduce uncertainty. How long does consideration have to go on before failure to pass becomes operative? So, it is necessary to impose time limits, and this can be done by a message from the Governor (which is required to initiate all appropriation legislation) setting a time limit. It might be feared that identifying "an appropriation bill" could present problems; States that have introduced the mechanism have included lengthy definitions but in the context of bicameralism which increases the likelihood of argument. Unicameral Queensland could encounter the problem only in the exceptional circumstances when a minority Government faces a temporary combination of parties and Members prepared to unite against a bill which looks sufficiently like an appropriation bill, but not prepared to combine for a no confidence motion.

It is open to a Government that wishes to have an early election to set off one of these mechanisms itself. Enough of its supporters could vote for a motion of no confidence to ensure its passage. This has been done on occasion in at least one country, West Germany. However the political costs of so desperate a step, and by definition on the eve of an election, make it unlikely. If there is to be a "fixed-term component", then it has to be "qualified" to resolve a situation in which the Government can no longer govern in the ways and to the extent that are expected of a Westminster model regime. The Commission recommends that the necessary provisions be introduced. The package should be referendum entrenched (R5.2).

Qualification of existing provisions

The Commission noted that the equivalent of s.6, the law-making power, in New South Wales had been made subject to the qualification: "The legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws … " *(Constitution Act 1902, s.5 (NSW).* Other States have not followed this course, and Victoria still claims: "The Parliament shall have power to make laws in and for Victoria in all cases whatsoever." *(Constitution Act 1975, s.16 (Vic)).* The Commission does not recommend any qualification be added to the Queensland Constitution.

S.9 provides that the legislature "consist of members who are eligible to be elected", but not that they have in fact been elected. It would be possible to add members who were nominated by the executive, or elected indirectly by some other body or bodies. The Commonwealth Constitution, conscious of the fact that the U.S. Senate which was the model for the Commonwealth's upper house was still indirectly elected by the state legislatures of that country, uses the words "directly chosen by the people" (ss. 7, 24). The Commission recommends that direct election be required under the Queensland Constitution and that s.9 be referendum entrenched (R5.3).

One of the wider purposes that the Commission has sought to advance in its recommendation is an increased role for the Parliament. In that context the present requirement in s.17(2) that one year must not pass between sittings of the Legislative Assembly might appear inadequate. The Commission fully appreciates that the ancient minimal requirements have little to do with how often Parliament sits, but believes that some modification might be justified. It recommends reduction in the time limit to six months maximum between sittings of the Legislative Assembly. That would affect s.17.(1) which says that there must be at least one meeting a year, and that should be amended to require at least two meetings a year (R5.4).

The Commission has noted that during the process of consolidation s.8.(2) of the *Constitution Act 1867 (Qld)* has been omitted from what became s.11 of the Parliament of Queensland Bill. As a consequence, the Governor's approval will no longer be required for the Standing Rules and Orders of the Legislative Assembly. The subsection's presence in the Queensland Constitution continued to reflect the transition to representative government in New South Wales in 1842 when the Governor ceased to be the presiding officer of the colonial legislature but continuing supervision of its performance was deemed appropriate.

Its retention would conflict with the principle of the Separation of Powers, and the Commission endorses the earlier decision.

Single-member electoral districts

The current s.11 requires that only one Member of the Legislative Assembly be elected from each electoral district. As the Commission's Issues Paper pointed out (p.109), this prevents the introduction of any system of proportional representation. The introduction of proportional representation was considered (EARC 1990: 28-37) when the State's electoral system was completely reviewed in 1990. So substantial a change to the electoral system could have far-reaching consequences for both the legislature and the executive as they have previously operated in this State, as well as for the political process. It should not be introduced unless the question has been thoroughly debated, and the people have made the final decision. The Commission recommends that s.11 be referendum entrenched (R5.5).

During its inquiry the Commission was impressed by the interest in, and support for, the possibility of having special representation of the Aboriginal and Torres Strait Islander communities in the Legislative Assembly (and in the Commonwealth Parliament, too, though that was no concern of the Commission's). When the possibility was last examined in Queensland (EARC 1990:72-82), there appeared to be substantial practical difficulties to implementing such a scheme, leaving aside the equally large question of whether communal representation is desirable or not. It might be added that that inquiry took place at a time when equality of representation had been the principal matter of concern in the electoral sphere, and arguments for any exceptions to the general principle would still have to be very persuasive.

New Zealand's long experience with a small number of Maori seats and a separate Maori roll is well known, and regarded as an attractive model. However the proportion of New Zealand's population that is of Maori descent is much higher, and the geographical size of the resulting electoral districts much smaller. The experience of the Commonwealth Parliament with the earliest Territory Members of the House of Representatives who had voting rights limited to matters concerning their Territories was not persuasive. Nevertheless the Commission is aware that a number of interesting and encouraging experiments with special governmental institutions for relatively small and widely scattered indigenous populations has been going on, especially around the shores of the Arctic Ocean.

It was argued in Submission 15:

It is imperative that political and policy processes initiate a rights based approach so that indigenous peoples may be empowered to actively pursue their needs and interests. This is possible by initially recognising these rights, then by ensuring they are not simply made subservient to party politics, but are realised at all levels of nation-state activities. … Indigenous injustices can only be adequately redressed by collectively identifying and respecting the inherent and inalienable rights of indigenous Australians, producing not only a sense of empowerment for the indigenous community, but formal institutional recognition. It is this recognition which enables indigenous Australians to pursue their rights with the greatest degree of legitimacy and state support.

…
Whether as peoples or as individuals, indigenous people can only take charge: of their lives and retain their cultures through self-management, self-empowerment, self-government, self-determination - or whatever else one wishes to call the shades of autonomy - at local and regional level. They may combine at national and international levels for political purposes with like-minded groups or peoples, but the major political arena is more narrowly confined [n.9].

[n.9] For instance, in Canada three national federations of indigenous peoples - Indian first nations', Inuit, and Metis - used their national clout in order to secure self-government reforms which are or will be exercised at local and regional levels. Inuit used their national constitutional reform work and other national efforts to secure substantial native title and self-government rights for the four natural regions into which they are divided, i.e., Labrador, Arctic Quebec, Nunavut, and the Western Arctic (Beaufort Sea coasts and Mackenzie Delta). The movement of charismatic and just plain capable Inuit leaders and staff experts from national and international work back to the main focus of developing governance and land/sea/freshwater management systems, i.e., the four regions, has dangerously denuded their national and international work of needed personnel, and at times undermined the effectiveness of those wider levels of work.

… Although some Australians have been resistant to the concept, it is worth noting that the Island Co-ordinating Council of Torres Strait with its regional council and c. 20 local councils, and the Aboriginal Co-ordinating Council, as well as various structures in individual Aboriginal or Islander communities, already reflect the principle in action if not all the practical possibilities. - Jull, P and Kajlich, H (S.15)

The Commission noted the recent report of the Commonwealth's House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Torres Strait Islanders: A new deal* (SCATSIA 1997).

The Commission has been unable to devise a suitable proposal on this occasion, but it does not believe the task to be impossible. The Commission recommends that during the life of the next Parliament the Legislative, Constitutional and Administrative Review Committee conduct an inquiry into the possibility of special representation for Aborigines and for Torres Strait Islanders (R5.6).

Parliamentary secretaries

The original decision to include provisions relating to Parliamentary Secretaries (QG 1999: ss.22-25) in this Chapter of the proposed Constitution may have been intended to reflect their distance from the executive, the subject of the following Chapter. The choice of location is debatable, but the Commission makes no recommendation to alter it.

Their number is not regulated by statute as has been the case under the *Officials in Parliament Amendment Act 1975 (Qld)* which limits the number of Ministers to 18. One submission warned -

The other critical factor that is missing is mention of the number of 'Parliamentary Secretaries' that may be appointed at any one time. Is this an avenue for generating "jobs for the boys" or is there a genuine purpose to justify the continuation of this position? If there is a genuine purpose then it ought to be stated in the Constitution and not left as a loose end to invite rorting and abuse. - Paterson G (S.26).

Although Parliamentary Secretaries do not receive salaries and are only reimbursed reasonable expenses (QG 1999: s.25), the combination of a title, the opportunity to exercise more power and influence, and the likelihood that good performance will lead to ministerial rank makes appointment attractive. If there were an expectation that the tighter political discipline of Ministers extended to Parliamentary Secretaries, a Government could be tempted to increase their number to the point that virtually all parliamentary party members were subject to the tightest discipline. That would reduce the effectiveness of Parliament in controlling the executive, and its status within the constitutional system.

In a Legislative Assembly with 89 members, 45 constitute a majority. As 18 Ministers of State plus five Parliamentary Secretaries add up to 23, that is already a majority of the 45 under the tightest discipline. The Commission recommends that the line be drawn there, and the maximum number of Parliamentary Secretaries be set at 5 (R5.7). However, like the number of Members in the Legislative Assembly itself and the number of Ministers, there should be flexibility, and the provision should be subject only to parliamentary entrenchment.

If the Constitution sees fit to require the Governor to appoint, or confirm the appointment, of 'Parliamentary Secretaries' then I believe that it is only proper that dismissals are confirmed in the same manner. The way this Section is written ratifies arbitrary decision making without any requirement to show cause or justify the decision.

This practice is in absolute contradiction to modern democratic practice and should not be allowed in the Constitution. - Paterson, G (S.26)

The Commission could see no justification for the distinction between the Governor in Council appointing Parliamentary Secretaries (QG 1999: s.22(1)) and the Premier dismissing them (QG 1999: s.24(3)). Appointment and dismissal should be in the same hands, which on balance the Commission believes should be the Governor in Council's, and so recommends (R5.8).

Disqualifications

S.20.(1) of the draft Constitution provides that "no person who is disqualified under an Act from being a member of the Legislative Assembly" can be a candidate. The principal provisions for disqualification are found in the draft Parliament of Queensland Bill (QG 1999), and the topic will therefore be discussed in Chapter 16.

CHAPTER 6

(Draft Bill Chapter 3 – Governor and Executive Government)

The office of Governor and its relationship to the Crown has been the subject of some controversy in Queensland for several decades. The central issue of that controversy, the retention of a link to the Monarchy of the United Kingdom, has been settled by the recent federal referendum for the timeframe within which this Commission is expected to work.

It would have been possible to re-open at least one aspect of that debate by examining whether the procedure set out in the *Australia Acts 1986*, s.7.(5) should be altered in the light of criticisms made in connection with that referendum. In particular, it could have been suggested that the non-partisan character of the office might be enhanced by involving the Leader of the Opposition and/or the Legislative Assembly in the advice to be given to the Queen on new appointments. However that appears to be a matter on which it would be desirable for *all* the States to agree initially. The Commission merely mentions the possibility as one which might be suitable for consideration in an appropriate inter-State forum and at an appropriate future time.

The Commission notes that the proposed Northern Territory Constitution had sought to clarify the boundary between powers when a Governor must act on advice and when a discretion exists:

> 4.2 (3) Except as otherwise expressly provided in this Constitution or an Act, or where, in the Governor's sole opinion, to so act would be contrary to his or her duty under subsection (2)(a) ["upholding and maintaining this Constitution"], the Governor shall act, in administering the government of the Northern Territory, only in accordance with the advice of the Executive Council.
>
> (4) If the Governor acts in or purportedly in administering the government of the Northern Territory otherwise than in accordance with the advice of the Executive Council or a Minister of the Northern Territory duly given, he or she shall, on the first sitting day of the Parliament after so acting, cause to be tabled in the Parliament a written statement of his or her reasons for so acting.

The Commission can see no benefit from proceeding along these or similar lines.

Saying more in the Constitution

Having put those two possibilities aside, the Commission believes that there are several areas of the draft Constitution that can usefully be revised to achieve objectives which ought not to be controversial: ensuring that the Constitution is comprehensive, that it is easily understood and that it accurately sets out the major processes of government. Submission 9 advocated the use of plain english throughout the Constitution. The steps recommended below are:

- to add a statement of the executive power,
- to amplify the role of the Governor as the principal guardian of the Constitution,

- to bring the Governor's stated role in the appointment of Ministers into conformity with the usual Westminster model,
- to recognise the existence and role of Cabinet, and
- to recognise the existence and role of the Premier.

As the possibility of its abolition is occasionally raised, it should be said at once that retention of the Executive Council in its present form and with its present responsibilities appears to the Commission to be necessary. The Executive Council provides an appropriate link between the Governor and the Premier and Cabinet, and a suitable occasion for the Governor to exercise his or her responsibilities for the good conduct of government by seeking clarification or explanation, or suggesting reconsideration, of executive business. For executive paperwork it sets a quality standard that is well worth preserving. Similarly, the great majority of other sections of Chapter 3 of the proposed Queensland Constitution are necessary and appropriately expressed.

One minor matter should be mentioned. In the Governor's absence a member appointed by the Governor presides at Executive Council and if no one has been appointed the most senior member present does so (QG 1999: s.48(2)). The office of Vice-President of the Executive Council as a Cabinet post came to an end during the Hon. Sir Frank Nicklin's period as Premier. Previously it had invariably held by the Premier who would, of course, have been the most senior member at an Executive Council meeting. It is possible to envisage an emergency situation in which neither the Governor nor the Premier is present at an Executive Council meeting, and a provision like s.48(2) would still be necessary even if the old arrangement had been revived. On balance the Commission sees no justification for making any other or different provision.

On a first reading it might be thought that the additions which the Commission recommends be made to this Chapter trespass on the long standing doctrine against committing too much to paper. The danger perceived is that constitutional disputes will be moved to the courts of law rather than being resolved in the political realm where political unpopularity and ultimately a general election defeat are the only sanctions against departures from recognised good practice. A secondary consequence to be feared is that the courts will be contaminated by partisan politics. In particular it is argued that their appointment processes will be corrupted by governments who will seek judges likely to be sympathetic to their political interests. The problem was discussed at some length in the Commission's Issues Paper, in its Chapter 6 on constitutional conventions and again (p.1213) on the subject of the Governor's reserve powers.

The Commission does not believe that extensive codification of conventions is a realistic prospect at the present time. Instead, it would draw a distinction between codifying the reserve powers to the extent that they *might* become justiciable (a possibility which it also rejects for the present) and stating certain basic principles that identify the roles which particular parts of the constitutional system are expected to discharge. The latter informs

citizens about the rules by which they are governed. These are rules that they are entitled to know. One comment was:

The other major debilitating flaw in the present Constitution is deliberate action of ignoring, and refusing to address, the impact of the 'conventions' on the way this State is governed.

By choosing not to include these in the development of the Constitution documents they have delivered a system that bears very little relationship to the way Parliament and the Government actually operates. - Paterson, G (S.3)

Further, stating such principles is likely to encourage those occupying these roles in uncertain or difficult circumstances to meet their responsibilities.

There is also a respectable case for trying to get away from the idea of convention based on precedent to identify the constitutional rationale that justifies observing the convention (McGarvie 1999: 54-58). Thus, for example, there is a clear rationale for a Governor

> retaining the right to obtain information from Ministers and to counsel them in relation to the exercise of their powers and functions. … The right to obtain information from Ministers and to counsel them is a resource of great utility for the [Governor] to use in appointing a government and in influencing Ministers in the interest of effective government and the maintenance of standards. … In contemporary Australian practice, the right to be consulted does not involve Ministers consulting the [Governor] in respect of all they do, but rather providing information needed for the exercise of the [Governor's] powers and functions, and the information he or she requests. Counselling includes both encouraging and warning. The right to be informed and to counsel includes the right to have a Minister call on the [Governor] for that purpose. (McGarvie 1999: 64)

Once that has been thought out, the question remains whether a statement to the effect that the Governor is entitled to those categories of information will do more harm than good. It should be said at once the Commission is conscious that there is no current problem in Queensland with the Governor's access to information, neither has there been for several decades. The flow of information from Cabinet and other governmental business is full and timely. However the Commission is also aware that in other States and in Queensland in the more distant past this could not be said so readily.

The general problem of how much to say in the Constitution has been around for a long time. Reacting to Dr H.V. Evatt's *The King and his Dominion Governors* (1936), the author who in the 20th century best embodied the Colonial Office tradition that fixed the basic character of the Queensland Constitution in the 19th century, Berriedale Keith, rejected any steps that would go down the justiciability road:

> … [I]t would be a very grave error to entrust power to control such issues to the ordinary Courts. Human nature being what it is, the inevitable result would be that judicial appointments would be made with definite regard to the value of having a political partisan on the Court, and the Court itself, if called upon to decide a difficult political issue, might easily lose prestige with the supporters of the party injuriously affected by its decision. The creation of a special tribunal would raise

> the utmost difficulty, and Dr. Evatt makes no concrete suggestion on this head. (1936:82)

The recent debate about introducing a republican form of government at the federal level raised again possible codification of powers and resort to the courts albeit in the context of an elected President defending an action rather than bringing it, and provides another informed appraisal of Evatt's views:

> The Evatt school has attracted many lawyers, as there is a natural tendency for lawyers to regard the introduction of the methods of the law and the employment of courts or tribunals to regulate the use of reserve authority, as in the public interest. I have spent the greater part of my life in the law and have great respect and admiration for the contribution of law, lawyers, courts and tribunals to our democracy. But I am convinced that the contribution can only be effective in areas suited to regulation and control by the law: and the operation of the constitutional and political processes of our system is not such an area. (McGarvie 1999: 161-62)

Nevertheless, Keith's advice was not followed during the period of decolonisation that followed the Second World War. Subsequent cases like Adegbenro v Akintola [1963] AC 614 show courts handling reserve powers problems quite readily, though admittedly with the Privy Council, suitably insulated from local partisanship, still in the picture as the court of last resort. Despite evidence elsewhere that it can work, thrusting the highest local court into "the political thicket" remains an unpopular strategy.

Having warned against justiciability, Keith then went on to express a view of the preferred alternative which is no longer stated in quite these terms, but which survives in Queensland's constitutional documents:

> There can be little doubt that the general view on legal and political circles alike is sound; there is room in a Constitution for reserve power, and it should be exercised by an authority above party, but not a Court. It is extremely significant that Mr. De Valera [then Prime Minister of the Irish Free State], who destroyed the independent authority of the representative of the Crown when he dismissed the Governor-General in 1932 lest he should carry out his constitutional duty of refusing assent to an Act violating the Constitution, has now declared in favour of maintaining the Constitution from violation. In the United Kingdom we have happily a hereditary monarch whose right and duty in this regard is beyond dispute; in the Dominions the unfortunate initiative of the Commonwealth in securing in 1930 the right to appoint the Governor-General, unwisely concurred in by the British Government and the other Dominions, has created a position in which the head of the Government is deprived of all real power to protect the people from the possible tyranny of Parliament and Ministers. (1936: 82-83)

What Keith took exception to was the Australian Prime Minister, the Rt. Hon. J. Scullin, putting only one name before King George V and not allowing the King to reject the nomination.

A statement of the executive power

The existing Constitution (QG 1999: s.6) contains a statement of the legislative power:

> Within the State of Queensland, the Sovereign has power by and with the advice and consent of the Legislative Assembly to make laws for the peace, welfare and good government of the State in all cases.

However it has no equivalent statement of the executive power such as that set out in the Commonwealth Constitution, s.61:

> The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution and of the laws of the Commonwealth.

And in the constitutions of postwar Westminster model systems. Thus the Indian Constitution of 1949, Art.53:

> (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
> (2) Nothing in this article shall … (b) prevent Parliament from conferring by law functions on authorities other than the President.

And the Jamaican Constitution of 1962, s.68:

> (1) The executive authority of Jamaica is vested in Her Majesty.
> (2) Subject to the provisions of this Constitution, the executive authority of Jamaica may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.
> (3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

In the absence of a head of state, provisions in the Australian Capital Territory would inevitably be somewhat different. Thus the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* has:

> 36. There shall be an Australian Capital Territory Executive.
> 37. The Executive has the responsibility of:
> (a) governing the Territory with respect to matters specified in Schedule 4;
> (b) executing and maintaining enactments and subordinate laws; and
> (c) exercising such other powers as are vested in the Executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a State or another Territory.
> 39.(1) The members of the Executive are the Chief Minister and such other Ministers as are appointed by the Chief Minister.

The proposed Northern Territory Constitution comes closer to the postwar Westminster models:

> 4.1 The duties, powers, functions and authorities of the Governor, the Executive Council and the Ministers of the Northern Territory imposed or conferred by or under this Part extend to the execution and maintenance of this Constitution and the laws of the Northern Territory and to the exercise of the prerogatives of the Crown so far as they relate to those duties, powers, functions and authorities.
>
> 4.2 (1) There shall be a Governor of the Northern Territory who shall be appointed by Her Majesty on the advice of the Premier and who shall hold office during Her Majesty's pleasure.
>
> (2) Subject to this Constitution, the Governor is charged with the duty of-
>
> (a) upholding and maintaining this Constitution; and
>
> (b) administering the government of the Northern Territory.

The Commission recommends that a section making similar provisions be added to the Queensland Constitution (R6.1) to say (a) that the executive authority of Queensland is vested in the Sovereign, (b) that the Sovereign's representative in Queensland is the Governor who holds office during the Sovereign's pleasure, (c) that apart from the power to appoint and terminate the appointment of the Governor and when the Sovereign is personally in the State, all powers and functions of the Sovereign in respect of Queensland are exercisable only by the Governor, (d) that advice to the Sovereign in respect of the appointment and termination of appointment of the Governor and the exercise of the powers and functions of the Sovereign in respect of Queensland shall be tendered by the Premier.

A further section should provide that (a) the Governor's appointment and termination of appointment shall be under the Royal Sign Manual, and (b) references to the Governor in legislation shall be to the person so appointed and to any other person appointed under dormant or other commission under the Royal Sign Manual to administer the Governor of Queensland. The current provisions (QG 1999: ss.29, 30) would be repealed.

Amplifying the Governor's role

The same period and the same author (Keith 1935: 283-89) provide illumination on a second matter where, the Commission believes, it would be possible and desirable to go beyond the present draft Constitution. What should happen if the Governor believes or suspects that the Premier is engaged in "illegal" conduct? In the instance Keith raised, the conduct concerned a State's refusal to conform to Commonwealth financial requirements and, ultimately, Commonwealth law.

At the start of the dispute involving Sir Philip Game as Governor of New South Wales and the Hon. J.T. Lang as its Premier, the question was whether a State Governor should act as an agent of the federal power and use his reserve power to dismiss the State Government. Under the Commonwealth Constitution, it was open to the federal authorities to secure a judgment against the defaulting State and get execution of the judgment. Therefore the Governor need not act.

But once the High Court had upheld the validity of the federal legislation, the Governor's discretion was reduced. Previously the Governor's proper legal advisers could tell him that the Premier's actions were within the law, but now the Premier could no longer say that with any authority. As Keith put it:

> … [T]he Governor has now to face the issue how far he can acquiesce in the violation of a law whose authority, as a representative of the Crown, he is under a clear duty to uphold. (1935: 285)

Once the High Court had said what the law was, the Governor was entitled to disregard contrary advice from his State legal advisers. His paramount duty was to carry out the law of the Constitution, to demand the Premier's obedience to that law, and to dismiss him if he refused it. When the Premier issued what were now clearly illegal orders to State public servants, the Governor was entitled to require him to withdraw those orders and, when he did not, to dismiss him. If he had not done so, he would have implicated himself in the illegalities for the Governor was as bound by the law as the Ministry and the people of the State.

A more recent appraisal of that affair reads:

> It is open to argument whether the dismissal had become absolutely necessary at the time it occurred.
>
> If the malfunction of the constitutional system is that the Government refuses to comply with the law, it could usually be overcome through action in the courts so that the question of use of the reserve authority would never arise. No [Governor] could regard it as absolutely necessary to use the reserve authority if there were a real and practical prospect of government compliance being brought about by court action. A [Governor] would also welcome the fact that a court decision would avoid any need to form a view that a court decision would avoid any need to form a view on the law, if there were doubt about it. However, whether there is an absolute necessity to use the reserve authority depends on practical realities, not theory. There could be situations in which it was vital that the malfunction be corrected more quickly than by court action, where it was unlikely that an appropriate person would commence an action or where it was unlikely that success in the type of court action available would lead to compliance., For example, in Victoria in 1865-66, devices were used which enabled the Government to govern without parliamentary supply for some five months before the validity of the devices was indirectly raised before the Supreme Court, which held them invalid. (McGarvie 1999: 153)

The Commission believes that there may be very rare occasions when this problem could recur. It has been greatly troubled by episodes when a Governor of ability and personal rectitude has presided over a Government which has subsequently been shown to have engaged in practices which bordered on, or even entered into, illegality. That this was the state of affairs had been publicly alleged in the mass media, in Parliament and in the community at large at the time.

On the one hand, the Governor is said to be the ultimate guardian of the State's constitution and its laws. On the other, whether a particular Premier or their Government remains in office has by convention been determined by whether or not they retain the support of a majority of members of the lower (or only) house of the State Parliament.

The uncertainty, and its consequent risk of inaction, in this conflict of principles can be reduced, the Commission believes and recommends, by two steps. The first can be found in the constitutions of other Westminster model systems. It seeks to ensure that the Governor is kept fully informed and has a right to pursue the information necessary to the duties of that office. The Commission recommends that such a provision be added to the Queensland Constitution (R6.2).

The second provides a mechanism to ensure that a Governor can establish, publicly and with certainty, whether a breach of law has occurred. That would best be done by the usual and most appropriate means, a decision of the State's Supreme Court on the Governor's application for a declaration. The Commission recommends that provision be made for this (R6.3). It recognises that such a situation may involve several different phenomena - a political scandal, a constitutional crisis, a breach of law - and rapidly changing circumstances can take on a logic of their own. In Queensland, and in New South Wales as was shown by the Metherell Affair, the existence of independent anti-corruption machinery adds a further dimension to the problem.

At the end of the day, the decision should still be the Governor's as to whether or not to revoke the Premier's commission and the conditions on which another Premier should be commissioned. The alternative to applying to the Supreme Court is to rely on the Governor obtaining advice confidentially from those thought best able to provide such advice. But who they might be and what their advice was would not be made public at the time, or possibly for some time after the event or at all. The Commission believes that a more public process is to be preferred.

It could be expected that the hearing of an application for a declaration would be brought on as rapidly as possible and would be heard by a full bench of the Supreme Court. Initially evidence would be provided on affidavit, but other arrangements for the testing of such evidence might be necessary if the application were opposed. Protracted appeals would clearly be undesirable, but it might not be possible to prevent appeals to the High Court based on s.106 of the Commonwealth Constitution in which case there might be little justification for seeking to prevent recourse to the Court of Appeal either.

It must be added, of course, that it is expected that only in the most extraordinary circumstances would it be necessary to invoke this process, and that its existence would reduce the likelihood of it ever being needed. As to its feasibility, the Commission notes the view of a former Chief Justice and Governor of Western Australia, Sir Francis Burt:

> And if the circumstances need to be established by a fact finding - which is most unlikely - then I can see no reason why the Governor should not be able to obtain an advisory opinion on any question of fact from the Supreme Court. (Burt 1994:6)

It might be added that it would be a question of the criminal law, or analogous statutory law relating to corrupt conduct by a public officer, that would be before the Supreme Court. It would not be an interpretation of prerogative or reserve powers, of constitutional conventions or political precedents, which the Commission agrees are better kept out of the courts for the reasons stated above. It would be one more resource available to the Governor.

Appointment of Ministers

The existing provision (QG 1999: s.34) quite deliberately (QPD, 7 December 1976, p.2172) contradicts the usual Westminster convention that the First Minister nominates the rest of the Ministry (subject in practice to what may be required by coalition agreements and political expectations about geographical, factional, bicameral, gender and other considerations) and can require their removal. Whilst the opening words "Ministers hold office at the pleasure of the Governor …" are the basis on which the Governor can act, the statutory denial in the words that follow of the convention that the Governor will always act on the advice of the Premier is, in the Commission's view, an indefensible breach of the principle of responsible government which is one of the main tenets of the Queensland Constitution.

The most recent constitution-making in Australia has followed the traditional view. Thus the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* has:

> 41.(1) Subject to subsection (2) [which concerns their number], the Chief Minister shall appoint 3 Ministers for the Territory from among the members of the Assembly.
>
> (4) A Minister may be dismissed from office at any time by a person holding office as Chief Minister at that time.

The proposed Northern Territory Constitution which had provided for a Governor was even more conventional:

> 4.7 There shall be such number of Ministerial Offices, having such respective designations, as the Governor, acting on the advice of the Premier, from time to time determines.
>
> 4.8 (1) The Governor shall, from time to time, appoint as the Premier the member of the Parliament who, in the Governor's sole opinion, commands or is likely to command the general support of the majority of members of the Parliament.
>
> (2) If a vote of no confidence in the government of the Northern Territory has been carried in the Parliament by a majority of its members present and voting and the Governor considers that there is another member of the Parliament who commands or is likely to command the general support of the majority of the members of the Parliament, the Governor may terminate the appointment of the Premier, and may do so without the need to refer the matter to or act on the advice of the Executive Council or the Premier.

> (3) Subject to this Part, the Governor may, on the recommendation of the Premier –
> (a) appoint a member of the Parliament to a Ministerial Office, who on being so appointed, shall be a Minister of the Northern Territory; and
> (b) any time, terminate the appointment.

It may be that in exceptional circumstances, for example a Premier who wished to replace their entire Cabinet or a large part of it (as the Hon. J.T. Lang succeeded in doing in May 1927), might properly be required by the Governor to prove that they still commanded the support of a majority in the Legislative Assembly. But if that were done, then the Governor would be obliged to act on the advice. In Lang's case, he obtained a new commission after which only three Ministers were re-appointed in exchange for a promise to dissolve the Legislative Assembly.

There is a related problem with the provision (QG 1999: s.41(1)) which empowers the Governor "to appoint a person to be a Minister". There is a strong convention that only Members of the Legislative Assembly will be appointed, but the Constitution itself does not say so. It is easy to imagine a situation where political considerations make it desirable that someone not yet in Parliament or even still sitting in another Parliament or who had recently lost their seat would be put up by their supporters for a Ministerial appointment and that appointment made a condition of support for the Government.

The Commonwealth Constitution, s.64 allows a period of three months in which a Minister has to find a seat in the Senate or the House. That permitted the Hon. John Gorton to become Prime Minister and subsequently move from the Senate to the House of Representatives in 1968 without having to vacate the position for the short period between his resignation from the Senate and his election to the House. That would not be a problem in Queensland, where the most likely question is whether it should be possible for a Minister whose re-election has been overturned by a Court of Disputed Returns to retain their office whilst fighting the subsequent by-election.

The Commission believes that the overriding principle should be that Ministers to be responsible to the Legislative Assembly have to be Members of the Legislative Assembly, and that this principle outweighs rare and minor inconveniences.

Consequently the Commission recommends that both matters be dealt with by saying that the Governor shall act in accordance with the advice of the Premier and appoint other Ministers from among the Members of the Legislative Assembly (R6.4).

The Commission believes that the present language (QG 1999: s.44(1)) that the Governor "may appoint a person who is a member of the Legislative Assembly and the Executive Council to act as a Minister" may be misleading. It appears to suggest that there are members who are already Executive Councillors but are not Ministers, in this presumably reflecting earlier practices. The Commission recommends (R6.5) that "and" become "to" to follow what actually happens. Someone is made an Executive Councillor and only then can they be made a Minister.

The Premier and the Cabinet

One of the features of the present text of the Constitution most often remarked on to the Commission is the virtual absence of the Premier and the total absence of Cabinet. The Premier makes his or her only appearance in the present Constitution in the minor role of allocating functions to Parliamentary Secretaries (QG 1999: s.23), receiving their resignations (QG 1999: s.24.(2)(b)) and dismissing them (QG 1999: s.24(2)(d) and s.24(3)).

The Commission recommends that a section be added to the Constitution to explain how a Premier comes to office and how a Premier might be dismissed (R6.6). As was noted at the commencement of this Chapter, making such a recommendation may raise concern as to whether this starts the codification of the reserve powers, or is the thin edge of a wedge leading to such a development. Nevertheless the Commission believes that the benefits outweigh such risks.

The principle of responsible government requires that the Government, which in the first instance means the Premier who heads that Government, has the confidence of a majority of the Members of the Legislative Assembly. The corollary is that if the Legislative Assembly formally states that it wishes the appointment of a Premier to be revoked, the Governor should do so.

It might be asked how a provision to this effect would relate to the provision recommended in the previous Chapter allowing a dissolution during the first three years of a four-year term. It is quite possible that when the Legislative Assembly resolves that A should cease to be Premier, B is now the person who can command a majority because of some change(s) of allegiance in the Assembly. In that case, the Governor then uses the first provision and appoints B. If, however, there is no B identifiable there can be some uncertainty. This is why some jurisdictions require that a valid resolution to remove A must designate B to succeed, otherwise the head of state will have to dissolve the legislature. The Commission does not believe the additional element is necessary in the Queensland Constitution where the reserve power to dissolve will survive in section 14.(3), subject to the limitations that the Commission recommends be added.

The Commission also believes that the principle of responsible government will be better served by an explicit statement that the Cabinet is collectively responsible to the Legislative Assembly, and that a ready understanding of the system of government will be assisted by a statement that Cabinet is the principal instrument of policy and charged with the direction and control of the Government of Queensland. It recommends accordingly (R6.7).

Attention should also be given to the provisions (QG 1999: ss.39, 40) that provide for the illness or absence from the State of the Governor. One matter is the retention of the office of Lieutenant-Governor though no appointment to the position has been made for more than 50 years. When new Governors had to first put their personal affairs in order and then travel from Britain to Queensland by sea, the periods between Governors could be lengthy.

Between 1901 and 1946 five Lieutenant-Governors acted for eight periods which averaged nine months in duration. Thereafter the relevant appointment was of the current Chief Justice as Administrator. Sir Alan Mansfield acted in that office for almost 14 months (1957-58), a period that included the political crisis of 1957, whilst waiting for the last overseas Governor and for a further period of six months when the Governor was on leave in Britain. Since then a combination of air travel and appointment of Australians as Governor has removed the need for a *locum* who can serve for a lengthy period.

Should the office of Lieutenant-Governor be retained in the Constitution? It does no harm and costs nothing. Elsewhere, for example South Australia, the office has continued to be filled and is perceived as useful. Thinking on the matter in Queensland might change one day. The Commission can see no need for deletion of the relevant provisions.

Are there any problems with the Chief Justice automatically becoming Administrator? Always provided that the acting periods are short enough not to disrupt seriously the Chief Justice's substantive duties in the judicial branch, the Commission does not perceive a problem. It is always possible that a constitutional crisis *might* occur whilst the Chief Justice is acting as Administrator (as happened with Sir Alan Mansfield), that some element of the crisis *might* prove justiciable, which did not happen in 1957, and that other members of the Supreme Court *might* be asked to rule on the Administrator's actions. Short of reviving the office of Lieutenant-Governor and finding a suitable appointee, who might be a retired Chief Justice or Governor, retention of the present arrangement with the Chief Justice appears to the Commission to be completely satisfactory. The Commission makes no recommendation but believes the matter may be worthy of review.

CHAPTER 7

(Draft Bill Chapter 4 – Statutory Office-holders NEW)

Introduction of certain statutory office-holders into the State Constitution was raised in the Commission's Issues Paper (p.710), and the idea was well received.

Comments on this proposal include the following:

While Legislation is written setting up the various Statutory bodies there always seems to be ample provisions for the protection of politicians. As well there are always various escape clauses which allows the government of the day to use its 'discretion' to delay, or hinder, embarrassing investigations. Paterson, G (S.3)

While discretion is usually allowed Auditors-General as to what they ultimately convey to the Parliament, it is nevertheless to the Parliament that their views, assurances, and so on are registered. This ability to independently report publicly to the Parliament is often the source of irritation, as your Paper suggests, to the Executive Government. Rollason, B M (S.18)

I believe that the inclusion of independent statutory officers such as the Auditor-General of Queensland in the Queensland Constitution would be beneficial in strengthening and preserving the independence of these positions. The protection of the statutory office holder would preferably be similar to those arrangements in place for the Office of the Governor. Scanlan, L J (S.22)

The considerations in the paper of such matters as the rule of law, ensuring the independence of statutory offices such as that of the Auditor-General, codifying conventions and supporting "democracy" are not to the point. What would be the use of making provisions for these matters if the provisions are to be at the mercy of the parliament, that is, in Queensland, the government, of the day? Evans, H (S.4)

The Commission's decision to put forward what at the time might have appeared a novel idea was influenced by recent developments, especially in the State of Victoria with its Director of Public Prosecutions and, more recently, the Auditor-General. The Commission was especially concerned that in the latter affair, the supposed traditional curbs on the executive proved unimpressive. Only one Member of Parliament quit his party in protest at the Government's attack on the effectiveness of the Auditor-General. At the subsequent general election the Government was defeated very narrowly, but it would have survived on the votes cast in the capital city and fell only because of the votes cast elsewhere in the State. It is unlikely that the Government's actions over the Auditor-General were decisive in causing its defeat. That is to be expected: elections are mainly about outcomes rather than process.

It might be noted, however, that there are Westminster model precedents for such a course. For example, as early as 1949 the Indian Constitution's Chapter V devoted to the Comptroller and Auditor-General provided for the same removal from office procedures as

for a judge of the Supreme Court, prohibition of reduction of the Auditor-General's salary and rights when in office and the administrative expenses of the office to be a charge upon the Consolidated Fund. It also provided that the office-holder would subsequently be ineligible for any other public office under the Government of India or of any Indian State. The Jamaican Constitution of 1962, s.94 provided similar protection for the Director of Public Prosecutions and ss.120 and 121 for the Auditor-General. Most recently the South African Constitution s.181 set out protection for six office-holders for reasons which the Commission thought suitable for a comparable provision in the Queensland Constitution.

Three steps are recommended. First, there should be constitutional identification of a special group of statutory office-holders whose responsibilities are likely to bring them into conflict with the executive and the majority in Parliament linked to the executive (R7.1).

Second, the procedures for their removal from office should be strengthened so that their status in this regard is assimilated to that of judges (R7.2). Removal from office by Parliament (which is already provided) should be tied to a preceding investigation of the facts alleged to be the grounds for dismissal by a neutral tribunal. It is highly desirable that repetition of the Creighton case ((QPD, 2 August 1956, pp.3-124) does not occur. In that case, too, there was a period of almost four months between the officer's suspension and the hearing of the resolution for his dismissal. Whereas it is appropriate for a tribunal for judges to be composed of retired judges or judges from other jurisdictions, statutory office-holders themselves do not necessarily have the appropriate skills for their own tribunal. A retired judge would be an appropriate chairperson, with two other members who meet the basic requirement for becoming a judge, five years standing as a barrister. In Queensland members of the Criminal Justice Commission's panel for misconduct tribunals would be suitable appointees.

Third, so far as is possible within the normal appropriation process, protection should be given to ensure that their functions are given sufficient resources to discharge their responsibilities adequately (R7.3). This point was made succinctly :

The Criminal Justice Commission is of the opinion that the current limitations on the removal of the chairperson and commissioners from office are generally adequate but, as the Issues Paper rightly notes, there are other, less direct, threats to the effectiveness of independent statutory bodies such as the Criminal Justice Commission including "attrition of appropriations and staffing".

The PCJC's functions and powers are set out in section 118 of the Act. Although its general functions include to report to the Legislative Assembly on matters pertinent to the Criminal Justice Commission, the resource welfare of the Criminal Justice Commission is not a specific responsibility of the PCJC [1]. The Criminal Justice Commission would consider it appropriate for the PCJC to be given specific responsibility to ensure that the Criminal Justice Commission remains adequately resourced for the very significant responsibilities it has. (S.16)

The machinery recommended, which incidentally strengthens the Parliament's general responsibility for good government, is to give the appropriate statutory committee responsibility for reporting on the resources of the statutory office-holders. That would be: the Legal, Constitutional and Administrative Review Committee for the Director of Public Prosecutions, the Information Commissioner and the Parliamentary Commissioner for Administrative Investigations, the Criminal Justice Committee for the Criminal Justice Commission Chairperson and the Crime Commissioner, and the Public Accounts Committee for the Auditor-General. These committees would be able to identify and publicise suspicious or unwarranted withdrawals of resources and, being bipartisan, are less likely to be bluffed by the executive.

CHAPTER 8

(Draft Bill Chapter 5 – Courts PREVIOUSLY 4)

Unlike the Commonwealth Constitution's Chapter III which begins (s.71) "The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia …", prior to EARC's consolidation in 1993 the State Constitution did not previously give anything like equivalent separate recognition to the Courts. The unsatisfactory situation of State higher courts, for the other States were similarly placed, has been the subject of adverse comment as prejudicial to the Rule of Law. The matter was noted in the Commission's Issues Paper (pp.407, 709) and the Commission has already recommended that the Preamble to the Queensland Constitution state that the people "wish to continue as free and equal citizens under the Rule of Law" (Chapter 3).

It should be added that one portion of the Queensland Constitution relating to the courts did undergo a significant change in recent years. Long-standing provisions of the *Act of Settlement 1700* ("Judges' Commissions be made *Quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the Address of both Houses of Parliament it may be lawful to remove them") were amplified by the investigatory procedures introduced to deal with the case of Mr Justice Vasta (now to be found in QG 1999: s.59).

Entrenchment

The higher Courts of the State deserve equal status with the other two arms of Queensland government, the legislature and the executive. An essential element of that recognition is equal protection against diminution of their independence and functions by the Government of the day using its control of the ordinary legislative process to amend provisions that have only the status of an ordinary statute. Protection of the courts from the then powerful monarchy was an essential component of the settlement of 1688-89, but the *Act of Settlement 1700* has under Queensland law no special status as a higher law. Only history and popular sentiment shield it from the new but still very powerful executive created by responsible, party government.

The Commission received a number of responses to the question on the Separation of Powers. Their consensus is reflected in the following examples:

The Supreme Court is supposed to represent a clear and unequivocal separation of 'powers' from the Government. Not only must this be done it must be seen to be done. - Paterson, G (S.26)

If democracy is to be effective, then the principles of Constitutional law will have to be upheld - Robinson, W (S.1)

I take the view that the rule of law is incapable of being entrenched as a principle because it is so uncertain and I think the features of the rule of law which we most value need to be

entrenched and independence of the judiciary is clearly one of those. - Carney, G (Brisbane Public Hearing 27/09/99)

Parliament can legislate to alter the judicial role of the State's courts. Therefore, consideration should be given to constitutionally providing that action to alter the judicial role of the State's courts should only be approved by a two-thirds majority of the Parliament. This would help to ensure that the courts were not interfered with for purely party political purposes. - Willis, D (S.25)

Accordingly the Commission recommends that the provisions of the State Constitution which establish the Supreme Court and the District Court (QG 1999: s.55), recognise the Supreme Court's superior jurisdiction (QG 1999: s.56), and set the length of judges' appointments (QG 1999: s.58(1)) and judges' salary (QG 1999: s.60(3)) be referendum entrenched against any future alteration (R8.1).

Acting judges

However entrenchment of s.58(1) might open the way to a constitutional challenge to the appointment of acting judges. The Commission understands that it is thought that similar provisions in the Commonwealth Constitution, s.72 preclude the Commonwealth appointing acting judges, although it has recently been held (Re The Governor, Goulburn Correctional Centre; ex p. Eastman [1999] HCA 44 (2 September 1999)) that the Commonwealth Territories exercising powers delegated to them pursuant to s.122, are not inhibited in the same way. To pre-empt the possibility of challenge, the Commission recommends introduction of a new section authorising the appointment of acting judges.

The Commission is aware that use of acting judges has been the subject of some controversy in some Australian States, and was very recently the subject of litigation in Scotland (Starrs and Chalmers v Procurator Fiscal (1999) (http://scotcourd1-1-http.pipex.net/opinions/1798-99.html, accessed 01/12/1999:1.:17PM) though that was a consequence of the European Convention on Human Rights rather than of the *Act of Settlement 1700*. It noted that the Scottish Appeal Court (at p.35) cited extra-judicial statements by Brennan, CJ and Kirby, J of the High Court in 1998 on the threat to judicial independence that the appointment of acting judges can present.

On balance, the Commission believes that the possibility of making such appointments is necessary and recommends accordingly (R8.2). The existing provisions of the *Supreme Court of Queensland Act 1991 (Qld)*, s.14 supplies an appropriate procedure:

> 14.(1) If a judge is or will be on leave, or otherwise absent, or is or will be, for any reason, unable to perform the functions of the office, the Governor in Council, after consultation between the Minister and the Chief Justice, may, by commission, appoint a person who is qualified to be appointed as a judge to act as a judge for such period (not longer than 6 months) as is specified in the commission.

However, with a view to strengthening the Separation of Powers doctrine, the Commission believes that the consent of the Chief Justice, rather than mere consultation of the Chief

Justice, should be required. The solution will be to add an appropriate provision to the Queensland Constitution, and making it referendum entrenched.

The equivalent provision for the appointment of acting judges to the District Court, contained in the *District Court Act 1967 (Qld)*, s.17, does not require consultation. The Commission believes that acting appointments to the District Court should be similarly protected, in this case requiring the consent of the Chief Judge.

The Commission also recommends that the procedure for removal of a judge be amended slightly by adding the words" such resolution to state with full particulars the grounds on which his or her removal is proposed" to the initiation of removal procedure (R8.3). This would prevent "fishing expeditions" by which an investigating panel was instructed to find anything to the discredit of the judge in question. It would ensure that a specific matter had to be the focus.

The Commission recommends that the District Court be brought under the same protection as is afforded the Supreme Court because of the level of its existing jurisdiction has the same potential to bring its judges into conflict with the other two arms of government and attract their enmity. Those considerations do not, it is thought, apply to a comparable extent or at all, to the magistracy. Consequently the Commission has not thought it necessary or appropriate to seek equivalent guarantees for the independence of the lower courts whilst recognising the important role they undertake, and should continue to, play in the good government of the State.

As to the appointment of judges, the Commission believes that it would be desirable if the fact and extent of prior consultation before the executive makes an appointment could be made more widely known, but does not wish to make any recommendation on this aspect or otherwise. It notes that the proposed Northern Territory Constitution had required consultation with the Leader of the Opposition and bodies representing the legal profession before the appointment of judges including the Chief Justice who should also be consulted about the appointment of other judges.

Electoral

The Commission is aware that concern has been expressed about the relationship between the Court of Disputed Returns and the Supreme Court, one of whose judges is appointed to constitute the Court of Disputed Returns, in respect of the doctrine of the separation of powers. Most immediately, there is also a question about the desirability of providing for an appeal from the Court of Disputed Returns. The Commission believes that creation of a special Appeal Court could be as readily accommodated within the *Electoral Act 1992 (Qld)* as has been the Court of Disputed Returns itself if the decision were to be taken to follow that course. The matter need not be taken further in this Report as the Queensland Constitution would not be involved. Nor does the Commission believe it necessary to offer an opinion as to whether a further appeal to the High Court could be excluded by State legislation.

CHAPTER 9

(Draft Bill Chapter 6 – Revenue PREVIOUSLY 5)

Two existing provisions of this Chapter deserve consideration for referendum entrenchment.

The requirement (QG 1999: s.63) that taxation, whatever its form, be authorised by legislation, that is it be agreed to by Parliament, is part of the *Bill of Rights 1689* ("That levying money for or to the use of the Crown, by pretence of prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.") and was an element in curbing the previously powerful monarchy and establishing the supremacy of Parliament. The previously disputed balance between those two arms had contributed to the outbreak of the English Civil War.

Second, the requirement (QG 1999: s.66) that appropriation legislation must be initiated by a recommendation from the Governor, that is the executive, is an essential ingredient for the establishment of responsible government. It distinguishes responsible government from the preceding constitutional stage of representative government. It is one of the fundamental differences between the Westminster model and the Washington model, for under the Separation of Powers regime of the United States and its constituent states, it is open to members of the legislature to initiate appropriations. As a result, their budgetary process is very different from Australian experience.

Neither provision has been in issue in Queensland so far as the Commission is aware. However, on balance, the Commission believes that the significance of both principles for the prevailing constitutional system, the 17th century settlement as it happens, and the objective of ensuring the Constitution says how that system works, make it preferable to recognise the importance of these provisions and provide for their referendum entrenchment. The Commission so recommends (R9.1).

The other provisions of this Chapter raise no problems, and the Commission makes no recommendation for change.

CHAPTER 10

(Draft Bill Chapter 7 – Lands PREVIOUSLY 6)

The only point raised with the Commission concerning this Chapter was whether the word "waste" relating to lands might not lead to misunderstanding. In its historic context the meaning is well established (New South Wales v Commonwealth (1975) 135 CLR 337 at 373, per Barwick, CJ), and given the sensitivity of opinions on land matters the Commission is reluctant to propose altering a provision unless the alteration is clearly necessary. It does not think this is the case, and makes no recommendation for change.

CHAPTER 11

(Draft Bill Chapter 8 – Local Government PREVIOUSLY 7)

The principal problem with the present Chapter is its purported entrenchment of a "system of local government" and associated processes to protect existing forms of local government. The Government which added these provisions to the Constitution perceived threats coming from a centralising Commonwealth government.

As has already been pointed out, this subject matter does not appear to fall within the scope of the *Colonial Laws Validity Act 1865 (Imp)* (and subsequently the *Australia Acts 1986*). Moreover, the double entrenchment provisions applied to the other matters entrenched in the Queensland Constitution were not introduced, leaving the sections that currently are in the Chapter vulnerable to repeal by an ordinary statute. After that the Government of the day could do whatever it wished with local government.

The Commission sent a copy of its Issues Paper to every Local Government Council and Community Council in the State. It received one submission in response. It also sent a copy to the Local Government Association and received a submission from the Association. Both submissions indicated full support for the principles of entrenching the system and status of local Government:

The need for effective and efficient Government at the community level has never been greater and the current framework does not provide any certainty for the future as it currently stands under the provisions of the Local Government Act… It is important to ensure that although the system of Local Government is entrenched in the Constitution, it cannot be overridden by an Act of Parliament. (S.23)

…the Association's position in relation to the review of the Constitution, is that there should be no diminution of the formal recognition of Local Government as reflected in this current Constitution Act. (S.30)

It was also noted that:

The provisions of the Constitutional Bill should clearly provide for a mandatory system of collaboration and consultation on all matters which involve Local Government. Therefore a Member of Parliament introducing any Bill for an Act that would affect a Local Government, or Local Governments generally, must circulate the Bill to a Local Government within a reasonable time before the Bill is introduced and provide it with the right to make a submission. Currently this level of collaboration and consultation will only be undertaken at the discretion of the Member and this is not acceptable and should clearly be made a statutory requirement. (S.23)

Further, because the public meetings held by the Commission were invariably on premises of the local Council, members of the Commission were able to discuss local government and Constitution matters with a few Councillors and Chief Executive Officers informally.

The impression it gained from such contacts was that the existing provisions of the Constitution were not unwelcome, but the contents of the *Local Government Act 1993* were regarded much more seriously.

The Commission noted that when entrenchment of local government in the Commonwealth Constitution was put to a referendum in 1988, 61.7**%** of the Queensland electorate voted against its inclusion. It is open to argument as to how the 1977 amendment to the Queensland Constitution would have gone had it been necessary (see Chapter 12 for the proposal that this should be the case in future) to hold a referendum to include it together with the purported entrenchment. But it is there now, no one appears to object to its inclusion, and its terms are sufficiently vague to allow reasonable intervention in local government affairs by the State when this is necessary – as it sometimes is. The Commission recommends that the defect in the present entrenchment of the local government provisions be remedied by referendum entrenchment (R11.1).

The Commission notes the proposal that dissolution of a local government must be preceded by a process of investigation (S.23), but believes that in the absence of any evidence before it concerning the operation of ss. 160-72 of the *Local Government Act 1993 (Qld)* it is unable to make a recommendation on the matter.

The mischief to guard against is an overly long suspension of elected local government in a particular area, for which there has been a precedent in Queensland in the past. Whilst the initial action has to be brought before Parliament, there is no obligation placed on the executive to restore elected local government as quickly as possible. In contrast, the *Local Government Act 1993 (Qld)*, s.187.(3) says:

> It is the intention of the Parliament that a fresh election of the councillors of the local government should be held as soon as possible after the appointment of an administrator for the local government.

The Commission believes that a similar form of words should be contained in the Queensland Constitution as well and it recommends that the present provision (QG 1999: s.69(3)) be modified accordingly (R11.2).

Further (QG 1999: s.69(3)), the inclusion of the words “and a person or persons appointed to perform the functions and exercise the powers of the local government as an administrator” in s.69.(4) as a definition to be applied to s.69.(3) is inappropriate. S.69.(3) says “if a local government is dissolved or is unable to be properly elected” events which are not applicable to an administrator. The Commission recommends that those words be deleted.(3) (R11.3).

Finally, concerning the proposal to tighten up the provision (QG 1999: s.74.(2)) concerning notification when legislation is introduced quoted above from Submission 23, the Commission believes that the uncertainty of what legislation "may affect local governments generally or all of them" raises serious difficulties and improvements in practice may best be left to the political process.

One Submission (S.24) proposed a substantial expansion of the provisions of the State Constitution dealing with local government, and included provisions relating to "the rights and freedoms of minorities and individuals", guaranteeing a minimum number (100) of local governments, and dealing with the role of the Local Government Association. The Commission believes that these matters might better be considered in connection with the *Local Government Act 1993 (Qld)* than with the proposed Constitution, and makes no recommendations concerning them.

CHAPTER 12

(Draft Bill Chapter 9 – Special Procedures for Constitutional Bills NEW)

Apart from the provisions requiring a referendum before designated sections of the Constitution can be amended, there are no provisions set out in the present Queensland Constitution for its amendment. It is an ordinary statute subject to the usual parliamentary processes for repeal or amendment; a majority in the Legislative Assembly is sufficient. This is in sharp contrast with the Commonwealth Constitution where s.128 requires "double majorities" (a majority of votes in the six States and two Territories combined AND a majority i.e. four, of the six States have to record majorities of their voters in favour of a change). The omission of an amendment procedure from the State Constitution is not surprising for the idea of fettering the legislature by a popular vote was virtually unknown in the middle of the 19th century when the great majority of Australian State constitutions were being put together. Rather than looking at providing democratic means of constitutional change, the principal emphasis was on protecting the co-equal status of anti-democratic upper houses by making the legislative process for constitutional amendment more difficult.

Such aspects of direct democracy as were subsequently introduced to State constitutional amendment processes, including Queensland's, enabled governments of the day to introduce constitutional provisions that were subsequently protected by the naturally conservative bent of the electorate. The solution came from Britain in the 1920s as the Commission's Issues Paper pointed out (pp.214-15).

Before considering what should be done (if anything), it would be as well to review the circumstances in which the currently entrenched provisions were inserted in the Queensland Constitution.

Parliament's three-year term and restoration of an upper house

In 1933 the then Government's intention was to prevent an extension of the term of the Legislative Assembly beyond three years and to forestall a re-establishment of the Legislative Council. The then Premier (the Hon. W. Forgan Smith) explained:

> The object of this Bill is to provide that the control of the Constitution shall remain in the hands of the people. In a democracy the theory of government is that the instrument of government shall be subject to the control of the people, and of them only. This principle having been adopted in Queensland, various Constitution Acts have been passed from time to time. At the present time the Constitution provides that a Parliament shall be elected for three years and no longer. It was known that the late Government intended to extend the period from three years to five years, and that without the consent of the people. Fortunately, however, public sentiment was so outraged by the proposal that the Government of the day was not prepared to go ahead with it.

> A Bill was also prepared having for its purpose the reimposition of a Legislative Council. That Bill is another interesting development inasmuch as, while the Government of the day proposed to establish a Legislative Council without reference to the wishes of the people, a provision was contained in the measure that prevented it from being amended, repealed, or otherwise dealt with, without a referendum having first been taken. In other words, the Moore Government were prepared to take power to themselves for the re-establishment of a certain Chamber, but were not prepared to allow a similar power to continue to reside in a similar authority – the Parliament.
>
> After the passage of the Bill involved in the resolution now before the Committee, the provision of the Constitution will be that Parliament shall be elected for three years, and that no form of government other than that which exists as the time of its passage shall be instituted unless the people declare in favour of such a proposal by means of a referendum. (QPD, 19 September 1933, p.452)

No debate ensued, apart from a proposal from an Opposition private member that a referendum for a five-year term be held at the next election; it was defeated.

Retention of Queen and Governor

In 1976 the Government of the day was concerned at what had been done (and worse was threatened it feared), not by a previous State Government, but by the Opposition in combination with governments of a similar political persuasion in Canberra and London (O'Connell 1977: 27-31). The Opposition, it should be remembered had then been out of office for almost twenty years. In particular, the mischief to be corrected concerned the serving Governor, Sir Colin Hannah, and the State Government's inability to secure an extension of his term that was drawing to a close.

In his Second Reading speech, the then Premier, the Hon. J. Bjelke-Petersen (as he then was), explained the defects of the existing Constitution:

> Let me recall again that our Constitution Act is dated 1867 and that, when Queensland combined with the other Australian colonies in federating to form the Commonwealth of Australia in 1900, no attention was paid to the basic questions concerning the Constitution as part of the Executive Government and as part of the Legislatures in both the Commonwealth and the States. That has proved to be a big gap in the written constitution – a gap through which Mr. Whitlam thought he could figuratively drive a bulldozer.
>
> …
>
> One looks in vain at our Constitution Act of 1867 and in the Constitution of 1900 of the Commonwealth for any clear statement concerning the fundamental position of the Crown and the office of the Governor.
>
> …
>
> Much that was unclear about the exercise of the royal prerogative in the days before federation became clearer as a result of decisions in the courts making deductions

> from the doctrine of responsible Government. It was held, for example, that the constitutional Act of the colonial Parliament was the sole source of the constitutional rights of self-government and that the Governor, acting on the advice of colonial Ministers, was invested with the necessary executive power to perform all Acts necessary for the Government of the colony. This was an essential step in transferring the source of constitutional power from Whitehall to the colony, and it occurred even before federation.
> …
> I want to emphasise that we are changing nothing; what we are doing is writing that which has hitherto been unwritten. In doing so we are making the present situation more understandable and protecting it from being undermined. (QPD, 7 December 1976, pp. 2170-71)

It must be pointed out that "the source of constitutional power" had never been in Whitehall (or more accurately in Downing Street where the entrance to the Colonial Office was located for most of this century) but down the road at Westminster where the Imperial Parliament sat. The bureaucrats and the Minister they advised at the Colonial Office did gradually abstain from intervening in Queensland's affairs, but no one questioned the power of the Imperial Parliament to do so *if it wanted to*. The Premier then turned to that aspect:

> Members will see that the Bill has a lengthy preamble. This sets out the essence of the present situation respecting the office of Governor.
>
> The Bill then goes on to make amendments to the Constitution Act of 1867 by providing for a clear definition of Parliament as consisting of the Queen and the Legislative Assembly.
>
> The Bill then acknowledges that the Governor is the Queen's representative in this State and defines him as the person appointed, as he always has been, by the Queen's personal signature. This means that he cannot be appointed by the Governor-General, even if that function were to be delegated to the Governor-General. The Governor will exercise his existing powers of assenting to legislation. The Governor is to conform to the Queen's instructions in the matter of assenting to Bills or reserving them.
>
> The present instructions were issued by letters patent in 1925 and it is not envisaged that they will be changed. The Bill makes it impossible for any such instructions to be issued in the future under the hand of the Governor-General, even if he were empowered to do this by the Queen and even if the imperial legislation presently covering this matter were ever to be repealed. In these matters the Bill is carefully drafted so as to mirror the provisions of existing imperial Acts. This is because this Parliament has no power to enact legislation repugnant to these imperial Acts. Should the imperial Acts be repealed, then the provisions in our own constitution will substitute for them. (QPD, 7 December 1976, p. 2171)

And then, finally, the Premier turned to the Bill's provisions relating to the conduct of responsible government within the State:

> The Bill also provides that Ministers are to hold office at the pleasure of the Governor, which means, of course, that the Governor will appoint them and dismiss them according to the conventions of responsible Government.
>
> The Bill provides that in acting to appoint or dismiss Ministers the Governor may hold such consultations or take such advice as he sees fit, and that he shall not be subject to the directions of any persons whatsoever. That excludes the possibility of his ever being directed by the Governor-General or by the Prime Minister, or, for that matter, by the Premier of Queensland or any other person, although it does not exclude the possibility of his receiving new instructions by letters patent from the Queen.
>
> My Government believes that writing these existing provisions of constitutional law and practice into the constitution will safeguard the existing system of parliamentary Government in Queensland but it believes that it is necessary to entrench this safeguard against the possibility of changes being brought about by Parliament contrary to the wishes of the electorate. (QPD, 7 December 1976, pp. 2171-72 emphasis added)

The Leader of the Opposition, a Liberal Member and an ex-Labor Member spoke for a total of 34 minutes, though it should be remembered that at that time a substantial debate took place on the First Reading (which had been a week earlier). On that occasion the debate following the Premier's speech had lasted for 2 hours and 48 minutes and in addition to the Leader of the Opposition and the Attorney-General ten Members spoke. When, immediately following the Second Reading debate, the Bill went into the Committee stage it was agreed without further debate.

Local government

By 1989 the First Reading had become a formality. The then Premier, the Hon. M.J. Ahern, tabled a Second Reading Speech which was incorporated in Hansard. That took two minutes. The speech explained the constitutional amendment:

> Honourable members, I am sure, will agree that local government is a vital third tier of Government.
>
> In recent years, a number of other State Parliaments have amended their constitutions to recognise local government. It is appropriate and timely that local government be recognised in Queensland's constitution.
>
> Honourable members will recall that last year, the Commonwealth Government's proposal to recognise local government in the Federal Constitution was resoundingly defeated at a referendum of the Australian people. I believe that this decision by the Australian people was the correct decision.

> Local government is created by and answerable to the State – therefore it is appropriate that local government be recognised in the constitutions of the State Governments of Australia. (QPD, 13 April 1989, p.4602)

Inclusion had been promised to local government the previous year, and there had been consultations with the Local Government Association about the form it should take.

However some months later the Premier introduced a new version of the Bill, explaining that it had been withdrawn for further discussions with the Local Government Association following representations from that body. The protection of elected local government had been strengthened, and Parliament had been brought into the suspension process. The Bill would "ensure that Queensland has progressed further than any other State in Australia in formally recognising local government and in providing local government with real protection". This would be done by forwarding any draft Bills affecting local government to the Local Government Association before they were introduced and requiring a referendum before any Bill "to abolish the system of local government throughout the whole of Queensland" could be introduced. (QPD, 6 September 1989, p.445)

That took seven minutes. The resumed Second Reading debate and Committee stage three weeks later (with a new Premier, the Hon. T.R. Cooper, in office) took 33 minutes, but that included a division in Committee. A Labor Member and a Liberal Member spoke during the Second Reading debate; part of the Labor Member's speech focused on a particular incident allegedly involving political intervention in a local government matter. He spoke again in the Committee stage moving the amendment that was defeated in the division; the Premier replied.

Parliament and the introduction of entrenchment provisions

In all three cases the involvement of Parliament in the entrenchment of new constitutional provisions was, to say the least, perfunctory. Few Members spoke, though it may be that the allocation of time to the various stages of the legislation restricted their opportunities. The justifications for taking so important a step vary, but mainly involve preserving the status quo unless the people agreed to change. However that status quo could be very new (abolition of the upper house), long standing (three year terms) or ancient but much altered (the link to the monarch). The threat to the status quo could come from the Opposition, but an external threat – especially from the Commonwealth but perhaps Britain too – was possible. Apart from consultation of the Local Government Association, which appears to have been less than effective the first time round, the Government of the day could speak for the people. The Commission believes that the past process requires reform.

A case where entrenchment was not involved

To prepare the way for the *Australia Acts 1986*, it was necessary for each State to pass an *Australia Acts (Request) Act*. In Queensland this was introduced on 26 September 1985

when the Bill received its first reading and the then Premier, the Honourable Sir Joh Bjelke-Petersen, made his Second Reading speech:

> … [T]he implementation of the agreement will bring the constitutional arrangements affecting the States into conformity with the status of Australia as a sovereign, independent and federal nation, whose States are sovereign within their constitutional sphere.
>
> …
>
> Ultimately, the key elements will be an Act of the Federal Parliament and, more significantly, in our view, an Act of the United Kingdom Parliament, each to be known as the Australia Act, and each identical in all material respects.
>
> …
>
> The Australia Acts themselves and the Statute of Westminster in its application to Australia will be able to be repealed or amended in the future, but only by an Act of the Commonwealth Parliament passed at the request or with the concurrence of the Parliaments of all the States.
>
> …
>
> Clause 6 preserves the entrenched provisions of State Constitutions by providing that a law of a State respecting the constitution, powers or procedure of the Parliament of that State shall be of no force or effect unless made in the manner and form, if any, required by a law made by that Parliament, whether before or after the commencement of the Australia Acts. This provision is included because of the repeal of the Colonial Laws Validity Act (section 5) by the Australia Acts, which hitherto has supported the entrenching provisions in the constitution law of the State.
>
> …
>
> Clause 15 is designed to secure the Australia Acts and the Statute of Westminster as it operates in Australia, against any amendment or repeal which does not have support throughout Australia. A unique system has been devised by which such amendment or repeal may only be made if all State Parliaments and the Commonwealth Parliament agree.
>
> Subclause (3) leaves open the possibility that a future amendment to the Commonwealth Constitution using the section 128 referendum procedure might give the Commonwealth Parliament power to effect some alteration to the Australia Acts or the Statute of Westminster.
>
> …
>
> Mr Speaker, implementation of these changes will represent the completion of a unique project of major significance which has received the support of all Governments in Australia, regardless of their political composition. These changes will complete the process of Australia's constitutional development commenced at the beginning of this century. Laws and procedures which are anachronistic will be eliminated and new arrangements which reflect Australia's status as an independent and sovereign nation will be substituted. The capacity of the State to exercise fully the powers and functions appropriate to its constitutional position in the Federation will be brought to full maturity, and the control of the constitutional instrumentalities of the State will be secured to the State's own Parliament and

> Government and to them alone. (QPD, 26 September 1985, 1500, 1501, 1502-03, 1504, 1506).

The Premier's speech took 28 minutes. The Second Reading debate resumed on 9 October 1985 when three Labor and three Liberal Members spoke. The Committee stage and Third Reading followed immediately, for a total of an additional 90 minutes.

Following passage of the *Australia Acts 1986*, it was deemed necessary to augment the new Letters Patent (dated 14 February 1986) with what became the *Constitution (Office of Governor) Act 1987 (Qld)*. The occasion was also used to remove obsolete provisions of several of the Constitution Acts (principally the *Australian Constitutions Act 1842, the Australian States Constitution Act 1907*, the *Constitution Act 1867*).

The First Reading and the Second Reading speech by then Premier, the Hon. Sir Joh Bjelke-Petersen, took six minutes on 13 November 1987. The remainder of the Second Reading debate in which the Leader of the Opposition, the Leader of the Liberal Party and the former Attorney-General, also a Liberal, took part, the Committee stage in which only the Leader of the Liberal Party spoke, and the Third Reading took a further 30 minutes on 20 November.

Closing the Second Reading debate the Premier said:

> Today, the Australia Acts repeal the Colonial Laws Validity Act, but the entrenching provisions of that Act are repeated in the Australia Acts.
>
> The Bill therefore does not affect any of the provisions of the Constitution Act that are protected by the 1977 amendment to that Act. Therefore, no referendum of the Queensland electorate is required. My officers have informed me of that.
>
> If at some time in the future there was a universal desire in Australia to change the position of Governor-General, the Australia Acts may possibly be amended by the Commonwealth Parliament. That exercise in itself would, of course, create a crucial question as to the power of the Commonwealth Parliament to do so. I place those matters on the record. (QPD, 20 November 1987, p.4697)

Responding to those remarks in the Committee stage, the Leader of the Liberal Party took a gloomier view of the future:

> I believe that, sooner or later, circumstances will arise in which people will feel as concerned as they were in the 1970s about the future destiny of this nation and will seek some form of protection so that no one Parliament can so arrange its affairs through political or any other means to dominate and veto the decisions of another Parliament in this country. That is ultimately what we are talking about. We are not just talking about the position of Governor … I would hope that there would be a sufficient number of alert people in this Parliament and in other parliaments to make a fuss about it that it would become a political issue in this nation so that it could be prevented. That is about the only remedy that we have. I give that warning at this stage. (QPD, 20 November 1987, p.4698)

The inhibition of the power to entrench that resulted from copying the *Colonial Laws Validity Act* provisions into the *Australia Acts* was not mentioned.

A less serious, but equally telling, example is provided by s.43.(2) which declares that the Attorney-General is a Minister. That was recently added to the *Officials in Parliament Act 1896 (Qld)*, and thereby became part of "the Queensland Constitution", by the *Statute Law Revision (No. 2) Act 1995 (Qld)* which was said to deal with, *inter alia*, 76 matters in the portfolio of the Attorney-General and Minister of Justice. During the Second Reading debate (QPD, 2 November 1995, pp.898-99, 16 November 1995, pp.1225-39) which lasted an hour and a half no mention was made of the matter.

Future use

Amendment of State constitutions was considered by the Queensland Constitutional Convention which was held in Gladstone in June 1999. The Convention recommended:

> *1.3 In general, how should State Constitutions be changed?*
>
> 4. Compliance with special procedures beyond a simple majority vote of the parliament should be required to change certain parts of State constitutions.
>
> 5. An entrenched provision may only be introduced into a State Constitution by following the same procedure as it provides for its amendment or repeal.
>
> 6. Parts of State Constitutions that may need entrenchment could include:
> - A democratically elected Parliament
> - Judicial independence
> - An executive that is responsible to the Parliament
> - Rights of the citizen
> - A system of local government.

The Commission agrees with that resolution and its recommendations parallel its terms. This course is supported by Submission 4:

The discussion of parliamentary supremacy in the paper further illustrates this problem. The first issue should be whether parliamentary supremacy should now be abandoned, that is, whether the legislative power should be subjected to limitations, which is the primary purpose of a constitution. The consideration by the paper of the entrenched provisions of the Queensland constitutional law as mere blots on the escutcheon of parliamentary supremacy appears to be heading in the direction of the Queensland government's apparent decision that entrenchment will be removed and the "constitution" placed entirely under the will of the legislature, that is, under the will of that same government. A constitution is an entrenched provision writ large, and the paper appears at this point to be ruling out Queensland having one. – Evans, H. (S.4)

The Commission recommends (R12.1) that a special procedure (a referendum) be required to change certain parts of the Queensland Constitution. In this Report and in the proposed Constitution of Queensland it is called "referendum entrenchment". These parts should include four of the five identified in the Gladstone resolution. "Rights of the citizen" have not been included because adding a Bill of Rights to the Queensland Constitution was deliberately excluded from the Commission's inquiry. If the possibility of a Bill of Rights is raised again, the Commission believes that inevitably some form of entrenchment will have to be considered. If the decision is to have a Bill of Rights, its eventual entrenchment, although not necessarily immediate (EARC 1994) would follow. The justifications for inclusion of particular items in the recommended list have been set out seriatim in preceding Chapters 5, 6, 8 and 11 of this Report.

Second, the Commission recommends that the possibility of a Government entrenching by a referendum requirement should be subject to a previous application to the electorate for its permission to do so (R12.2). If the State Constitution is to be seen as the property of the people of Queensland, they should have as much right to determine what is put in as what is taken out in those areas of such special significance that a referendum is advisable.

The point was made:

The Queensland electorate should be given the opportunity to decide whether certain provisions ought to be entrenched in the new proposed statutes … any future or continued entrenchment of statutory provisions ought to be decided by a referendum of the Queensland electorate. Moreover, this principle should be expressly stated in the Constitution of Queensland Bill as an entrenched provision itself. The principles of law which facilitate effective entrenchment are sufficient to enable this to be achieved. (S.13)

In other words, it would be open to a Government to add a provision by the ordinary legislative process after which it would be subject to removal or alteration by a comparable process - subject to lesser restrictions than the referendum. If, however, the addition was to have the protection of a referendum, or indeed if an existing provision were to be have that protection belatedly given to it, then, the Commission recommends, a prior referendum to agree to that course of action would be necessary.

Those restrictions should be, in the Commission's opinion, confined to the commanding heights of the constitutional system. Thus a requirement for single-member electoral districts is important because altering that provision has consequences for the type of electoral system and how basic structures like Parliament and Cabinet will operate. It is important that the people be asked if it is to be changed. On the other hand, whether there should be 89 members of the Legislative Assembly is a question of lesser calibre. There may be a number so small that parliamentary government as it has been known in the Australian States would suffer a qualitative change just as there could be a number so large as to change the character of the legislature. It would be undesirable for the Legislative Assembly to be reduced to 30 members or expanded to 300, but to set parameters around 89 for permissible size would be unsound and unwise. When, in the past, ratios to population have been fixed, they invariably had to be abandoned.

There still is a case for protecting those sections of the State Constitution that do not warrant so high a level of restriction. Here the situation of the Commonwealth Constitution provides a cautionary example. There are well known matters, like the disqualifications of Members of Parliament, where there is general agreement that the existing provisions in the Commonwealth Constitution are unhelpful, and agreement too on more satisfactory versions of such provisions. But nothing happens because the amending process is too cumbersome. It is also loaded against change. At intervals an unfortunate case documents once more that the disqualification provisions are defective in some regard. But no government is willing to expend the financial resources, and possibly the political capital, on odds that are so long.

The view that all changes to the Constitution should be subject to a referendum requirement was expressed in many ways in submissions (e.g. S.23 and S.10) and at the public hearings and meetings. One submission put it:

Of course, the Constitution should only contain provisions that are thought to be so important that they should not be changed without the people's approval; if some provision is not important enough to be entrenched, let it be part of an ordinary Act. Pyke, J (S.20)

On the other hand, the view was also expressed that:

Entrenchment ought to be contemplated only for those provisions which establish the essential structure of the State's constitutional system. Hence, the existence of the Legislative Assembly, the Executive Council, the position of Governor, the Supreme Court and its independence, and recognition of local government are appropriate subjects for entrenched protection by referendum… It is submitted that great care is needed if the whole of the constitution were to be entrenched. The Constitution under those circumstances would merely provide for those matters I have just referred to. The many machinery provisions would need to be located in another statute. In essence, the basic constitutional framework would be protected by entrenchment, while the fabric of that system would be capable of up-dating within the parameters of that framework. Such an approach emphasises the most important features of Queensland's system of government in a statute uncluttered by more complicated provisions. And it would create a constitution which is more accessible to the general community. Carney, G (S.13)

The Commission is opposed to entrenching the entire text of the State Constitution subject to a referendum requirement as is the case with the Commonwealth Constitution. But it believes that the status of the State Constitution as the fundamental law of the State requires appropriate recognition.

This was expressed succinctly:

The principal issue should be: Should Queensland now have a constitution properly so called, that is, a charter of government framed by, and amendable only by, a special process of consultation with the people of the state, and not amenable to alteration by the legislature alone in the same way as ordinary law? This is now the predominant concept of a constitution, as distinct from a collection of laws relating to matters of government able to be altered by the legislature and therefore indistinguishable from all other laws. (S.4)

This can be done in various ways. One submission suggested:

a combination of special Parliamentary majorities and referenda could be used as the mechanism for changing the Queensland Constitution rather than primarily relying on the special majority approach. I consider that the special majority mechanism could be utilised for those machinery aspects of the Constitution impacting directly on the operations of the Legislative Assembly. However, for those elements of the Constitution which are of vital interest to the public (for example, the role, importance and continuation of local government), the referenda mechanism may more appropriately be employed. This combined approach could offer a more inclusive and acceptable means of altering the Constitution to that which is currently practised. Willis, D (S.33)

Other State Constitutions require an absolute majority of Members (in each chamber) to vote for amending legislation, or even a two-thirds majority. In colonial times and continuing until 1908 Queensland had a two-thirds majority requirement. The Commission is opposed to adoption of any special majority mechanism. It is aware that have been times when it would have been pointless, for example 1974-77 when the Government of the day in Queensland had a majority substantially larger than two-thirds. It is also aware that a special majority requirement can place excessive power in the hands of one Member or a few Members who happen to occupy a pivotal role in the legislature at the time.

In the recent federal referendum debates consideration was given to requiring agreement from the Prime Minister and the Leader of the Opposition, rather than numbers of votes, and that may well be preferable. However it has to be recognised that there will be times and measures on which bipartisan agreement cannot be attained, and the matter is not of such importance that the Government of the day should not be allowed to proceed.

The Commission seeks to achieve three objectives for the greater part of the State Constitution and recommends accordingly (R12.3). One is to ensure that there is sufficient time for the public to become aware of what is proposed and, if they wish, to approach their Members of Parliament and the media to support or oppose the proposed change to what is ultimately their Constitution. This is best done by requiring a reasonable delay between the introduction of the amending legislation and the first substantial debate on its merits, the Second Reading.

Second, the merits of the proposal should be given a careful and public examination. The appropriate forum for this is the Legal, Constitutional and Administrative Review Committee which should be required to report on any proposed amendment before the Second Reading.

Third, the Constitution should not be amended inadvertently or by concealment. If legislation is going to amend the Constitution, it must be called a Constitution Amendment Bill. If it does not bear that Short Title, then it cannot take effect. The Commission believes it is desirable that the Short Title should also contain words to identify the subject matter of the amendment(s).

These three requirements are together called "parliamentary entrenchment" in this Report and the draft State Constitution.

There is also the possibility that the Queensland Constitution might be amended by the process of requesting by a Bill analogous to the Australia Acts (Request) Bill 1985 so that the Commonwealth Parliament undertake the amending process. This possibility should be included in the amending formula (R12.4).

Major reviews

Once the Queensland Constitution has been approved by the people of the State, procedures for keeping it up to date have an additional significance. The Commission has just made recommendations for what might be termed "running repairs", but there will also be a need for an overview of its effectiveness and relevance to contemporary aspirations and conditions. The Commission recommends that the Legislative, Constitutional and Administrative Review Committee (or its successor with the responsibility for constitutional matters) conduct such an overview at roughly ten-year intervals, the first to take place about 2010. It also recommends, having regard to the possibility of changing ideas about participation and democracy, that it be open to the Committee to recommend that a Constitutional Convention be convened to take over the review of the Constitution, and that it be open to the Committee to also recommend that such a Convention be elected in whole or in part (R12.5). The existence of such a provision ought to stimulate and sustain interest in constitutional questions. Submission 32 contained a proposal for regular reviews of the Commonwealth Constitution that could be adapted to the Queensland Constitution.

Other legislation

The Commission notes that the proposed Northern Territory Constitution, s.2.3 introduced a concept of Organic Laws "having a superior constitutional status to ordinary Acts but less status than the Constitution itself". Such Laws would have required special majorities at their Second and Third Readings, and the passage of at least two months between the two votes. They might be identified in the Constitution or by a provision of the Law itself to that effect. Examples would have concerned land rights and sacred sites.

It may be that such an idea will be of interest at a future date, but at present the Commission does not wish to pursue the possibility.

CHAPTER 13

(Draft Bill Chapter 10 – Miscellaneous PREVIOUSLY 8)

The only section of this Chapter of the proposed Constitution deals with the appointment and oath-taking of the Governor (QG 1999: s.31), delegation to a Lieutenant-Governor (s.39), appointment and oath-taking of an Administrator (QG 1999: s.40) and Members of Executive Council (QG 1999: s.46) and the proceedings of Executive Council (QG 1999: s.48). The purpose of its original inclusion was to deny justiciability in the sphere of the prerogative.

The Commission was initially concerned at the possible effect of s.48 should a meeting of Executive Council take place in the absence of the Governor – as in the controversial Loans Affair at the federal level in 1975. If the effect of s.48 were to prevent a legal challenge to purported decision of such a meeting, this would clearly be undesirable. There are good reasons, consistent with the maintenance of the Rule of Law, why the courts could be able to examine whether a decision was made at a validly convened and constituted meeting of the Executive Council. In Cormack v Cope (1974) 131 CLR 432 at 452, Barwick CJ pointed out that the law-making process in the Commonwealth Parliament was controlled by a written Constitution with the result that the courts had a right and duty to ensure that the law-making process was observed. If the legislative process is examinable in the courts to determine whether mandatory provisions have been met, then the validity of Executive Council meetings should not be exempt. Indeed, the tendency of late has been to broaden the scope of inquiry into the validity of executive decisions rather than to narrow it.

The Commission has not made a recommendation that s.48 be revised to ensure that a meeting of the Executive Council was validly convened and constituted because it has concluded that should the question arise, the courts would be prepared to consider the question.

CHAPTER 14

(Draft Bill Chapter 11 – Transitional provisions PREVIOUSLY 9)

The addition of the Premier to the offices designated in the Constitution will require a provision that the appointment of the person who immediately before the commencement of the appropriate section was the Premier should not be affected. (R14.1)

CHAPTER 15

(Draft Bill Chapter 12 – Consequential Amendments and Repeals PREVIOUSLY 9)

This Chapter will be inserted when the substantive provisions in the earlier chapters have been settled by the Queensland Government and Parliament.

CHAPTER 16

(Draft Parliament of Queensland Bill)

Petitions Committee

Chapter 5 introduced the proposal, which the Commission recommends, to establish a Petitions Committee to enable greater public participation in the legislative process. The Commission notes that the proposed Northern Territory Constitution had envisaged a comparable Standing Committee on the Constitution and Organic Laws. That Standing Committee would have had a discretion whether to receive and report on petitions requesting an amendment of the proposed Constitution or Organic Laws. It would have been obliged to consider and report on amendments introduced in the Parliament and referred to it, and also petitions signed by at least 10% of electors on the roll at the time of the petition's presentation to the Standing Committee. The Commission would not wish to draw such a distinction, and believes that the Petitions Committee it recommends should report on all petitions. When constitutional amendments are involved, the resulting draft Bill would ultimately go to the Legal, Constitutional and Administrative Review Committee under the recommended procedure of s. 83.(2).

The Commission recommends (R16.1) that:

- a Petitions Committee be established as a statutory committee;
- it be required to report on all petitions received;
- it may conduct public hearings at its discretion;
- it may deal with several petitions in one inquiry;
- it may create guidelines to refuse to consider petitions which are similar to petitions reported on by the Committee in a time period set by the Committee;
- it may recommend that an indicative plebiscite or a referendum or both be held.

As a consequence of the creation of the Petitions Committee, it would be appropriate to amend the objects section (QG 1999: s.78.(1)) to read: "The main objects of this chapter are to enhance the accountability and transparency of public administration and extend democratic government in Queensland." The Commission recommends this amendment be made (R16.2).

Miscellaneous

The Commission recommends (R16.3) two minor amendments to provisions:

- (QG 1999: s.5.(2)): to read that "The *Constitution of Queensland 2000* establishes the Parliament of Queensland …" in keeping with the recommendation made in Chapter 4 concerning the Short Title of the Constitution.

- (QG 1999: s.10): to read "Following a general election" which the Commission believes would be more in keeping with common usage.

As matters of more substance, the Commission recommends (R16.4) by way of amendment:

- (QG 1999: s.78.(1)) : to read "the main objects of this chapter are to enhance the accountability and transparency of public administration and extend democratic government in Queensland" to reinforce a constitutional commitment to FOI requirements.

- (QG 1999: s.124, new 13.(1) and (2): having the Governor in Council involved and able to initiate action appears inappropriate as contrary to the doctrine of the Separation of Powers. The Commission recommends (R16.5) that the Speaker should advise the Treasurer when the seat of a member has become vacant, and the Treasurer may then retain the amounts payable &c.

The Commission noted the Legislative Assembly's power to direct the Attorney-General to prosecute as possibly causing concern for the doctrine of the Separation of Powers (QG 1999: s.47.(2)), but concluded that it was appropriate in all the circumstances. However at s.39.(2) it noted that if the Assembly's power to imprison were to survive renunciation of that power by the House of Commons, that might well cause more serious concern about breach of the doctrine. Whilst not wishing to make a formal recommendation on the point, it would express the hope that the Legislative Assembly would give the most careful consideration to the matter.

Disqualifications

The Commission is concerned about the adequacy of disqualification provisions (QG 1999: s.72.(1)(i)):

> the member is convicted of any of the following offences –
>
> (i) an offence against the law of Queensland, another State or the Commonwealth for which the member is sentenced to more than 1 year's imprisonment;
>
> (ii) an offence against the *Electoral Act 1992*, section 154, 168 170(a) or (b).

In the first place, the offences against the *Electoral Act 1992 (Qld)* listed in (ii) do not include any enrolment offences. The Commission believes that offences against the integrity of the electoral rolls are amongst the most serious that may be committed, and deserve appropriate sanctions. For a candidate or member to be convicted of such an offence warrants disqualification both because such a person ought not to sit in Parliament, and because the attendant publicity of such a conviction would discourage other potential offenders. Accordingly the Commission recommends (R16.6) that two additional sections of the *Electoral Act 1992 (Qld)* (s.151 (wilfully inserting a false or fictitious name on a roll), and s.159 (forging or uttering an electoral paper) be included. S.159 would have to be qualified to apply only to an enrolment application.

However that is not the end of the problem. As a consequence of joint roll enrolments with the Commonwealth, an enrolment offence may be committed against either Commonwealth law or Queensland law. As the Commission understands present practice, it is more likely

that the offender will be dealt with under Commonwealth law. Enrolment offences under the *Commonwealth Electoral Act 1918 (Cwlth)* do not incur a year's imprisonment, so it is necessary to specify the equivalent sections to the State provisions just added and the Commission recommends accordingly (R16.6). These would be s.336.(3) (making the signature of another person) and s.337.(1)(d) (writing his or her own name the name of another person or any name not being his or her own); in both instances the *Commonwealth Electoral Act 1918 (Cwlth)* provisions cover all electoral papers, and it would be necessary to restrict the application to enrolment forms.

Parliamentary appropriation

The Commission believes that the principle of a separate appropriation for the Legislative Assembly (QG 1999: s.109) is highly desirable, and recommends that the section (corresponding to Chapter 8) be transferred to the Constitution (R16.7).

CHAPTER 17

Referendums Act 1997

The recent experience of the federal referendum on retention of the monarchy or replacement by a form of presidential government has clearly shown the consequences of a forced choice between two alternatives when much of the population believes that more than two alternatives exist and that these should be voted on, simultaneously or serially. The Commission believes that the problem is widely known and reasonably well understood. Those with a greater stock of information were already aware that such a vote had been held prior to the electoral system changes implemented in New Zealand in 1996.

The Commission wishes to extend the use of the referendum in Queensland, the better to associate the people with major decisions involving their system of government. It believes that a necessary concomitant of asking the people to answer questions is those questions should be formulated in a way that the great majority of people will accept as valid and fair. Accordingly it recommends (R17.1) that the *Referendums Act 1997 (Qld)* be extended to make provision for the holding of what it would called indicative plebiscites. (To call them indicative referendums might lead to confusion as to whether they are to take effect immediately or not.)

This would allow the alternatives to the status quo to be narrowed to the most popular alternative to the status quo, before the people are asked to make a final choice. The preliminary vote would not prevent those whose alternative was not adopted from voting in favour of the status quo in the hope that one day opinion might shift so that their preferred option could be tried. It would better inform the electorate as to what their fellow citizens thought, and do so more soundly than even the best planned public opinion polls could do.

It is unlikely that the need for an indicative plebiscite will occur very often, The Government of the day should be able to hold it at the same time as a general election (which would reduce cost considerably). But if that were not possible, either because an answer was needed urgently to proceed to the following stage of a referendum proper or because it was thought undesirable to mix party politics with the issue, then it should be possible to conduct the plebiscite by post and so save several million dollars. Whether a postal indicative plebiscite should be compulsory, in the sense that non-voters would be asked to explain and might be subject to a penalty if the explanation were not acceptable, could be left to be decided by a resolution of the Legislative Assembly at the time and in the light of the nature of the decision to be made.

A postal ballot would be returnable to a single point, and thus more amenable to electronic counting. Again money would be saved. The model ballot papers already in the Schedule to the Act would require modification to have more than two boxes and to allow the voter's intention to be shown by a mark in the box rather than writing "Yes" or "No".

CHAPTER 18

Other Matters

Matters raised in the Commission's Issues Paper not pursued in this Report

In its Issues Paper, the Commission raised two topics that attracted little attention during the process of public consultation. One was majoritarianism (Chapter 9) about which the Commission asked:

> Should any mechanism be introduced to ensure, as far as is possible, that a majority of votes will produce a majority of seats in the Legislative Assembly. If so, what should be that mechanism. (p.907)

Whilst there were expressions of support for proportional representation as a principle (S. 7, S.8, S.11, S.12, S.19, S.20 & S.29), this was not advocated as a solution to the problems mentioned in the Issues Paper. Elsewhere in this Report (Chapter 5), the Commission recommends that because the introduction of proportional representation would constitute so substantial an impact on political affairs, a referendum should be held before it could be introduced. The Legal, Constitutional and Administrative Review Committee is charged by the Parliament of Queensland Bill with responsibility for "electoral reform" (s.85) and would presumably examine any initiative from the Government of the day. If a Petitions Committee were created, as the Commission recommends should be done, that Committee would assess arguments put forward by members of the public seeking changes in this field. The Commission believes that the question it put in the Issues Paper can be left on the back-burner for the present.

The other topic raised in the Issues Paper was the status of political parties (Chapter 11). The Commission asked:

> Should the importance of political parties in the process be recognised in the Queensland Constitution?
>
> If so, what form should that recognition take? For example, should it resemble the recognition of a system of local government in clause 68 and guarantee retention of a competitive party system?
>
> Should there be some legislative regulation of the internal affairs of registered political parties to require
> (i) democratic election of the party's office-holders and candidates to contest parliamentary and local government elections?
> (ii) greater transparency of party income and expenditure?
> (iii) other matters? (p.1107)

There were a few expressions (S. 2, S.5, S.8, S.10, S.12, S.18, S.25, S.29 and S.31), of opposition to the idea of recognising political parties as suggested, in large part the

Commission felt because of hostility to parties as such, but no interest was shown in the particular aspects about which it had sought views from the public.

As with majoritarianism, this appears to be a question whose time has not yet come in Australia. The litigation about the registration of the One Nation party has called attention to some difficulties which may arise, and the change in the courts' views about the justiciability of internal party affairs noted in the Issues Paper makes it likely that public attention will be called to the status of political parties from time to time. The courts' interest in the maintenance of representative government is another likely stimulant of interest.

The two parliamentary committees mentioned above would provide appropriate fora in which relevant issues could be raised should this be thought appropriate, and the Commission sees no justification for recommending that constitutional provisions be introduced at this point of time.

Civic education

Although tangential to the Commission's terms of reference, the lack of interest in and knowledge of the State Constitution which, the Commission believes, its inquiry has disclosed warrants attention and needs remedial action.

It is reinforced in that opinion by a recent speech by the Chief Justice, the Hon Paul de Jersey:

> Our children are growing up faced with the fascination of a computer age which regrettably often tends to treat information as significant per se. Information is but the first step towards knowledge, but the information must be there. If our children are to be productive, worthwhile citizens, they need to understand the system which governs them. They need to be able to distil from information the principles on which it is based. This will not occur, on a broad scale, until our children are enthusiastically introduced, not only directly to the principal doctrines underlying our system of government, but also to the constitutional history that spawned them. I am not for one moment suggesting that children should be educated into the depths of constitutional and jurisprudential theory. But it strikes me as unsatisfactory – as seems to be the case – that most children should be matriculating from primary and secondary schools without knowing the basics of governmental structure. (deJersey 1999: 3-4)

The Commission recommends two courses of action. It understands that curriculum development and pilot testing intended to restore the place of civic education in Queensland schools is already in hand. It commends the activity that is taking place. But it is necessary to ensure that matters are brought to completion, that implementation is as swift and extensive as is compatible with the development of materials and training of teachers, and that awareness of what is happening be as general as possible. The Commission recommends (R18.1) that the Minister of Education make ministerial statements at approximately six-month intervals to inform the Legislative Assembly regularly of the

development of the program and the evaluations of its effectiveness. It would hope that time would be made available so that the ministerial statement may be debated.

The Commission would also endorse greater provision of courses about Australian government and politics at federal, State and local government levels in the field of adult education, and express the hope that resources will be available for this activity.

The Commission is aware of the existence of what are called Electoral Education Centres (EECs) in Canberra, Melbourne, Adelaide and Perth. They specialise in introducing students to ideas of representation and procedures for enrolment and voting, but also cooperate with other programs such as parliamentary education provided by education officers at the local Parliament House. To quote from the Annual Report of one State authority:

> The Electoral Education Centre (EEC) is located in the Constitutional Centre of Western Australia, in the "Old Hale School" buildings on the corner of Parliament Place and Havelock Street, West Perth. The EEC is a joint tenant of the premises, along with:
>
> - The Constitutional Centre of Western Australia, and
>
> - The Western Australian State Committee for the centenary of Federation.
>
> The EEC's proximity to Parliament House and the other facilities in the Constitutional centre ensures easy access for schools, students and other community groups visiting these adjacent site. … The facility features an innovative audiovisual presentation, and comprehensive static and interactive displays on the electoral processes and functions of Australia's State, Federal and Local levels of Government. (WAEC 1999: 20, 21)

The Commission recommends (R18.2) that the Electoral Commission Queensland (ECQ) be encouraged to develop a comparable facility in Brisbane with a capacity to produce travelling displays that can be moved around the State. The statutory power already exists in the *Electoral Act 1992 (Qld)*, s.8.(1)(d). The facility should be developed and maintained, if possible, in collaboration with the Australian Electoral Commission because of the overlap in interests and responsibilities, and to share the costs. The Commission recommends that adequate resources for such a facility be provided.

CHAPTER 19

Recommendations

Chapter 2

R2.1 That the Queensland Constitution contain an unequivocal statement that the Constitution is the highest rule of State law. **p.24 s.3.(3)**

R2.2 That all the principal elements of the State's constitutional structure in the Queensland Constitution be subject to referendum entrenchment. **p.24 s.84.(5)**

This covers existing (ss.5, 6, 7, 15, 29.(1), (6) and (7) and 74) and new (ss.9, 11, 60, 61, 63, 64.(1), and (2), 67, 69, 72, 82, 83, 84, 85, 86) provisions.

R2.3 That the whole text of the Queensland Constitution be subject to parliamentary entrenchment. **p.24 ss.82, 83**

Chapter 3

R3.1 That a preamble to the Queensland Constitution should state:

Since the Australia Acts 1986 no law made by the Parliament of the United Kingdom shall extend to the State of Queensland.

Previously the Parliament of the United Kingdom was the ultimate authority for the Acts, Laws and Documents relating to the Constitution of the State of Queensland.

We, the people of Queensland wish to continue as free and equal citizens under the Rule of Law, and to be governed in accordance with the democratic processes contained in this Constitution.

And being within the federal Commonwealth of Australia, we recognise we are subject also to its Constitution. **p.29 Pre.1-4**

R3.2 And that the preamble should continue:

In a spirit of reconciliation, we recognise the contribution of both Aboriginal and Torres Strait islander peoples as the original occupants and custodians of this land.

We declare that we respect the equality of all persons under the law, regardless of class, faith, gender, origin or race, and recognise the contribution they make to the State of Queensland.

We declare that we respect the land and the environment we all share. **p.29 Pre.5-8**

Chapter 4

R4.1 That the Short Title be The Constitution of Queensland 2000. **p.35 s.1**

R4.2 That s.3 include words to indicate that the Constitution will be have to be adopted by the people at a referendum. **p.35 s.3, (2)**

R4.3 That an additional subsection say that the Constitution is the highest rule of the Queensland legal system. **p.35 s.3.(3)**

Chapter 5

R5.1 That a new statutory committee, the Petitions Committee, be created. **p.39 PQBill, ss.80, 93**

R5.2 That the maximum term of the Legislative Assembly be extended to four years subject to a provision that a dissolution may not be granted during the first three years unless (a) a vote of no confidence is carried or a vote of confidence fails to be carried, or (b) an appropriation bill is defeated or fails to pass. The provisions should be referendum entrenched. **p.41 ss.14(3) and (4), 15, 84**

R5.3 That direct election of Members of the Legislative Assembly be required and the provision be referendum entrenched. **p.41 ss.9, 84**

R5.4 That the maximum time limit between sittings of the Legislative Assembly be reduced to six months and the minimum number of sittings be increased to two per year. **p.41 s.17**

R5.5 That the requirement that only one Member be elected from each electoral district be referendum entrenched. **p.42 s.84**

R5.6 That during the life of the next Parliament the Legislative, Constitutional and Administrative Review conduct an inquiry into the possibility of special representation for Aborigines and Torres Strait Islanders. **p.43**

R5.7 That the maximum number of Parliamentary Secretaries be set at 5. **p.44 s.23.(1)**

R5.8 That Parliamentary Secretaries be dismissed by the Governor in Council rather than by the Premier. **p.44 s.25.(3)**

Chapter 6

R6.1 That a statement of the executive power be added to the Queensland Constitution. **p.50s.301.(1)**

R6.2 That the Governor's right to be kept fully informed and to request information about matters relevant to the performance of the Governor's functions be recognised in the Queensland Constitution. **p.52 s.42**

R6.3 That the Governor have power to apply to the Supreme Court for a declaration concerning possible illegal or corrupt activities by a member of the Ministry. **p.52 s.33**

R6.4 That the existing provision concerning the appointment of Ministers be amended to provide that (a) the Governor shall act on the advice of the Premier in appointing and removing Ministers, and (b) Ministers must be Members of the Legislative Assembly. **p.54 s.43.(1)**

R6.5 That the language of s.44(1) be amended concerning appointment of an acting Minister by changing "and" to "to". **p.54 s.47.(1)**

R6.6 That a section be added to the Queensland Constitution stating that (a) the Governor appoints as Premier the Member of the Legislative Assembly who, in the Governor's opinion, is most likely to command the support of a majority in the Legislative Assembly, and (b) removes the Premier following a vote of no confidence passed by the Legislative Assembly. **p.55 s.41.(1) and (3)**

R6.7 That a section be added to the Queensland Constitution stating that (a) Cabinet is collectively responsible to the Legislative Assembly, and (b) is the principal instrument of policy. **p.55 s.40**

Chapter 7

R7.1 That certain statutory office-holders (the Auditor-General, the Crime Commissioner, the Criminal Justice Commissioner, the Director of Public Prosecutions, the Electoral Commissioner, the Information Commissioner and the Parliamentary Commissioner for Administrative Investigations) be identified in the Queensland Constitution as requiring special provisions. **p.58 s.58**

R7.2 That those statutory office-holders be removed by a procedure comparable to that provided for the removal of judges. **p.58 s.59**

R7.3 That appropriate statutory committees be required to ensure that the offices of those statutory office-holders be given sufficient resources to discharge their responsibilities adequately. **p.58 PQBill, ss.86.(1)(e), 97.(c), 114**

Chapter 8

R8.1 That the provisions of the Queensland Constitution that (a) establish the Supreme Court and the District Court, (b) recognise the Supreme Court's superior jurisdiction, (c) set the duration of judge's appointments, and (d) relate to judge's salary, be referendum entrenched. **p.61 s.60, 61, 63.(1), 64.(1) and (2), 84**

R8.2 That a provision authorising the appointment of acting judges be added to the Queensland Constitution and referendum entrenched. **p.61 ss.67, 84**

R8.3 That the procedure for removal of a judge be amended to require that any resolution commencing the dismissal procedure state with full particulars the ground on which dismissal is sought. The principal provisions for removal by the Legislative Assembly after a tribunal's findings should be referendum entrenched. **p.62 s.64.(6)**

Chapter 9

R9.1 That the requirements that (a) taxation always have to be authorised by legislation and (b) that appropriation legislation be initiated by a recommendation from the Governor, be referendum entrenched. **p.63 ss.69, 72, 84**

Chapter 11

R11.1 That the provisions relating to local government be effectively entrenched by being subject to referendum entrenchment. **p.66 s.74, 84**

R11.2 That a provision supporting the restoration of elected government after the appointment of an administrator be added to the Queensland Constitution. **p.66 s.75.(4)**

R11.3 That superfluous words in s.69(4) be deleted. **p.66 s.75.(5)**

Chapter 12

R12.1 That referendum entrenchment be applied to designated sections of the Queensland Constitution. **p.76 s.84**

R12.2 That the application of referendum entrenchment to other sections be possible only after a referendum authorising it has been carried. **p.76 s.86**

R12..3 That parliamentary entrenchment apply to all sections of the Queensland Constitution requiring (a) delay of one calendar month between the First and Second Readings of a Bill to amend the Constitution, (b) a report on the Bill by the Legislative, Constitutional and Administrative Review Committee before the Second Reading, and (c) that the Bill have the words "Constitution Amendment" in its Short Title. **p.78 ss.82, 83**

R12.4 That Bills requesting amendment of the Queensland Constitution by the Commonwealth Parliament be covered by the same procedure as R12.3. **p.79 s.86**

R12.5 That (a) at least once in each decade the Legislative, Constitutional and Administrative Review Commission conduct a review of the Queensland Constitution and associated constitutional legislation, and (b) the Committee may

recommend that a Constitutional Convention may be chosen by appropriate means, including election, to conduct the review. **p.79 s.88**

Chapter 14

R14.1 That a provision be inserted that the appointment as Premier of the person who immediately before the commencement of the appropriate section was the Premier should not be affected. **p.81 s.92**

Chapter 16

R16.1 That (a) a Petitions Committee be established as a statutory committee, which (b) be required to report on all petitions received, (c) may refer a petition to the appropriate Minister for consideration, (d) may conduct hearings at its discretion, (e) may deal with several petitions in one inquiry, (f) may create guidelines, and (g) may recommend that an indicative plebiscite or a referendum or both be held. **p.83 PQBill, s.94**

R16.2 That s.78.(1) be amended to include the words "and extend democratic government". **p.83 PQBill, s.78.(1)**

R16.3 That two minor amendments to the Parliament of Queensland Bill be made in ss.5.(2), 10, and 11.(2)(g). **p.83 PQBill ss.5.(2), 10**

R16.4 That the object of statutory committees be extended to include enhancing the transparency of public administration. **p.84 PQBill, s.78.(1)**

R16.5 That the Speaker be designated to advise the Treasurer when the seat of a Member becomes vacant. **p.84 PQBill, s.127 (s.13.(2))**

R16.6 That the disqualification provisions be extended to include offences in respect of enrolment in both State and Commonwealth electoral law. **p.84 PQBill, s.72.(1)(i), (ii), (iia), and (iib)**

R16.7 That the provision requiring a separate appropriation for the Legislative Assembly be transferred from the Parliament of Queensland Bill to the Queensland Constitution. **p.85 s.18**

Chapter 17

R17.1 That the Referendums Act 1997 be amended to provide for (a) indicative plebiscites which (b) might be conducted by post, and (c) counted electronically. **p.86 PQBill, ss.127-29, Sch.1**

Chapter 18

R18.1 That the Minister of Education made a ministerial statement regularly to inform the Legislative Assembly of progress on the implementation of civic education in the State. **p.88**

R18.2 That the Electoral Commission Queensland be encouraged to develop an electoral education centre and adequate resources for such a facility be provided. **p.89**

The Commission has also mentioned certain matters which it believes warrant consideration, without making a formal recommendation for action. These were:

- compilation of a composite single document concerning the State's boundaries; **p.2**
- again appointing a Lieutenant-Governor for the State; **p.56**
- make more widely known the fact and extent of prior consultation which takes place before judicial appointments are made; **p.62**
- the Legislative Assembly consider whether it wishes to retain the power to imprison for contempt; **p.84**
- greater provision of courses about Australian government and politics in the field of adult education. **p.89**

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APPENDIX A

Commissions of Inquiry Act 1950

COMMISSIONS OF INQUIRY ORDER (No. 1) 1999

TABLE OF PROVISIONS

Short Title

1. This Order in Council may be cited as Commission of Inquiry Order (No. 1) 1999.

Commencement

2. This Order in Council commences on 13 May 1999.

Appointment of Commission

3. Under the provisions of the Commissions of Inquiry Act 1950 and all other enabling powers Colin Hughes, Manfred Cross AM, Jacki Huggins, Virginia Hall and Sir James Killen KCMG are appointed to make full and careful inquiry in an open and independent manner with respect to the following matters:-

   Subject to paragraph (e) below to:-

   (a) Research and investigate whether there should be reform of and changes to the Acts and laws that relate to the Queensland Constitution;

   (b) Seek submissions from the public as to whether there should be reform of and changes to the Act and laws that relate to the Queensland Constitution;

   (c) If the Australian people at a referendum held in accordance with Section 128 of the Commonwealth Constitution approve a proposed law to amend the Commonwealth Constitution and thereby establish Australia as a Republic, to also research and investigate what alterations would be necessary to the laws of Queensland to enable the State of Queensland to sever its links with the Crown;

   (d) By 1 February 2000 to make full and faithful report and recommendations touching the subject matter of inquiry including:

      (i) any recommended draft legislation in respect of the issues raised by paragraph (a) above; and

      (ii) any recommended draft legislation in respect of the issues raised by paragraph (c) above;

   and to transmit same to the Honourable the Premier;

   (e) The subject matter of this inquiry does not include the undertaking of a review of the unicameral nature of the Queensland Parliament.

Applicable Act

4. Apart from Sections 5, 5A, 5B, 7, 8, 9, 10, 11, 12, 13, 19, 19A, 19B and 19C, all other provisions of the Commissions of Inquiry Act 1950 shall be applicable to the inquiry.

Appointment of Chairperson

5. That Colin Hughes be appointed as Chairperson of the Commission established by this Instrument.

Ministerial Directions

6. The Honourable the Premier is to give the necessary directions herein accordingly.

ENDNOTES

1. Made by the Governor in Council on 13 May 1999
2. Published in the gazette on 14 May 1999
3. Not required to be laid before the Legislative Assembly.
4. The administering agency is the Department of the Premier and Cabinet.

APPENDIX B

QUEENSLAND CONSTITUTIONAL REVIEW COMMISSION

Reform of the Queensland Constitution

The Commission seeks written public submissions from individuals, community organisations and other bodies in relation to its inquiry into whether there should be reform of and changes to the Acts and laws that relate to the Queensland Constitution. This inquiry will culminate in a report by 1 February 2000 to the Honourable the Premier of Queensland.

The Issues Paper relating to the Commission's inquiry is now available. It focuses on Queensland's existing Acts and laws that relate to the Queensland Constitution. Issues raised for consideration in the Issues Paper include:

(1) the future amendment or entrenchment of the Queensland Constitution;
(2) the status of local government in the Queensland Constitution;
(3) the protections for independent statutory officer holders in Queensland;
(4) recognition of political parties in the Queensland Constitution; and
(5) whether the Queensland Constitution should have a preamble.

Copies of the Issues Paper may be inspected at major Public Libraries and the Commission's Public Reading Room from 2 August 1999. The Issues Paper may also be accessed via the internet which may be available at some public libraries at http://constitution.qld.gov.au/ The Commission's address is:

QUEENSLAND CONSTITUTIONAL REVIEW COMMISSION
PO BOX 185, Brisbane Albert Street QLD 4002

Initial submissions to the Issues Paper should be sent to the Commission by **17 September 1999**. Submissions received will be available for public inspection at the Commission's Public Reading Room and via the Internet. Comments in response to initial submissions should be sent to the Commission by 15 October 1999.

Commission Address:	Level 13, 126 Margaret Street, Brisbane
Telephone:	(07) 3224 2086
Facsimile:	(07) 3210 2503

COLIN A. HUGHES
Chairperson

QUEENSLAND CONSTITUTIONAL REVIEW COMMISSION

Public Hearing and Meeting

The Commission will hold a public hearing followed by a public meeting on Monday, 25 October, commencing at 10.00am in the **Civic Reception Room, Cairns City Council, 119-145 Spence Street, Cairns**. The public hearing concerns written submissions already received by the Commission. The public meeting which follows will provide an opportunity for members of the public and representatives or community organisations to have input to the Commission's review of the consolidated Queensland Constitution and its subsequent report to the Premier.

Copies of the Commission's Issues Paper may be inspected at major Public Libraries and the Commission's Public Reading Room. The Issues Paper may also be accessed via the internet which may be available at some public libraries at http://constitution.qld.gov.au

Commission Address: Level 13,
126 MargaretStreet,
Brisbane
Telephone: **(07) 3224 2086**
Facsimile: **(07) 3210 2503**

COLIN A. HUGHES
Chairperson

APPENDIX C

Submissions received

1. Robinson, Wilf
2. McFadyen, Ralph
3. Paterson, Graham L.
4. Evans, Harry
5. Bar Association (O'Connor, Daniell)
6. Williams, George
7. Davies, K. M.
8. Womens Electoral Lobby, Cairns (Trewern, Joan)
9. Sadler, Robert C.
10. Hinterland Shire Steering Committee (McAlister, H)
11. Sheehy, B. T.
12. McFayden, Ralph (Second Submission, also s.02)
13. Carney, (Assoc Prof) Gerard
14. Luckman, Kelly
15. Jull, Peter & Kajlich, Helena
16. Criminal Justice Commission (Butler, Brendan SC)
17. Walker, Prof Geoffery
18. Rollason, B. M.
19. K, Phillip
20. Pyke, John
21. Anti-Discrimination Commission (Walters, Karen)
22. Auditor-General (Scanlan, L. J.)
23. Redland Shire (Santagiuliana, Mayor Eddie)
24. Hinterland Shire Steering Committee (Second Submission, also s.10)
25. Willis, Don
26. Paterson, Graham L (Second Submission, also s.03 and s.32)
27. Friis, Peter C.
28. Coleman, Pat
29. Hoy, David B.

30. Local Government Association (Hoffman, Greg)
31. Johns, Gary
32. Paterson, Graham L (Third Submission, also s.03 and s.26)
33. Willis, Don (Second Submission, also s.25)
34. Aboriginal Co-ordinating Council

Queensland

CONSTITUTION OF QUEENSLAND 2000

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Queensland

CONSTITUTION OF QUEENSLAND 2000

TABLE OF PROVISIONS

2000

A BILL

FOR

An Act to consolidate the laws relating to the Constitution of the State of Queensland

DRAFT

Preamble—(new)

Parliament's reasons for enacting this Act are—

1. Since the *Australia Acts 1986* no law made by the Parliament of the United Kingdom extends to the State of Queensland.

2. Previously the Parliament of the United Kingdom was the ultimate authority for the Acts, Laws and Documents relating to the Constitution of the State of Queensland.

3. We, the people of the State of Queensland, wish to continue as free and equal citizens under the Rule of Law, and to be governed in accordance with the democratic processes contained in this Constitution.

4. Being within the federal Commonwealth of Australia, we recognise we are subject also to its Constitution.

6. In a spirit of reconciliation, we recognise the contribution of both Aboriginal and Torres Strait Islander peoples as the original occupants and custodians of this land.

7. We declare we respect the equality of all persons under the law, regardless of class, origin, race, religion or sex, and recognise the contribution they make to the State of Queensland.

8. We declare we respect the land and the environment we all share.

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

Short title (DD s 1)

1. This Act may be cited as the *Constitution of Queensland 2000*.

Commencement (DD s 2)

2. This Act commences on a day to be fixed by proclamation.

Object (~EARC reprint s 3(1) + (4), DD s 3, new)

3.(1) This Act declares, consolidates and modernises the Constitution of Queensland.

(2) It is intended that before this Act is assented to by or on behalf of the Sovereign, the Bill for the Act must first be approved by the majority of electors qualified to vote for members of the Legislative Assembly in a vote taken as prescribed by Parliament.

(3) The Constitution is the highest rule of the legal system.

References to the Sovereign (DD s 4)

4. A reference in this Act to the Sovereign is a reference to the Queen or King for the time being, and, if necessary, includes the Queen's or King's heirs and successors.

CHAPTER 2—PARLIAMENT

PART 1—CONSTITUTION AND POWERS OF PARLIAMENT

Legislative Assembly (CA s 1, EARC reprint s 5, DD s 5)

5. [1]There is to be within the State of Queensland a Legislative Assembly.

Law-making power (CA s 2, EARC reprint s 6, DD s 6)

6. [2]Within the State of Queensland, the Sovereign has power by and with the advice and consent of the Legislative Assembly to make laws for the peace, welfare and good government of the State in all cases.

The Parliament (CA s 2A, EARC reprint s 4, DD s 7)

7.(1) [3]The Parliament of Queensland consists of the Sovereign and the Legislative Assembly.

(2) Every Bill, after its passage through the Legislative Assembly, must be presented to the Governor for royal assent and has no effect unless it has received royal assent.

Powers, rights and immunities of Legislative Assembly (CA s 40A, DD s 8)

8.(1) The powers, rights and immunities of the Legislative Assembly and its members and committees are—

(a) the powers, rights and immunities defined under Act; and

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1 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

2 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

3 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

(b) until defined under Act—the powers, rights and immunities, by custom, statute or otherwise, of the Commons House of Parliament of the United Kingdom and its members and committees at the establishment of the Commonwealth.[4]

(2) In this section—

"rights" include privileges.

Members of Legislative Assembly (CA s 28, DD s 9, new)

9. [5]The Legislative Assembly is to consist of directly elected members who are eligible[6] to be elected by the inhabitants of the State who are eligible[7] to elect members.

Division of State into electoral districts (DD s 10)

10. The State is to be divided into the same number of electoral districts as there are members of the Legislative Assembly.[8]

1 member for each electoral district (LAA s 4, EARC reprint s 8, DD s 11)

11. [9]Each member of the Legislative Assembly is to represent 1 of the electoral districts.

4 Date of establishment of the Commonwealth—1 January 1901

5 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

6 See the *Parliament of Queensland Bill*.

7 See the *Electoral Act 1992*.

8 The *Electoral Act 1992* sets out the process.

9 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

Number of members of Legislative Assembly (LAA s 3, EARC reprint s 7, DD s 12)

12. The Legislative Assembly is to consist of 89 members.

Power to alter system of representation (CA 1867 s 10, DD s 13)

13. The Parliament under an Act may—

(a) vary the electoral districts of the State that are to be represented in the Legislative Assembly; and

(b) establish new and other electoral districts; and

(c) vary the number of members to be elected to the Legislative Assembly; and

(d) vary and regulate the appointment of returning officers and make any new and other provision that it considers convenient for the issuing and return of writs for the election of members to the Legislative Assembly and the time and place of holding the elections.

PART 2—PROCEDURAL REQUIREMENTS FOR THE LEGISLATIVE ASSEMBLY

Summoning, proroguing and dissolution of Legislative Assembly (CA s 27 + part of s 12, DD s 14, new)

14.(1) The Governor may summon the Legislative Assembly in the Sovereign's name by instrument under the Public Seal of the State.

(2) The Governor may prorogue the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.

(3) Subject to subsection (4), the Governor may dissolve the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.

(4) The Governor may not dissolve the Legislative Assembly unless—

(a) a period of three years has elapsed since the day of its first meeting after a general election; or

(b) the Legislative Assembly has passed a motion of no confidence in the government; or

(c) the Legislative Assembly has defeated a motion of confidence in the government; or

(d) the Legislative Assembly has rejected a Bill for an Appropriation Act, or an Annual Appropriation Act, within the meaning of the *Financial Administration and Audit Act 1977*; or

(e) the Legislative Assembly has failed to pass a Bill for an Appropriation Act, or an Annual Appropriation Act, within the meaning of the *Financial Administration and Audit Act 1977* before the time that the Governor by a message has informed the Legislative Assembly that the appropriation is required.

Duration of Legislative Assembly to be 4 years maximum (CAAA 1890 s 2, DD s 15, new)

15. [10]Every Legislative Assembly is to continue for a maximum of 4 years from the day appointed for the return of the writ for a general election of its members.

Time and place for sessions of Legislative Assembly (part of CA s 12, DD s 16)

16.(1) The Governor may set the times and places in Queensland for sessions of the Legislative Assembly that the Governor considers appropriate.

(2) The Governor may change the times and places if the Governor considers change advisable and more consistent with general convenience and the public welfare.

(3) The Governor must give sufficient notice of a change.

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[10] This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

Minimum sitting requirement for Legislative Assembly (CA s 3, EARC reprint s 11, DD s 17, new)

17.(1) The Legislative Assembly must meet at least twice in every calendar year.

(2) Six months must not pass between a sitting of the Legislative Assembly and the next sitting of the Legislative Assembly.

PART 3—APPROPRIATION FOR LEGISLATIVE ASSEMBLY

Separate appropriation for Legislative Assembly (EARC QPB s 200, DD s 109, new)

18.(1) Legislation appropriating the consolidated fund for the Legislative Assembly and the parliamentary service, including salaries payable under the *Parliamentary Service Act 1988* and the *Parliamentary Members' Salaries Act 1988*, must be contained in a Bill separate from legislation about appropriations for other purposes.

(2) However, subsection (1) does not apply to legislation appropriating the consolidated fund for the Legislative Assembly and the parliamentary service pending the passing of an Annual Appropriation Act making appropriations for the Legislative Assembly and the parliamentary service.

(3) This section is to be read with the *Financial Administration and Audit Act 1977.*

PART 4—MEMBERS

Division 1—Generally

Eligibility to stand for election as a member (Electoral Act s 83(1), part of s 83(2), EARC reprint s 27, DD s 18)

19.(1) [11]An adult who is an Australian citizen living in Queensland is eligible to stand for election as a member of the Legislative Assembly.

(2) However, a person disqualified under an Act from standing for election is not eligible to stand for election.

(3) Subsection (1) is subject to any conditions imposed by an Act.

Disqualification of member (part of CA s 7, EARC reprint s 29, DD s 19)

20.(1) No person who is disqualified under an Act from being a member of the Legislative Assembly is capable of becoming a candidate for election as a member or becoming a member.[12]

(2) A member of the Legislative Assembly who becomes disqualified under an Act from being a member ceases to be a member in accordance with that Act.

No member to sit or vote without first taking oath (CA s 4 + 5, DD s 20)

21.(1) No member may sit or vote in the Legislative Assembly unless the member has made the oath or affirmation of allegiance in the schedule.

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11 This section is a basic statement about eligibility. The *Parliament of Queensland Bill* contains specific provisions about the qualification of members.

12 This section is a basic statement about disqualification. The *Parliament of Queensland Bill* contains specific provisions about the disqualification of members and the effect of unduly qualified members on the validity of the operations of Parliament.

(2) The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.

Division 2—Members who are Ministers or Parliamentary Secretaries

Ministers (DD s 21)

22. The law relating to the appointment of members as Ministers or Acting Ministers is set out in chapter 3, part 3.[13]

Appointment of Parliamentary Secretaries (CA s 57, DD s 22, new)

23.(1) The Governor in Council may appoint members of the Legislative Assembly, not being more than 5, as Parliamentary Secretaries.

(2) However, a Minister may not be appointed as a Parliamentary Secretary.

Functions of Parliamentary Secretary (CA s 58, DD s 23)

24. A Parliamentary Secretary has the functions decided by the Premier.

Duration of appointment as Parliamentary Secretary (CA s 59, DD s 24, new)

25.(1) The appointment of a member of the Legislative Assembly as a Parliamentary Secretary ends on the polling day of the next election conducted of the members of the Legislative Assembly.

(2) However, the appointment ends before polling day if—

(a) the member's seat becomes vacant otherwise than because the Legislative Assembly is dissolved or expires by the passage of time; or

(b) the member resigns as Parliamentary Secretary by written notice of resignation given to the Premier; or

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13 Chapter 3 (Governor and Executive Government), part 3 (Cabinet, the Premier and Ministers of the State)

(c) the member is appointed as a Minister; or

(d) the appointment is ended by the Governor in Council under subsection (3).

(3) The Governor in Council may, at any time, end the appointment for reasons the Governor in Council considers sufficient.

Reimbursement of Parliamentary Secretary's expenses (CA s 60, DD s 25)

26.(1) A Parliamentary Secretary is entitled to be reimbursed the Parliamentary Secretary's reasonable expenses of office.

(2) The consolidated fund is appropriated for the reimbursement.

CHAPTER 3—GOVERNOR AND EXECUTIVE GOVERNMENT

PART 1—INTERPRETATION

Governor (COGA s 12, DD s 26)

27. "Governor" means—

(a) generally—the person appointed for the time being to the office of Governor of the State; and

(b) for sections 28, 34, 35, 38, 39, 49 and 51[14]—includes a person for the time being exercising the Governor's powers under a delegation as Deputy Governor under section 38 and a person for

[14] Sections 28 (Governor in Council), 34 (Power of Governor—removal or suspension of officer), 35 (Power of Governor—relief for offender), 38 (Delegation by Governor to Deputy Governor), 39 (Administration of Government by Acting Governor), 49 (Executive Council) and 51 (Meetings of Executive Council)

the time being administering the Government of the State as Acting Governor under section 39.

Governor in Council (EARC reprint s 21, DD s 27)

28. The Governor in Council is the Governor acting with the advice of Executive Council.

PART 2—GOVERNOR

Office of Governor (CA ss 11A + ~11B, COGA s 3(1), EARC reprint ss 16-18, DD ss 28- 30, AA s 7(1) + (5))

29.(1) [15]There must be a Governor of Queensland.

(2) The Governor is the Sovereign's representative in Queensland and holds office during the Sovereign's pleasure.

(3) The Governor must be appointed by commission under the Royal Sign Manual.

(4) The appointment of a person as Governor may be terminated only by instrument under the Royal Sign Manual.

(5) The instrument takes effect on its publication in the gazette or at a later time stated in the instrument.

(6) Advice to the Sovereign in relation to the appointment and termination of the appointment of a person as Governor is to be tendered by the Premier.

(7) In this Act and in every other Act, a reference to the Governor is taken—

(a) to be a reference to the person appointed for the time being by the Sovereign by commission under the Royal Sign Manual to the office of Governor of the State of Queensland; and

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[15] Subsections (1), (6) and (7) are referendum entrenched provisions—see section 84 (Referendum entrenchment).

(b) to include any other person appointed by dormant or other commission under the Royal Sign Manual to administer the Government of the State of Queensland.

(8) In this section—

"Royal Sign Manual" means the signature or royal hand of the Sovereign.

Sovereign's functions and powers in relation to Queensland (AA s 7(2), (4) + (5), new)

30.(1) The executive power of Queensland is vested in the Sovereign and extends to the administration of the Constitution and the laws of Queensland.

(2) Subsection (1) does not limit the Sovereign's other functions and powers in relation to Queensland.

(3) Subject to subsections (4) and (5), all functions and powers of the Sovereign in relation to Queensland may be performed or exercised only by the Governor.

(4) Subsection (3) does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor.

(5) While the Sovereign is personally present in Queensland, he or she is not precluded from performing or exercising any of His or Her functions and powers in relation to Queensland.

(6) Advice to the Sovereign in relation to the performance or exercise of the Sovereign's functions and powers in relation to Queensland is to be tendered by the Premier.

Publication of commission, declaration of allegiance and office (COGA s 5, DD s 31)

31.(1) Before undertaking any duties as Governor, a person appointed as Governor must, in the presence of the Chief Justice, or the next most senior judge of the State who is able to act, (the **"judicial officer"**) and of at least 2 members of the Executive Council—

(a) cause the commission appointing the person as Governor to be read and published at the seat of government of the State; and

(b) make the oath or affirmation of allegiance and the oath or affirmation of office in the schedule, subject to and in accordance with the law and practice of the State.

(2) The judicial officer must administer the oaths or affirmations.

General power of Governor (COGA s 4(1), EARC reprint s 20, DD s 33)

32. The Governor is authorised and required to do all things that belong to the Governor's office under any law.

Power of Governor–Supreme Court declaration (new)

33.(1) This section applies if the Governor considers—

(a) the Premier is engaging in illegal conduct or official misconduct; or

(b) a Minister is engaging in illegal conduct or official misconduct and the Premier is failing to take appropriate action to recommend the Minister's dismissal.

(2) On application by the Governor, the Supreme Court may—

(a) consider the conduct alleged to be illegal conduct or official misconduct; and

(b) if it considers the conduct to be illegal conduct or official misconduct—make a declaration to that effect.

(3) Before the Supreme Court decides the application it must ensure the Premier has been given the grounds of the application and an opportunity to provide evidence and make submissions to the court.

(4) This section does not limit the powers of the Governor.

(5) In this section—

"official misconduct" means official misconduct as defined under the *Criminal Justice Act 1989*.

Power of Governor—removal or suspension of officer (COGA s 8(a), DD s 35)

34.(1) This section applies without prejudice to the operation of another Act.

(2) To the extent it is within the Governor's power and if the Governor considers there is sufficient reason, the Governor may remove or suspend from office a person holding an office or place under an appointment made in the name or under the authority of the Sovereign.

Power of Governor—relief for offender (COGA s 8(b), DD s 36)

35.(1) This section applies without prejudice to the operation of another Act.

(2) If an offender may be tried in the State for an offence (not being an offence against a Commonwealth law), the Governor may grant the offender, in the name and on behalf of the Sovereign—

(a) a pardon, a commutation of sentence or a reprieve of execution of sentence for a period the Governor considers appropriate; or

(b) a remission of a fine, penalty, forfeiture or other consequence of conviction of the offender.

(3) The grant may be unconditional or subject to lawful conditions.

Power of Governor—public seal (COGA s 4(2), DD s 37)

36. The Governor may keep and use the Public Seal of the State for sealing all public instruments made and passed in the Sovereign's name.

Statutory powers when Sovereign personally in State (RPA s 2, DD s 38)

37.(1) When the Sovereign is personally present in the State, any power under an Act exercisable by the Governor may be exercised by the Sovereign.

(2) The Governor has the same powers in relation to an act done, or an instrument made, by the Sovereign under this section as the Governor has

in relation to an act done, or an instrument made, by the Governor himself or herself.

(3) This section does not affect or prevent the exercise of any power under an Act by the Governor.

(4) In this section, references to the Governor or to the Sovereign include references to the Governor, or to the Sovereign, acting with the advice of the Executive Council.

Delegation by Governor to Deputy Governor (~COGA 10(1) + (4), DD s 39)

38.(1) The Governor may delegate the Governor's powers to the person mentioned in subsection (2) only during any or all periods—

(a) the Governor is temporarily absent for a short period from the State or from the seat of government but not from the State, except when administering the Government of the Commonwealth; or

(b) the Governor is ill if there are reasonable grounds for believing the illness will be of short duration.

(2) The person to whom the Governor's powers may be delegated is—

(a) the Lieutenant-Governor; or

(b) if there is no Lieutenant-Governor in the State and able to act—the Chief Justice; or

(c) if there is no Chief Justice in the State and able to act—the next most senior judge of the Supreme Court of Queensland who is in the State and able to act.

(3) The delegation must be by an instrument under the Public Seal of the State and specify the power given to the delegate.

(4) A person exercises the Governor's powers under a delegation as Deputy Governor.

Administration of Government by Acting Governor (~COGA s 9, DD s 40)

39.(1) The person mentioned in subsection (3) must administer the government of the State during any period—

(a) the office of Governor is vacant; or

(b) the Governor assumes the administration of the Government of the Commonwealth; or

(c) the Governor is incapable or absent from the State unless a Deputy Governor is exercising the Governor's powers under section 38.

(2) The Governor is taken not to be absent from the State for subsection (1)(c) if the Governor is beyond the boundaries of the State in the course of travel from 1 part of the State to another part of the State.

(3) The person who must administer the Government of the State is—

(a) the Lieutenant-Governor; or

(b) if there is no Lieutenant-Governor in the State and able to act—the Chief Justice; or

(c) if there is no Chief Justice in the State and able to act—the next most senior judge of the Supreme Court of Queensland who is in the State and able to act.

(4) A person administering the Government of the State under this section has all the functions and powers of the Governor and performs the functions and exercises the powers as Acting Governor.

(5) Before assuming the administration of the Government of the State, the person must have previously taken, or must take as soon as is reasonably practicable after the occasion arises for the person to administer the State, the oaths or affirmations directed by section 31[16] to be taken by the Governor in the way stated in section 31.

(6) The person must not continue to administer the Government of the State after—

(a) the Governor, by proclamation; or

16 Section 31 (Publication of commission, declaration of allegiance and office)

(b) some other person holding an office prior in title to administer the Government of the State under subsections (1) and (3), by gazette notice on the advice of and signed by the Premier;

has given notice that the Governor or other person has assumed or resumed or is about to assume or resume, the administration of Government of the State.

PART 3—CABINET, THE PREMIER AND MINISTERS OF THE STATE

Cabinet (new)

40.(1) There is to be a Cabinet consisting of the Premier and a number of other Ministers appointed under section 43.

(2) The Cabinet is the government's principal instrument of policy.

(3) The Cabinet has, and is collectively responsible to Parliament for, the government's general direction and control.

Premier (new)

41.(1) Whenever the Governor has occasion to appoint a Premier the Governor may appoint as Premier the member of the Legislative Assembly the Governor considers is best able to command the confidence of a majority of the members of the Legislative Assembly.

(2) The Premier is a Minister of the State.

(3) If the Legislative Assembly by a resolution supported by a majority of its members resolves that the Premier's appointment should be revoked, the Governor must revoke the appointment.

Information for Governor (new)

42. The Premier is to keep the Governor fully informed of the general conduct of the government and give the Governor the information the

Governor may request on any particular matter relating to the government that is relevant to the performance or exercise of the Governor's functions or powers.

Appointment of other Ministers of the State (~part OPA s 3(1), ~EARC reprint s 25, OPA s 8A, DD s 41, new)

43.(1) The Governor, on the Premier's advice, must appoint from among the members of the Legislative Assembly, the number of other Ministers of the State as the Premier may advise.[17]

(2) To remove any doubt, it is declared that the Attorney-General is a Minister.

(3) The maximum number of Ministers at any time is 18.

Oath or affirmation of allegiance and of office by Premier and other Ministers (LCARC s 42(4) + (5))

44.(1) The Premier or other Minister must, before entering on the duties of office, make the oath or affirmation of allegiance and of office in the schedule.

(2) The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.

Administrative arrangements (~AIA s 33(14), ~ EARC reprint s 25(2), DD s 42)

45. The Governor in Council may make administrative arrangements—

(a) distributing the public business, or any of that business, among the several departments of government or any of those departments; or

(b) showing—

(i) the offices or any of the offices placed under the control of each Minister respectively, or of any Minister; and

[17] This was previously a reference to 'officers of the Crown liable to retire from office on political grounds'.

(ii) the Acts, or any of the Acts administered by, each Minister respectively, or by any Minister.

Minister may act for another Minister (~OPA s 8, DD s 43)

46.(1) The Governor or Premier may, in writing, appoint a Minister to perform all or any of the functions, and exercise all or any of the powers, of another Minister.

(2) However, an appointment by the Premier may not be for a period of more than 14 days.

Acting Ministers (~OPA s 3(3) + (4), DD s 44)

47.(1) The Governor may appoint a person who is a member of the Legislative Assembly to the Executive Council to act as a Minister for any or all periods—

(a) the Minister is absent from the State in the course of the duties of the office; or

(b) the Minister is absent on leave given under section 48.

(2) A person who is already a Minister may not be appointed under subsection (1).

(3) The person may be appointed to perform all or any of a Minister's functions and exercise all or any of a Minister's powers.

(4) If a person acts as a Minister for a continuous period of 30 days or more, then, in addition to the salary payable to the person as a member of the Legislative Assembly, the person must be paid additional salary at the rate applicable to the office of Minister.[18]

Sick leave (OPA s 3(2), DD s 45)

48. The Governor may, by proclamation, give a Minister who is ill leave of absence with pay for a period of not more than 6 months.

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18 See the *Parliamentary Members' Salaries Act 1988*.

PART 4—EXECUTIVE COUNCIL

Executive Council (part of COGA s 6, EARC reprint s 22, DD s 46)

49.(1) There must be an Executive Council for the State.

(2) Executive Council consists of the persons appointed as members of the Executive Council by the Governor under the Public Seal of the State.

(3) A member of the Executive Council must, before entering on the duties of the member's office, make an oath or affirmation of office and of secrecy in the schedule.

(4) The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.

Duration of appointment as members of Executive Council (part of COGA s 6, DD s 47)

50. The appointment of a person as a member of Executive Council ends only on the happening of either of the following—

(a) the person's resignation as a member of Executive Council;

(b) the person's removal from Executive Council by the Governor.

Meetings of Executive Council (COGA s 7, EARC reprint s 24, DD s 48)

51.(1) The Governor must preside over a meeting of Executive Council.

(2) However, if for good reason, the Governor can not preside, Executive Council must be presided over by—

(a) if the Governor has appointed a member of Executive Council to preside—the member; or

(b) if the Governor does not appoint a person to preside—the member who is taken to be the most senior member present.

(3) Executive Council must not deal with any business at a meeting unless—

(a) it has been properly summoned to meet by the Governor; and

(b) at least 2 members, other than any presiding member, are present for the entire meeting.

PART 5—POWERS OF THE STATE

Division 1—General

Powers of the State (AIA s 47A + 47B, DD s 49)

52.(1) The Executive Government of the State of Queensland (the **"State"**) has all the powers, and the legal capacity, of an individual.

(2) The State may exercise its powers—

(a) inside and outside Queensland; and

(b) inside and outside Australia

(3) This part does not limit the State's powers.

Example—

This part does not affect any power a Minister has apart from this part to bind the State by contract.

Division 2—Commercial activities

Definitions for div 2 (AIA s 47C, DD s 50)

53. In this division—

"commercial activities" includes—

(a) commercial activities not within the ordinary functions of the State; and

(b) commercial activities of a competitive nature; and

(c) activities declared under regulation to be commercial activities;

but does not include activities declared by regulation not to be

commercial activities.

"State" includes—

(a) a department of government of the State; and

(b) a part of a department of government of the State.

Commercial activities by State (AIA s 47C, DD s 51)

54.(1) The State may carry out commercial activities.

(2) This section is sufficient statutory authority for the State to carry out a commercial activity.

(3) Commercial activities may be carried out—

(a) without further statutory authority; and

(b) without prior appropriation from the public accounts for the purpose.

(4) Commercial activities may be carried out—

(a) inside and outside Queensland; and

(b) inside and outside Australia.

Commercial activities by Minister (AIA s 47D, DD s 52)

55. A Minister may carry out commercial activities for the State.

Delegation by Minister (AIA s 47E, DD s 53)

56.(1) A Minister may delegate the State's powers to an appropriately qualified officer of the State.

(2) An officer of the State may subdelegate delegated powers to another appropriately qualified officer of the State.

(3) In this section—

"appropriately qualified" includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

A person's level of employment in the entity in which the person is employed.

"officer of the State" means—

(a) a chief executive, or employee, of a public sector unit; or

(b) an officer of the public service.

Regulation-making power (AIA s 47F, DD s 54)

57. The Governor in Council may make regulations under this part.

CHAPTER 4—STATUTORY OFFICE HOLDERS

Declaration about particular statutory office holders (new)

58.(1) It is declared that the statutory office holders mentioned in subsection (3) have responsibilities and duties that require they be independent and subject only to the law.

(2) They must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(3) The statutory office holders are—

(a) the auditor-general; and

(b) the crime commissioner; and

(c) the criminal justice commissioner; and

(d) the director of public prosecutions; and

(e) the electoral commissioner; and

(f) the information commissioner; and

(g) the parliamentary commissioner for administrative investigations.

Removal of statutory office holder for misbehaviour or incapacity (new)

59.(1) This section applies to a statutory office holder mentioned in section 58.

(2) The statutory office holder may be removed from office only by the Governor on the address of the Legislative Assembly for proved misbehaviour or proved incapacity.

(3) The address may only be made after a tribunal has found that, on the balance of probabilities, the person to be removed has misbehaved, or is incapable of performing the duties of office, and the person's removal is justified.

(4) The tribunal is to consist of at least 3 persons, including—

(a) a chairperson who is a former judge or former justice of a State or Federal superior court in Australia; and

(b) 2 other members who are barristers, of at least 5 years standing, of the High Court or a Supreme Court of any Australian jurisdiction.

(5) The tribunal members are to be appointed by resolution of the Legislative Assembly.

(6) The resolution under subsection (5) must state full particulars of the grounds on which it is proposed to remove the statutory office holder.

(7) The tribunal has the functions, powers, protection and immunity given by an Act.

CHAPTER 5—COURTS

Supreme Court and District Court (SCQA 1991 s 7, DCA 1967 s 4, EARC reprint s 32, DD s 55)

60. [19]There must be a Supreme Court of Queensland and a District Court.

Supreme Court's superior jurisdiction (SCQA 1991 s 8, EARC reprint s 33, DD s 56)

61.(1) [20]The Supreme Court has all jurisdiction necessary for the administration of justice in Queensland.

(2) Without limiting subsection (1), the court—

(a) is the superior court of record in Queensland and the supreme court of general jurisdiction in and for the State; and

(b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.

Appointment of judges (SCQA 1991 s 12, DCA s 9, DD s 57)

62. The Governor in Council may, by commission, appoint a barrister or solicitor of the Supreme Court of at least 5 years standing to be a judge of the Supreme Court or District Court.

Length of judge's appointment (CA s 15, SCQA 1991 s 23, SCA 1995 s 195(1), DCA s 14(1) + (2), EARC reprint s 35, DD s 58)

63.(1) [21]A judge holds office indefinitely during good behaviour.

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19 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

20 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

21 Subsection (1) is a referendum entrenched provision—see section 84 (Referendum entrenchment).

(2) However, a judge must retire at 70 years.

(3) Despite subsection (2), a judge who, before reaching 70 years, starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.

(4) A judge's appointment is unaffected by the end of the Sovereign's reign.

(5) In this section—

"judge" means a Supreme Court judge or a District Court judge.

Removal of judge for misbehaviour or incapacity (CA s 16, SCA 1995 s 195(2), DCA s 15, EARC reprint s 36 with PCEAR pars 47, 52, 58, 60, 67 and 69, DD s 59, new)

64.(1) [22]A Supreme Court judge or a District Court judge may be removed from office only by the Governor on the address of the Legislative Assembly for proved misbehaviour or proved incapacity.

(2) The address may only be made after a tribunal has found that, on the balance of probabilities, the person to be removed has misbehaved, or is incapable of performing the duties of office, and the person's removal is justified.

(3) The tribunal is to consist of at least 3 persons.

(4) A tribunal member must—

(a) be a former judge or former justice of a State or Federal superior court in Australia; and

(b) not be a former judge of the court of which the person who may be removed is a judge.

(5) The tribunal members are to be appointed by resolution of the Legislative Assembly.

(6) The resolution under subsection (5) must state full particulars of the grounds on which it is proposed to remove the judge.

[22] Subsections (1) and (2) are referendum entrenched provisions—see section 84 (Referendum entrenchment).

(7) The tribunal has the functions, powers, protection and immunity given by an Act.

Judge's salary (CA s 17, SCA 1995 s 196, EARC reprint s 37(1) with PCEAR par 79, DD s 60)

65.(1) A judge must be paid a salary at the rate applicable to the judge's office.

(2) This Act authorises payment of the amount for judges' salaries from the consolidated fund.

(3) The amount of a judge's salary may not be decreased.

(4) In this section—

"judge" means a Supreme Court judge or a District Court judge.

Protection if judicial office abolished (DD s 61)

66.(1) This section applies if a judicial office held by a Supreme Court judge or a District Court judge is abolished either directly or by abolition of a court or part of a court.

(2) The judge is entitled at least, without loss of salary, to be appointed to, and to hold, another judicial office of equivalent or higher status in the same court in which the judge held the abolished judicial office or in another court, unless the judge already holds that type of judicial office.

(3) The right mentioned in subsection (2)—

(a) continues for the period during which the judge would have been entitled to hold the abolished judicial office, subject to removal under section 64; and

(b) lapses if the judge fails to take up an appointment to the other judicial office or resigns from it.

Acting judges (new)

67.(1) [23]Despite section 63(1), the Governor in Council may, with the consent of the Chief Justice, by commission, appoint a barrister or solicitor of the Supreme Court of at least 5 years standing to be an acting judge of the Supreme Court for a period stated in the commission.

(2) Despite section 63(1), the Governor in Council may, with the consent of the Chief Judge, by commission, appoint a barrister or solicitor of the Supreme Court of at least 5 years standing to be an acting judge of the District Court for a period stated in the commission.

(3) An appointment as an acting judge may be renewed.

CHAPTER 6—REVENUE

Consolidated fund (CA s 34, DD 62)

68. All taxes, imposts, rates and duties and other revenues of the State are to form one consolidated fund to be appropriated for the public service of the State in the way, and subject to the charges, specified by this Act.

Requirement to pay tax, impost, rate or duty (Bill Rts art 4, DD s 63)

69. [24]A requirement to pay a tax, impost, rate or duty of the State must be authorised by Act.

Payment from consolidated fund (CA s 39(1), DD 64)

70.(1) The payment of an amount from the consolidated fund must be authorised by Act.

(2) Further, the Act authorising the payment must specify the purpose

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23 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

24 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

for which the payment is made.

(3) This section does not apply in relation to the costs, charges and expenses relating to the collection and management of the fund.

Charges on consolidated fund (CA s 35 + 39(1), EARC reprint s 41, DD s 65)

71.(1) The consolidated fund is permanently charged with all the costs, charges and expenses relating to the collection and management of the fund.

(2) The costs, charges and expenses are the first charge on the consolidated fund.

(3) However, the costs, charges and expenses may be reviewed and audited under an Act.

Governor's recommendation required for appropriation (CA s 18, EARC reprint s 42, DD s 66, new)

72.(1) [25]The Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of—

(a) an amount from the consolidated fund; or

(b) an amount required to be paid to the consolidated fund;

that has not first been recommended by a message of the Governor.

(2) The message must be given to the Legislative Assembly during the session in which the vote, resolution or Bill will be passed.

(3) Failure to comply with subsection (1) or (2) affects the validity of a vote, resolution or Bill passed only if, before the vote, resolution or Bill is passed, a member of the Legislative Assembly objects to the vote, resolution or Bill because of the failure.

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[25] This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

CHAPTER 7—LANDS

Lands (CA ss 30 + 40, EARC reprint s 9, DD s 67)

73.(1) Parliament may make laws for regulating the sale, letting, disposal and occupation of the waste lands of the Crown in Queensland.

(2) The entire management and control of the waste lands of the Crown in Queensland and also the appropriation of the gross proceeds of the sales of the lands and all other proceeds and revenues of the lands from any source including all royalties mines and minerals vest in the Parliament.

CHAPTER 8—LOCAL GOVERNMENT

PART 1—LOCAL GOVERNMENT SYSTEM

System of local government (part of CA s 54(1), EARC reprint s 43, DD s 68)

74.(1) [26]There must be and continue to be a system of local government in Queensland.

(2) The system consists of a number of local governments.

Requirements for a local government (CA s 54, EARC reprint s 44, DD s 69, new)

75.(1) A local government is an elected body charged with the good rule and local government of a part of Queensland allocated to the body.

(2) Other legislation (whenever made) decides the way in which a local government is constituted and the nature and extent of its functions and powers.

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26 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

(3) Despite subsection (1), if a local government is dissolved or is unable to be properly elected, other legislation (whenever made) may provide for all or any of the local government's functions to be performed and all or any of the local government's powers to be exercised by 1 or more appointed bodies or persons until the local government has been properly elected.

(4) The election of the councillors of the local government necessary to end a power mentioned in subsection (3) should be held as soon as possible after the dissolution of the local government or the event happens that stops a local government from being properly elected.

(5) In subsection (3)—

"local government" includes a joint local government.

PART 2—PROCEDURE RESTRICTING DISSOLUTION OF LOCAL GOVERNMENT AND INTERIM ARRANGEMENT

Dissolution of local government must be tabled (part of CA s 55(2), EARC reprint s 46(1), DD s 70)

76. A copy of an instrument purporting to dissolve a local government must be tabled in the Legislative Assembly within 14 sitting days after the instrument is made.

Suspension until dissolution ratified (CA s 55(2) + (5), EARC reprint s 47, DD s 71)

77.(1) From the time an instrument purporting to dissolve a local government is made until it is ratified under section 78 or its effect ends under section 79, it has the effect only of suspending the local government's councillors from office.

(2) During the suspension, 1 or more bodies or persons appointed by law to perform the functions and exercise the powers of the local

government because of its purported dissolution may be taken to be the local government and to perform its functions and exercise its powers.

Ratification of dissolution (CA s 55(2) + (3), EARC reprint s 48, DD s 72)

78.(1) The Legislative Assembly may, on the motion of the Minister responsible for local government, ratify the dissolution of a local government within 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled.

(2) If the Legislative Assembly ratifies the dissolution, the local government is dissolved in accordance with the instrument from the time of ratification.

No tabling or ratification of dissolution (CA s 55(4), EARC reprint s 49, DD s 73)

79.(1) This section applies if—

(a) a copy of the instrument purporting to dissolve the local government is not tabled under section 76;[27] or

(b) the Legislative Assembly refuses to ratify a dissolution of a local government moved by the Minister responsible for local government; or

(c) at the end of 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled—

(i) the Minister has not moved that the dissolution be ratified; or

(ii) the Legislative Assembly has not ratified the dissolution, even though the Minister has moved that it be ratified.

(2) The effect of the instrument purporting to dissolve the local government ends.

(3) The suspension from office of the local government's councillors ends and they are reinstated in their respective offices.

27 Section 76 (Dissolution of local government must be tabled)

(4) The appointment of a body or person appointed to perform the functions and exercise the powers of the local government because of its purported dissolution ends.

PART 3—SPECIAL PROCEDURES FOR CERTAIN LOCAL GOVERNMENT BILLS

Procedure for Bill affecting a local government (CA s 56(1), EARC reprint s 50, DD s 74)

80.(1) This section applies for a Bill for an Act that would—

(a) be administered by the Minister responsible for local government; and

(b) affect local governments generally or any of them.

(2) The member of the Legislative Assembly who is to be in charge of the passage of the Bill in the Legislative Assembly must, if the member considers it practicable, arrange for a summary of the Bill to be given to a body representing local governments in the State a reasonable time before the Bill is introduced in the Legislative Assembly.

CHAPTER 9—SPECIAL PROCEDURES FOR CONSTITUTIONAL BILLS

Introduction (new)

81.(1) This chapter provides for—

(a) clear identification of any Bill expressly or impliedly amending this Act by requiring inclusion in the Bill's short title of the words 'Constitution Amendment'; and

(b) entrenchment of the Constitution in recognition of it being the highest rule of the legal system.

(2) This chapter provides 2 levels of entrenchment of the Constitution—

(a) for every principle of this Act—parliamentary entrenchment; and

(b) for a referendum entrenched principle—additional referendum entrenchment.

(3) A reference in this chapter to a principle of this Act or a provision of this Act is a reference to a principle or rule of law enacted by the Act or provision, as opposed to the words used to express the principle or rule from time to time.

Short title words (new)

82. [28]If a Bill for an Act that expressly or impliedly amends this Act is enacted and assented to so as to be otherwise a valid law, the Act is nevertheless of no effect to the extent it expressly or impliedly amends this Act, unless the Act's short title includes the words 'Constitution Amendment'.

Parliamentary entrenchment (new)

83.(1) [29]This section applies to a Bill for an Act that offends against a principle of this Act, including a referendum entrenched principle under section 84.

(2) The Legal, Constitutional and Administrative Review Committee must report on the Bill.

(3) The Bill may not be presented for royal assent, and if enacted and assented to so as to be otherwise a valid law is nevertheless of no effect, unless—

(a) there is at least 1 month between the Bill's first reading and the Bill's second reading; and

(b) before the Bill's second reading, the Legal, Constitutional and

28 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

29 This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

Administrative Review Committee reports to the Legislative Assembly on the Bill.

(4) If subsection (3)(a) and (b) are satisfied for the Bill, the Bill may be presented to the Governor for royal assent.

(5) Subsection (4) does not apply to a Bill to which section 84 applies.

Referendum entrenchment (new)

84.(1) [30]This section applies to a Bill for an Act that offends against a referendum entrenched principle.

(2) The Bill may not be presented for royal assent, and if enacted and assented to so as to be otherwise a valid law is nevertheless of no effect, unless the Bill is approved by a majority of electors voting on the question.

(3) A Bill that must be approved by electors under this section must be submitted to electors for their approval in a referendum.

(4) The Bill may be presented to the Governor for royal assent if—

(a) section 83(3)(a) and (b) are satisfied for the Bill; and

(b) a majority of electors voting on the question approve the Bill.

(5) In this section—

"electors" means the persons entitled to vote at an election for members of the Legislative Assembly under the *Electoral Act 1992*.

"referendum" means a referendum under the *Referendums Act 1997*.

"referendum entrenched principle" means a principle of a referendum entrenched provision.

"referendum entrenched provision" means any of the following provisions—

- section 5
- section 6
- section 7

30 This section is itself a referendum entrenched provision—see subsection (5).

- section 9
- section 11
- section 15
- section 29(1), (6) and (7)
- section 60
- section 61
- section 63(1)
- section 64(1) and (2)
- section 67
- section 69
- section 72
- section 74
- section 82
- section 83
- section 84
- section 85
- section 86.

Effect of entrenchment on amendment etc. if principle preserved (new)

85. [31]Sections 83 and 84 do not prevent a provision of this Act being amended, or repealed and immediately re-enacted in this or another Act, without compliance with section 83(1)(a) and (b) or approval by a majority of electors under section 84, if the principle of the provision is effectively preserved.

[31] This is a referendum entrenched provision—see section 84 (Referendum entrenchment).

Referendum requirement for new referendum entrenchment or request Act (new)

86.(1) [32]This section applies to—

(a) a Bill for an Act—

(i) extending the definition of "referendum entrenched provision"; or

(ii) providing that a Bill for an Act amending a provision of this Act, other than a referendum entrenched provision, must be approved by a majority of electors voting on the question; and

(b) a Bill for an Act requesting the enactment by the Parliament of the Commonwealth of an Act that offends against a referendum entrenched principle.

(2) A Bill for an Act to which this section applies may not be presented for royal assent, and if enacted and assented to so as to be otherwise a valid law is nevertheless of no effect, unless the Bill is approved by a majority of electors voting on the question.

(3) A Bill that must be approved by electors under this section must be submitted to electors for their approval in a referendum.

(4) The Bill may be presented to the Governor for royal assent if—

(a) section 83(3)(a) and (b) are satisfied for the Bill; and

(b) a majority of electors voting on the question approve the Bill.

(5) In this section—

"electors" means the persons entitled to vote at an election for members of the Legislative Assembly under the *Electoral Act 1992*.

"referendum" means a referendum under the *Referendums Act 1997.*

"referendum entrenched principle" see section 84.

"referendum entrenched provision" see section 84.

[32] This section is a referendum entrenched provision—see section 84 (Referendum entrenchment).

CHAPTER 10—MISCELLANEOUS

Issue of compliance not justiciable (~COGA s 11, DD s 75)

87. Without affecting the justiciability of any other issue under this Act, it is declared that the issue of compliance with section 31, 38, 39, 44, 49 or 51[33] is not justiciable in any court.

Review of Constitution (new)

88.(1) At least once every 10 years, the Legal, Constitutional and Administrative Review Committee must—

(a) conduct a review of this Constitution and associated constitutional legislation; and

(b) report on the review to the Legislative Assembly.

(2) The committee may recommend that a Constitutional Convention be chosen in the way the committee considers appropriate, including wholly or partly by election, to conduct the review and report on the review to the Legislative Assembly.

(3) Subsection (1) does not apply if, in accordance with the committee's recommendation, a Constitutional Convention conducts the review and reports on the review to the Legislative Assembly.

References to Legal, Constitutional and Administrative Review Committee (new)

89.(1) This section applies if the Legal, Constitutional and Administrative Review Committee (the **"original committee"**) is replaced, either generally or in relation to constitutional reform, by another parliamentary committee having responsibility for constitutional reform (the **"new committee"**).

33 Section 31 (Publication of commission, declaration of allegiance and office), 38 (Delegation by Governor to Deputy Governor), 39 (Administration of Government by Acting Governor), 44 (Oath or affirmation of allegiance and of office by Premier and other Ministers), 49 (Executive Council) or 51 (Meetings of Executive Council)

(2) References in this Act to the original committee are taken to be references to the new committee.

CHAPTER 11—TRANSITIONAL PROVISIONS

Continuation of Legislative Assembly and its membership (EARC Bill cl 51, DD s 76, new)

90.(1) The Legislative Assembly as constituted immediately before the commencement of this section, is continued in existence under this Act.

(2) A person who, immediately before the commencement of section 21,[34] is a member of the Legislative Assembly—

(a) is taken to be a member of the Legislative Assembly under this Act; and

(b) is taken to have made the oath or affirmation of allegiance for the purpose of section 21.

(3) Section 14(4)[35] applies to the Legislative Assembly as constituted at any time on and after the first general election of members of the Legislative Assembly after the commencement of this section.

(4) Section 14(4) does not apply to the Legislative Assembly as constituted before the first general election of members of the Legislative Assembly after the commencement of this section.

Continuation of appointment of Governor (EARC Bill cl 47, DD s 77)

91. The appointment as Governor of the person who, immediately before the commencement of section 29,[36] was the Governor is not affected by the section's commencement.

34 Section 21 (No member to sit or vote without first taking oath)

35 Section 14 (Summoning, proroguing and dissolution of Legislative Assembly)

36 Section 29 (Office of Governor)

Continuation of appointment of Premier (new)

92. The appointment as Premier of the person who, immediately before the commencement of section 41,[37] was the Premier is not affected by the section's commencement.

Continuation of appointment as Minister of State (EARC Bill cl 49, DD s 78)

93. A person who, immediately before the commencement of section 43,[38] was an Officer of the Crown declared under the *Officials in Parliament Act 1896* to be capable of being elected as a member of the Legislative Assembly and of sitting and voting in the Legislative Assembly at the same time is taken to have been appointed as a Minister of the State under this Act.

Continuation of appointment as Parliamentary Secretary (DD s 79)

94.(1) A person who, immediately before the commencement of section 23,[39] was a member of the Legislative Assembly appointed as a Parliamentary Secretary is taken to have been appointed as a Parliamentary Secretary under this Act.

(2) The limitation on the number of parliamentary secretaries in section 23 does not apply to appointments under subsection (1).

Continuation of administrative arrangements (~EARC Bill cl 50, DD s 80)

95. The administrative arrangements as in force immediately before the commencement of section 45[40] are not affected by the section's commencement.

37 Section 41 (Premier)

38 Section 43 (Appointment of other Ministers of the State)

39 Section 23 (Appointment of Parliamentary Secretaries)

40 Section 45 (Administrative arrangements)

Continuation of Supreme Court (DD s 82)

96. The Supreme Court as formerly established as the superior court of record in Queensland is continued in existence.

Continuation of District Court (DD s 83)

97. The District Court as formerly established is continued in existence.

Continuation of appointment of judges (DD s 84)

98. The appointment as a Supreme Court judge or District Court judge of a person who, immediately before the commencement of section 62,[41] was a Supreme Court judge or District Court judge is not affected by the section's commencement.

Continuation of consolidated fund (EARC Bill cl 52, DD s 85)

99. The consolidated fund in existence immediately before the commencement of section 68[42] is taken to be the consolidated fund.

41 Section 62 (Appointment of judges)

42 Section 68 (Consolidated fund)

SCHEDULE

OATHS AND AFFIRMATIONS

sections 21, 31, 44 and 49[43]

Oath or affirmation of allegiance

'I,..(*name*).., do sincerely promise and swear (*or, for an affirmation*—do solemnly and sincerely affirm and declare) that I will be faithful and bear true Allegiance to Her (*or* His) Majesty..(*name of Sovereign*).. as lawful Sovereign of Australia and Her (*or* His) other realms and territories and to Her (*or* His) heirs and successors, according to law.

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

Oath or affirmation of office—Governor

'I,..(*name*).., do swear (*or, for an affirmation*—do solemnly and sincerely affirm and declare) that I will well and truly serve Her (*or* His) Majesty..(*name of Sovereign*).. in the office of Governor of Queensland and its Dependencies, in the Commonwealth of Australia, and will duly carry out the office according to the best of my ability, skill and knowledge and that 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

'I,..(*name*).., do sincerely promise and swear (*or, for an affirmation*—do solemnly and sincerely affirm and declare) that I will be faithful and bear true Allegiance to Her (*or* His) Majesty..(*name of Sovereign*).. as lawful

43 Sections 21 (No member to sit or vote without first taking oath), 31 (Publication of commission, declaration of allegiance and office), 44 (Oath or affirmation of allegiance and of office by Prremier and other Ministers) and 49 (Executive Council)

SCHEDULE (continued)

Sovereign of Australia and Her (*or* His) other realms and territories and to Her (*or* His) heirs and successors, according to law and that I will well and truly serve the people of Queensland in the office of *(Premier and/or 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 swear (*or, for an affirmation*—do solemnly and sincerely affirm and declare) that I will, to the best of my judgment and ability, faithfully advise and assist the Governor or other officer exercising a function or 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 that I will not disclose the confidential deliberations of the council.

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

KEY

AA	***Australian Acts 1986***
AIA	***Acts Interpretation Act 1954***
Bill Rts	**Bill of Rights (1 William and Mary Sess.2.c.2 (Imp))**
CA	***Constitution Act 1867***
CAAA 1890	***Constitution Act Amendment Act 1890***
CAAA 1896	***Constitution Act Amendment Act 1896***
CAAA 1922	***Constitution Act Amendment Act 1922***
COGA	***Constitution (Office of Governor) Act 1987***
DCA	***District Court Act 1967***
DD	**Discussion Draft (July 1999)**
EARC	**Electoral and Administrative Review Commission**
EARC Bill	***Queensland Constitution Bill 1993*** **in Appendix B to EARC's** ***Report on Consolidation and Review of the Queensland Constitution*** **(1993)**
EARC reprint	***Queensland Constitution Bill 1993*** **in Appendix A to EARC's** ***Report on Consolidation and Review of the Queensland Constitution*** **(1993)** **Appendix A shows the Bill as reprinted to include amendments up to the Queensland Constitution Amendment Act 1993**
Electoral Act	***Electoral Act 1992***
LAA	***Legislative Assembly Act 1867***
LCARC	**Legal, Constitutional and Administrative Review Committee's Report No. 13:** ***Consolidation of the Queensland Constitution*** **(1999)**
OPA	***Officials in Parliament Act 1896***
PCEAR	**Parliamentary Committee for Electoral and Administrative Review's** ***Report on Consolidation and Review of the Queensland Constitution*** **(1994)**
RPA	***Royal Powers Act 1953***
SCA 1995	***Supreme Court Act 1995***
SCQA 1991	***Supreme Court of Queensland Act 1991***

Queensland

PARLIAMENT OF QUEENSLAND BILL 2000

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Queensland

PARLIAMENT OF QUEENSLAND BILL 2000

TABLE OF PROVISIONS

2000

DRAFT

A BILL

FOR

An Act to provide for the powers, rights and immunities of the Legislative Assembly, appointment of its officers and committees, continuation of particular committees, qualification for membership of the Legislative Assembly, matters affecting continuation of membership and capacity of members, matters incidental to its existence and for other matters

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

Short title [DD s 1]

1. This Act may be cited as the *Parliament of Queensland Act 2000*.

Commencement [DD s 2]

2. This Act commences on a day to be fixed by proclamation.

Dictionary [DD s 3]

3. The dictionary in schedule 2 defines particular words used in this Act.

Object [new, DD s 4]

4.(1) This Act generally consolidates existing laws incidental to the operation of the Assembly.

(2) However, particular laws have been reformed, including, for example, the following—

(a) laws relating to the qualifications of a person to be a candidate for election as a member;

(b) laws affecting a person's continued membership of the Assembly;

(c) laws affecting a person's capacity because of membership of the Assembly.

Relationship between this Act and some other Acts about Parliament [new DD s 5]

5.(1) This Act contains laws incidental to the operation of the Assembly.

(2) The *Constitution of Queensland 2000* establishes the Parliament of Queensland and its provisions contain basic statements about procedural requirements for the Assembly and about membership and powers of the Assembly.

(3) The *Parliamentary Service Act 1988* contains laws about administrative and support services for the Assembly, including the administrative powers of the Speaker, the office and powers of the Clerk and the establishment of the parliamentary service.

(4) The *Parliamentary Members' Salaries Act 1988* contains laws about the salaries of members.

Act does not limit power, right or immunity [PPA s 13, DD s 6]

6. Nothing in this Act derogates from any power, right or immunity of the Assembly or its members or committees.

When does a member "take" a seat [new, DD s 7]

7. A member **"takes"** the member's seat on taking the oath or affirmation mentioned in the *Constitution of Queensland 2000*, section 21[1].

CHAPTER 2—PROCEEDINGS IN THE ASSEMBLY

Assembly proceedings can not be impeached or questioned [Bill Rts art 9, DD s 8]

8.(1) The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.

(2) To prevent doubt, it is declared that subsection (1) is intended to have

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1 *Constitution of Queensland 2000*, section 21 (No member to sit or vote without first taking oath)

the same effect as article 9 of the Bill of Rights had immediately before the commencement of the subsection.

Meaning of "proceedings in the Assembly" [PPA s 3 + EARC QPB s 7+ new, DD s 9]

9.(1) "Proceedings in the Assembly" include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.

(2) Without limiting subsection (1), **"proceedings in the Assembly"** include—

(a) giving evidence before the Assembly, a committee or an inquiry; and

(b) evidence given before the Assembly, a committee or an inquiry; and

(c) presenting or submitting a document to the Assembly, a committee or an inquiry; and

(d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry; and

(e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and

(f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and

(g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee.

(3) Despite subsection (2)(d), section 8 does not apply to a document mentioned in the subsection—

(a) in relation to a purpose for which it was brought into existence other than for the purpose of being tabled in, or presented or submitted to, the Assembly or a committee or an inquiry; and

(b) if the document has been authorised by the Assembly or the committee to be published.

Example—

A document evidencing fraud in a department tabled at a Public Accounts Committee inquiry can be used in a criminal prosecution for the fraud if the document was not created for the committee's inquiry and the committee has authorised the document to be published.

(4) If the way in which a document is dealt with has the effect that—

(a) under an Act; or

(b) under the rules, orders, directions or practices of the Assembly;

the document is treated, or accepted, as having been tabled in the Assembly for any purpose, then, for the purposes of this Act, the document is taken to be tabled in the Assembly.

CHAPTER 3—PROCEDURES AND POWERS

PART 1—MISCELLANEOUS

Assembly may proceed to business although not more than 5 members have not been elected [LAA s 14, DD s 10]

10. Following a general election the Assembly may proceed to the transaction of business at the time appointed by the Governor for the purpose even though in not more than 5 of the electoral districts a member has not been elected.

Standing rules and orders may be made [CA s 8, DD s 11]

11.(1) The Assembly may prepare and adopt standing rules and orders that appear to the Assembly best adapted to conduct its business and proceedings.

(2) Without limiting subsection (1), the standing rules and orders may provide for the following—

(a) the orderly conduct of the Assembly;

(b) the way the Assembly must be presided over in the absence of the Speaker;

(c) the way its powers, rights and immunities may be exercised and upheld;

(d) the way notices of Bills, resolutions and other business intended to be submitted to the Assembly at any session may be published for general information;

(e) publication of the proceedings of the Assembly and its committees, whether the Assembly is sitting, adjourned, prorogued or dissolved;

(f) the proper passing, entitling and numbering of the Bills to be introduced into and passed by the Assembly;

(g) the proper presentation of Bills to the Governor for royal assent.

(3) A standing rule or order becomes binding and of force on adoption by the Assembly or at another time decided by the Assembly.

Quorum [LAA s 13, DD s 12]

12. At a meeting of the Assembly, 16 members of the Assembly exclusive of the Speaker are a quorum.

Voting [LAA s 13, DD s 13]

13. At a meeting of the Assembly or a Committee of the Whole House—

(a) a question is decided by a majority of the members present and voting; and

(b) the Speaker or Chairperson of Committees presiding—

(i) has no deliberative vote; but

(ii) if the votes are equal, has the casting vote.

PART 2—THE SPEAKER

The Speaker [LAA s 12, DD s 14]

14.(1) The members of the Assembly must immediately on sitting after every general election proceed to elect a member to be Speaker.

(2) The Speaker must preside at all meetings of the Assembly, unless otherwise provided by the standing rules and orders.

(3) The Speaker ceases to hold office on his or her resignation or removal by a vote of the Assembly.

(4) On the Speaker's death, resignation or removal by a vote of the Assembly, the members must proceed to elect another member to be the Speaker before proceeding to any other business.

Speaker continues to hold office on Assembly's dissolution for election [new, DD s 15]

15. The Speaker holding office on the dissolution of the Assembly for the holding of a general election continues to hold office until the end of the day before the first sitting day of the Assembly after the election.

Deputy Speaker in particular circumstances [CAAA 1896 s 3(4) + new DD s 16]

16.(1) This section does not affect the way in which the Assembly is presided over when it is sitting in the absence of the Speaker.

(2) The way in which the Assembly is presided over when it is sitting in the absence of the Speaker is decided under the standing rules and orders and any resolution of the Assembly.

(3) Subject to subsections (1) and (2), the Chairperson of Committees may act as the Speaker—

(a) during a vacancy in the Speaker's office; or

(b) during a period when the Speaker is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

(4) If the Chairperson of Committees is for any reason unable to act as Speaker at a time mentioned in subsection (3)(a) or (b), the most senior temporary Chairperson of Committees appointed by the Speaker, who is able to act as Speaker, may act as the Speaker.

(5) For subsection (4), as between temporary Chairpersons of Committees the most senior temporary Chairperson of Committees is the one who has continually served longest as a member.

(6) A person acting as the Speaker may be referred to as the Deputy Speaker.

PART 3—CHAIRPERSON OF COMMITTEES

Chairperson of Committees [new, DD s 17]

17.(1) The members of the Assembly must as soon as practicable on sitting after every general election proceed to appoint a member to be Chairperson of Committees.

(2) The Chairperson of Committees must preside at all meetings of a Committee of the Whole House of the Assembly, subject to the standing rules and orders.

(3) The Chairperson of Committees ceases to hold office on his or her resignation or removal by a vote of the Assembly.

(4) On the Chairperson of Committees' death, resignation or removal by a vote of the Assembly, the members must proceed to appoint another member to be the Chairperson of Committees before proceeding to any other business.

Chairperson of Committees continues to hold office on Assembly's dissolution for election [new DD s 18]

18. The Chairperson of Committees holding office on the dissolution of the Assembly for the holding of a general election continues to hold office until the end of the day before the first sitting day of the Assembly after the election.

PART 4—PROXY VOTING

Member who may give proxy [LAA s 15, DD s 19]

19.(1) This section applies if, because of justified medical emergency, evidenced by at least 2 medical certificates, a member (the **"absent member"**) stated in the certificates is in a state of ill health through no fault on the member's part that prevents the member, during a period stated in the certificates, to attend any sittings of the Assembly.

(2) The absent member may notify the Speaker in writing that the member desires to vote as a member at every sittings of the Assembly and of every Committee of the Whole House—

(a) by way of a named proxy who is also a member (the **"first proxy"**); or

(b) if the first proxy is not present, by another named proxy, who is also a member (the **"second proxy"**).

(3) The absent member or, if the member is unable to do so through ill health, another member on the member's behalf, must present the certificates and notification to the Speaker.

(4) The Speaker must read the certificates and notification to the Assembly—

(a) if the Assembly is sitting on the day the Speaker receives them—on that day; or

(b) if the Assembly is not sitting on that day—on the day of the first sittings of the Assembly afterwards.

(5) If the Speaker declares that the Speaker is satisfied that the matters stated in the certificates are true, at any division at any sittings of the Assembly or any Committee of the Whole House during the period stated in the certificate, subject to section 23,[2] the proxy may vote as and for the absent member.

(6) Under subsection (5), the first proxy may vote, or, if the first proxy is absent, the second proxy may vote.

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2 Section 23 (End of proxy)

(7) The proxy may vote as and for the absent member either without voting in the proxy's own right or in addition to voting in the proxy's own right.

(8) In this section—

"division" means any voting of the Assembly or any Committee of the Whole House for which a division is called on any question.

How the proxy votes [LAA s 15, DD s 20]

20.(1) The proxy is to vote by declaring to the Speaker or the Chairperson of Committees, as the case may be, during the taking of the votes on the division, that the proxy votes as and for the absent member for the 'ayes' or for the 'noes'.

(2) If the vote is for the 'ayes', the tellers for the 'ayes' must count it accordingly, and if the vote is for the 'noes', the tellers for the 'noes' must count it accordingly.

(3) A vote so declared is as effectual as if the absent member had been personally present in the Assembly on the taking of the votes on the division and had voted on the side of the question for which the member's vote has been so declared by proxy.

(4) A member who, as a proxy, votes as and for the absent member, and does not vote in the member's own right, must declare the vote as and for the absent member from outside the bar of the Assembly.

(5) If the member declares the vote as and for the absent member within the bar, the member must be taken to vote also in the member's own right on the side of the question which the member's place in the division indicates.

How a proxy is substituted [LAA s 15 DD s 21]

21.(1) This section applies if during the period stated in the certificates, the absent member notifies the Speaker in writing that the member desires to substitute as the member's first proxy and second proxy or either of them 2 other named members or 1 other named member, as the case may be.

(2) The Speaker must read the notification to the Assembly—

(a) if the Assembly is sitting on the day the Speaker receives the notification—on that day; or

(b) if the Assembly is not sitting on that day—on the day of the first sittings of the Assembly afterwards.

(3) On the notification under subsection (2) being read to the Assembly by the Speaker, the other members or member named in the notification—

(a) becomes the first proxy and the second proxy or the first proxy or the second proxy, as the case may be, in substitution for the members or member who had been authorised to vote as and for the absent member; and

(b) as the proxies or proxy, may vote as and for the absent member as provided under section 20.

End of certificate, notification or declaration on last day of session [LAA s 15 DD s 22]

22.(1) No certificate or notification and no declaration by the Speaker under this part is effective beyond the last day of the session of the Assembly in which the certificate, notification or declaration was received or made.

(2) However, if the ill health of the absent member and the absent member's inability to attend any sittings of the Assembly continue or are likely to continue beyond the period stated in the certificate, the certificate, notification, and declaration may be renewed whenever necessary.

End of proxy [LAA s 16 DD s 23]

23.(1) No further vote of the absent member may be declared by proxy, if during the period stated in the certificates, and after any declaration made by the Speaker in relation to the member—

(a) the member attends any sittings of the Assembly or any Committee of the Whole House; or

(b) the Speaker declares to the Assembly that the Speaker is satisfied that the member is able to attend the sittings; or

(c) the Speaker reads to the Assembly a notification by the member that the member desires that the member's vote is to be no longer declared by proxy.

(2) When the absent member notifies the Speaker in writing that the member desires that the member's vote be no longer declared by proxy, the Speaker must read the notification to the Assembly—

(a) if the Assembly is sitting on the day the Speaker receives the notification—on that day; or

(b) if the Assembly is not sitting on that day—on the day of the first sittings of the Assembly afterwards.

Part does not affect vacation of seat provisions [LAA s 18 DD s 24]

24. This part does not affect section 72.[3]

CHAPTER 4—POWERS, RIGHTS AND IMMUNITIES

PART 1—POWERS TO REQUIRE ATTENDANCE AND PRODUCTION

Power to order attendance or production of document or other thing [CA s 41 + PCA s 25, DD s 25]

25.(1) The Assembly may order a person to attend before the Assembly and also to produce to the Assembly any document or thing in the person's possession.

3 Section 72 (Vacating seats of members in particular circumstances)

(2) A committee of the Assembly authorised by the Assembly or an Act to call for persons, documents and other things (an **"authorised committee"**), may order a person to attend before the committee and also to produce to the committee any document or thing in the person's possession.

(3) A statutory committee may call for persons, documents and other things.[4]

(4) Any committee of the Assembly may receive testimonial and documentary evidence voluntarily given.

Summons to non-member to attend or produce documents or other things [CA s 42(1)-(3) + EARC QPB cl 9, DD s 26]

26.(1) Subject to section 28,[5] a person who is ordered to attend must be given a summons issued by—

(a) if ordered to attend by the Assembly—the Speaker; or

(b) if ordered to attend by a committee—the Clerk on notification by the committee's chairperson.

(2) The summons must state—

(a) a reasonable time and place for the attendance; and

(b) if a document or other thing is ordered to be produced—reasonable particulars of the document or other thing.

Attendance expenses [CA s 42(4) + EARC QPB cl 15, DD s 27]

27. A person, other than a member, ordered to attend the Assembly or an authorised committee is entitled to be paid a reasonable amount for expenses of attendance as decided by the Speaker.

Member required to attend without summons [CA s 43] [EARC QPB cl 10, DD s 28]

28. A member may be ordered by the Assembly to attend the Assembly

4 For establishment of statutory committees, see section 80.

5 Section 28 (Member required to attend without summons)

or an authorised committee without being given a summons.

Examination under oath or affirmation [EARC QPB cl 11, DD s 29]

29.(1) The Assembly or an authorised committee before which a person attends may require the person to answer questions under oath or affirmation.

(2) The oath or affirmation may be administered by—

(a) if the person attends before the Assembly—the Speaker or the Clerk; or

(b) if the person attends before a committee—the committee's chairperson or the Clerk, or Clerk's delegate, attending the committee.

Obligation to attend [EARC QPB cl 12 + new, DD s 30]

30.(1) A person ordered to attend must not—

(a) fail to attend before the Assembly or the committee as ordered; or

(b) fail to attend from time to time as required by the Speaker or the committee's chairperson in the course of the Assembly's or the committee's proceedings in relation to the matter on which the person was ordered to attend.

(2) A person may be excused from a failure mentioned in subsection (1)—

(a) if ordered to attend by the committee—by the committee; or

(b) in any case—by the Assembly.

Obligation to be sworn or to respond [EARC QPB cl 13 + new, DD s 31]

31.(1) A person ordered to attend must not—

(a) fail to be sworn or to make an affirmation if required under

section 29;[6] or

(b) fail to answer a question that the person is required to answer by the Speaker or the committee chairperson; or

(c) fail to produce a document or other thing that the person was ordered to produce.

(2) A person may be excused from a failure mentioned in subsection (1)—

(a) if ordered to attend by the committee—by the committee; or

(b) in any case—by the Assembly.

Objecting to answering questions or production [CA s 44 + PCA s 26(3), DD s 32]

32. A person may object to answering a question or producing a document or other thing under sections 25 and 31[7] on the following grounds—

(a) the answer, document or thing is of a private nature and does not affect the subject of inquiry;

(b) giving the answer or producing the document or thing might tend to incriminate the person and the person would have a claim of privilege against self-incrimination in a Supreme Court action if the person were asked in the action to give the answer or produce the document or thing.

Procedure on objection to answering questions etc. of Assembly [CA s 44 + PCA s 26, DD s 33]

33.(1) This section applies if a person ordered by the Assembly to attend before the Assembly or to produce to the Assembly any document, information or thing objects to answering any question that may be asked by the Assembly, or to producing any document or thing to the Assembly,

6 Section 29 (Examination under oath or affirmation)

7 Sections 25 (Power to order attendance or production of document or other thing) and 31 (Obligation to be sworn or to respond)

under section 32.[8]

(2) The Speaker must report the refusal and the grounds to the Assembly.

(3) The Assembly may order the person to answer any or particular questions, or produce any or particular documents or other things to the Assembly.

(4) A person to whom an order under subsection (3) is directed must comply with the order despite section 32.

Procedure on objection to answering questions etc. of authorised committee [CA s 44 + PCA s 26, DD s 34]

34.(1) This section applies to an authorised committee.

(2) If a person attending before the committee does not—

(a) answer a question asked by the committee; or

(b) produce a document or thing the committee asked the person to produce to it;

the chairperson of the committee may require the person to comply with the request.

(3) However, the person need not comply with the requirement if the person objects to answering the question or producing the document or thing under section 32.

(4) The objection must be made directly to the committee or in writing and must state the grounds of the objection.

(5) If a person does not comply with an order to appear before the committee or a requirement to answer a question or produce a document, the committee may report the failure to comply to the Assembly.

(6) The Assembly may order a person to appear before a committee and answer any or particular questions, or produce any or particular documents or other things.

(7) A person to whom an order under subsection (6) is directed must

8 Section 32 (Objecting to answering questions or production)

comply with the order despite section 32.

(8) An order may be made under subsection (6) for a class of persons, including persons who have not appeared, or been asked to appear, before a committee.

Assembly to have regard to particular things when considering objection [PCA s 26(6), DD s 35]

35. In deciding whether to make an order under section 33 or 34,[9] the Assembly must have regard to—

(a) the public interest in having the questions answered before the Assembly or committee or the documents or other things produced to the Assembly or committee; and

(b) the public interest in providing appropriate protection to individuals against invasions of privacy or against self-incrimination.

Inadmissibility of particular events before a committee [PCA s 26(9) and (10) + new, DD s 36]

36.(1) Evidence may not be given in any proceeding of an answer given by a person or before a committee, or of the fact the person produced a document or other thing to a committee.

(2) However, subsection (1) does not apply to—

(a) a proceeding before the Assembly or a committee of the Assembly; or

(b) a criminal proceeding brought against the person about the falsity, or the misleading, threatening or offensive nature, of the evidence, document, information or other thing;[10] or

(c) a criminal proceeding brought against the person about the

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9 Section 33 (Procedure on objection to answering questions etc. of Assembly) or 34 (Procedure on objection to answering questions etc. of authorised committee)

10 For example, see the Criminal Code, section 57 (False evidence before Parliament).

person's failure to produce a document or thing to, or refusal to answer a question before, the Assembly or a committee.[11]

(3) Subsection (2) applies despite sections 8 and 9.[12]

PART 2—CONTEMPTS

Meaning of "contempt" of the Assembly [PPVA s 3(3), 4, DD s 37]

37.(1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees.

(2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with—

(a) the free exercise by the Assembly or a committee of its authority or functions; or

(b) the free performance by a member of the member's duties as a member.

Examples—

1. Assaulting, obstructing or insulting a member—

(a) in the member's coming to or going from the Assembly or a meeting of a committee; or

(b) anywhere else because of the member's performance of his or her parliamentary duties.

2. Attempting to compel a member by force, insult or menace to take a particular position in relation to a proposition or matter pending, or expected to be brought, before the Assembly or a committee.

3. Sending a threat to a member because of the member's performance of his or

11 For example, see the Criminal Code, section 58 (Witnesses refusing to attend or give evidence before Parliament or parliamentary committee).

12 Sections 8 (Assembly proceedings can not be impeached or questioned) and 9 (Meaning of "proceedings in the Assembly")

her parliamentary duties.

4. Sending a challenge to fight a member.

5. The offering of a bribe to or attempting to bribe a member.

6. Creating or joining in any disturbance in the Assembly or before a committee or in the Assembly's or a committee's vicinity while it is sitting that may interrupt its proceedings.

7. Contravention of sections 30, 31, 33(4) and 34(7).[13]

8. Preventing or attempting to prevent a person from complying with sections 30, 31, 33(4) and 34(7).

9. Improperly influencing, or attempting to improperly influence, a person, in relation to any evidence to be given by the person to the Assembly or a committee.

10. Treating a person adversely and without lawful authority, or attempting to do so, because of evidence given by the person to the Assembly or a committee or because of a belief or suspicion about that evidence.

Decisions on contempt [new, DD s 38]

38. Whether particular conduct is contempt of the Assembly as defined under section 37 is a matter for the Assembly to decide, acting on any advice it considers appropriate.

Assembly's power to deal with contempt [new, DD s 39]

39.(1) The Assembly has the same power to deal with a person for contempt of the Assembly as the Commons House of the Parliament of the United Kingdom had at the establishment of the Commonwealth[14] to deal with contempt of the Commons House.

(2) To remove doubt, it is declared the power includes the power to fine the person, and impose imprisonment on the person in default of the payment of the fine, as provided for under sections 40 to 45.

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13 Sections 30 (Obligation to attend), 31 (Obligation to be sworn or to respond), 33 (Procedure on objection to answering questions etc. of Assembly) and 34 (Procedure on objection to answering questions etc. of authorised committee)

14 Date of establishment of the Commonwealth—1 January 1901

Assembly proceedings on contempt [CA s 45 + EARC QPB cl 17, DD s 40]

40.(1) Subject to section 38, proceedings for punishment by the Assembly of contempt are to be taken in the way stated in the standing rules and orders.

(2) The Assembly may order that a person found by it to have committed a contempt—

(a) pay a fine of an amount not more than an amount stated in the standing rules and orders; and

(b) if the fine is not paid within a reasonable time stated by the Assembly, be imprisoned as directed by it—

(i) until the fine is paid; or

(ii) until the end of the session of the Assembly or a part of the session.

(3) For subsection (2)(b), the Assembly may order a person to be imprisoned—

(a) in the custody of an officer of the Assembly; or

(b) in a prison under the *Corrective Services Act 1988*.

Speaker's warrant for contempt [CA s 46 + EARC QPB cl 18, DD s 41]

41. The Speaker, on the Assembly's resolution, may issue a warrant for the apprehension and imprisonment of a person fined for contempt if the fine is not paid as required by the Assembly.

Arrest pending warrant in certain cases [CA s 47 + EARC QPB cl 19, DD s 42]

42.(1) A person who commits a contempt by creating or joining in any disturbance in the Assembly or before a committee or in the Assembly's or a committee's vicinity while it is sitting that may interrupt its proceedings may be apprehended without warrant on the Speaker's order, oral or written.

(2) The person may be kept in the custody of an officer of the Assembly pending the person being dealt with by the Assembly under section 39.

Form of warrant [CA s 48 + EARC QPB cl 20, DD s 43]

43. A warrant issued under section 41[15] need not be in any particular form, but it must state in effect that the person has been found by the Assembly to have committed a contempt of the Assembly.

Duty to assist in execution of Speaker's order or warrant [CA s 49(1), 50 + EARC QPB cl 21, DD s 44]

44.(1) The commissioner of the police service, all police officers and other persons are required to assist in the apprehension and detention of any person who is required to be apprehended under the order or warrant of the Speaker.

(2) For the purpose of searching for and apprehending a person under the Speaker's warrant, a person may enter any place using force that may be reasonably necessary.

Warrant to be given effect [CA s 49(2) + EARC QPB cl 22, DD s 45]

45. The person in charge of a prison to whom is delivered a person apprehended under the Speaker's warrant must take the person into custody and detain the person in accordance with the warrant's terms.

Treasurer's power to retain allowances to pay fine [LAA s 7E, DD s 46]

46.(1) This section applies if—

(a) a member has been found guilty under section 39 of contempt by the Assembly; and

(b) the member has been summarily dealt with by the Assembly and ordered to pay a fine; and

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15 Section 41 (Speaker's warrant for contempt)

(c) any amount of the fine is not paid by the member as required by the Assembly's order.

(2) The Speaker must deliver a signed certificate countersigned by the Clerk to the Treasurer notifying the Treasurer that the amount has not been paid as required by the Assembly.

(3) On receiving the certificate, the Treasurer may order that there be set aside and retained by the Treasurer amounts the Treasurer considers proper out of the salary to which the member is entitled as a member until the full amount of the fine has been paid.

(4) The Treasurer may act under subsection (3), even though the session in which the fine was imposed has ended.

(5) The Treasurer may at any time amend the order.

(6) All amounts set aside and retained by the Treasurer are part of the consolidated fund.

Other proceedings [CA s 52 + EARC QPB cl 23(3), DD s 47]

47.(1) If a person's conduct is both a contempt of the Assembly and an offence against another Act, the person may be proceeded against for the contempt or for the offence against the other Act, but the person is not liable to be punished twice for the same conduct.

(2) The Assembly may, by resolution, direct the Attorney-General to prosecute the person for the offence against the other Act.

PART 3—PARLIAMENTARY PAPERS

Meaning of "authorising person" [PPA s 2, DD s 48]

48. In this part—

"authorising person" means—

(a) the Speaker; or

(b) the chairperson of a committee; or

(c) the Clerk; or

(d) the chief reporter.

Assembly or committee may authorise publication [PPA s 4, DD s 49]

49.(1) The Assembly may authorise the publication of a document relating to proceedings in the Assembly.

(2) A committee may authorise publication of—

(a) evidence given before the committee; or

(b) a document presented or submitted to the committee; or

(c) a document (including a report) prepared or made by the committee.

(3) This section does not limit by implication any other power the Assembly may have to authorise the publication of a document.

Authority for government printer to publish [PPA s 5, DD s 50]

50. If the Assembly or a committee orders or otherwise authorises evidence or a document to be printed, then, unless the order or other authority otherwise expressly provides, the Assembly or the committee is taken to have authorised the government printer to publish the evidence or document.

Assembly taken to have authorised certain publications [PPA s 6, DD s 51]

51.(1) The Assembly is taken to have authorised a person to whom this section applies to publish parliamentary documents.

(2) The authority conferred by subsection (1) extends to—

(a) the doing of all acts preparatory to, and for the purposes of, publication; and

(b) all forms of publication.

(3) For this part, a document that purports to be a parliamentary document is taken to be a parliamentary document unless the contrary is proved.

(4) In this section—

"document" includes—

(a) a copy of a document; and

(b) a part of a document; and

(c) an abstract of, or extract from, a document;

if the copy, part, abstract or extract is published with the authority of an authorising person.

"parliamentary document" means—

(a) the Votes and Proceedings; or

(b) the Notices of Motion and Orders of the Day; or

(c) the Questions on Notice and answers to questions on notice; or

(d) Hansard reports of proceedings in the Assembly, a committee or an inquiry; or

(e) another document that is published with the authority of an authorising person.

"person to whom this section applies" means—

(a) a member or a person acting on behalf of a member; or

(b) the Clerk; or

(c) an officer or employee of the parliamentary service acting in the course of the person's duties; or

(d) the government printer; or

(e) an officer or employee of the government printer acting in the course of the person's duties.

Tabled, unprinted documents may be read etc. [PPA s 7, DD s 52]

52.(1) A person may read any document that is tabled in the Assembly by a member, but is not ordered or otherwise authorised by the Assembly to be printed.

(2) The person may make a copy of, take an extract from, or take notes of, the document.

(3) A person does not incur any civil or criminal liability for the doing by the person or another person of an act permitted to be done under this section.

Particular documents are taken to be printed when tabled or taken to be tabled in the Assembly [new, DD s 53]

53. The following documents are taken to be printed when tabled or taken to be tabled in the Assembly—

(a) a report of a committee or an inquiry;

(b) a Bill presented to the Assembly and the explanatory note for the Bill;

(c) a report that, under an Act—

(i) is received by a Minister or the Speaker; and

(ii) is required or permitted to be tabled in the Assembly.

Publication of fair report of tabled document [PPA s 8, DD s 54]

54.(1) A person does not incur any civil or criminal liability for the publication of a fair report of a document that is tabled in the Assembly by a member with—

(a) the express permission of the Speaker; or

(b) the leave of the Assembly.

(2) Subsection (1) applies to a document whether or not the Assembly orders or otherwise authorises the document to be printed.

Certificates relating to proceedings [PPA s 9 + new, DD s 55]

55.(1) A certificate purporting to be signed by an authorising person and stating any 1 or more of the matters mentioned in subsection (2) is evidence of those matters.

(2) The matters are—

(a) that evidence was given before the Assembly, a committee or an inquiry; and

(b) that a document was presented or submitted to the Assembly, a committee or an inquiry; and

(c) that a document was tabled in, or presented or submitted to, the Assembly, a committee or inquiry; and

(d) that a document was prepared for the purposes of, or incidental to, transacting business mentioned in section 9(2)(a) or (c);[16] and

(e) that a document (including a report) was prepared, made or published under the authority of the Assembly, a committee or inquiry; and

(f) that a committee authorised publication of evidence; and

(g) that the Assembly or a committee authorised the government printer to publish evidence or a document; and

(h) that a person is a person to whom section 51[17] applies; and

(i) that a thing is a document, or a parliamentary document, for the purposes of section 51; and

(j) that an act was preparatory to, or for the purposes of, publication of a thing that is a parliamentary document for the purposes of section 51; and

(k) that a document was tabled in the Assembly by a member, but was not—

(i) ordered or otherwise authorised, by the Assembly to be printed; or

16 Section 9 (Meaning of "proceedings in the Assembly")

17 Section 51 (Assembly taken to have authorised certain publications)

(ii) taken to be printed by the Assembly; and

(l) that a document was tabled in the Assembly by a member with—

(i) the express permission of the Speaker; or

(ii) the leave of the Assembly; and

(m) that a person is an authorising person; and

(n) that a person is the government printer.

No liability for publishing under authority of Assembly or committee [PPA s 10, DD s 56]

56.(1) A person does not incur any civil or criminal liability for publishing evidence or a document by order or under the authority of the Assembly or a committee.

(2) If a proceeding is brought for a publication to which subsection (1) applies, the defendant may produce to the court a certificate—

(a) signed by an authorising person; and

(b) stating that the publication is a publication to which that subsection applies.

(3) Before producing the certificate, the defendant must give the plaintiff or prosecutor and any other defendant 24 hours notice of the defendant's intention to produce the certificate.

(4) On production of the certificate, the court must dismiss the proceeding and may order the plaintiff or prosecutor to pay the defendant's costs.

(5) This section does not affect any other defence available to the defendant.

Reports of debates taken to be true and correct record [PPA s 11, DD s 57]

57.(1) Reports of the debates in the Assembly published by order or under the authority of the Assembly may be received in evidence as an accurate record of what happened in the Assembly.

(2) Evidence must not be admitted contradicting, adding to or otherwise impugning the accuracy of the reports.

Application of part [PPA s 12, DD s 58]

58. This part applies to evidence given and documents tabled, printed or published at any time whether before or after the commencement of the part.

PART 4—TABLING OF REPORTS OUTSIDE SITTINGS

Tabling of report when Assembly not sitting [AIA s 29A + new, DD s 59]

59.(1) This section applies to a report that, under an Act—

(a) is received by a Minister or the Speaker; and

(b) is required or permitted to be tabled in the Assembly.

(2) If the Minister or Speaker wants to table the report when the Assembly is not sitting, the Minister or Speaker may give a copy of it to the Clerk.

(3) The report is taken to have been tabled on the day a copy of the report is received by the Clerk.

(4) The receipt of the report by the Clerk, and the day of the receipt, must be recorded in the Assembly's votes and proceedings for the next sitting day after the day of receipt.

(5) For subsection (1)(b), if a report is required or permitted to be tabled in the Assembly, a part of the report or a document accompanying the report is also taken to be required or permitted to be tabled in the Assembly.

(6) A report tabled under subsection (3) is a report tabled in and printed by order of the Assembly.

(7) This section does not limit the Assembly's power by resolution or order to provide for the tabling of reports and other documents when the Assembly is not sitting.

(8) In this section—

"report" includes—

(a) part of a report; and

(b) a document accompanying a report.

PART 5—CUSTODY OF ASSEMBLY DOCUMENTS [NEW]

Application of pt 5 [new, DD s 60]

60. This part applies despite any other law.

Clerk has custody of Assembly documents [new, DD s 61]

61. For this part, the Clerk is taken to have custody of all documents in the possession of, the Assembly, a committee or an inquiry.

Instrument requiring access or production must be addressed to Clerk [new, DD s 62]

62. (1) An instrument requiring access to or production of a document mentioned in section 61 must be addressed to the Clerk.

(2) If the instrument is not addressed to the Clerk, it is of no effect.

Assembly controls release [new, DD s 63]

63. (1) The Clerk may not allow access to, or produce, a document as required under an instrument mentioned in section 62 unless—

(a) for a document in the possession of a committee that has not been tabled in the Assembly—the committee or the Assembly by resolution has given leave; or

(b) for a document in the possession of an inquiry that has not been tabled in the Assembly—the inquiry or the Assembly by resolution has given leave; or

(c) for a document in the possession of the Assembly that has not been tabled in the Assembly—the Assembly by resolution has given leave; or

(d) for a document that has been tabled in the Assembly and prohibited by the Assembly from being published—the Assembly by resolution has given leave.

(2) However, if—

(a) an instrument requires access to or production of a document in the possession of the Assembly; and

(b) the Assembly is dissolved, prorogued or adjourned for more than 7 days;

the Speaker may give leave for the document to be accessed or produced as required under the instrument.

CHAPTER 5—CANDIDATES AND MEMBERS

PART 1—QUALIFICATIONS

Qualifications to be a candidate and be elected a member [LAA s 7 + EA s 83(1)–(2) + DCA s 13 + new, DD s 64]

64.(1) A person may be nominated as a candidate for election, and may be elected, as a member of the Assembly for an electoral district only if the person is—

(a) enrolled on an electoral roll for the electoral district or another electoral district; and[18]

(b) an Australian citizen; and

(c) an adult; and

(d) not a disqualified person under subsection (2) or (3).

(2) A person is a disqualified person if—

(a) the person—

(i) is subject to a term of imprisonment or detention, periodic or otherwise; or

(ii) within 2 years before the day of nomination, has been convicted of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than 1 year's imprisonment; or

(iii) has been convicted within 3 years before the day of nomination of an offence against the *Electoral Act 1992*, section 154, 168 or 170(a) or (b);[19] or

(iv) has been convicted within 7 years before the day of nomination of an offence against the Criminal Code, section 59 or 60;[20] or

(v) has been convicted, and not pardoned, of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth; or

(b) the person—

(i) is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth); or

(ii) has executed a deed of arrangement as debtor under the

18 See *Electoral Act 1992*, section 64 (Entitlement to enrolment) and *Electoral Act 1918 (Commonwealth)*, section 93 (Persons entitlement to enrolment and to vote).

19 *Electoral Act 1992*, sections 154 (False, misleading or incomplete documents), 168 (Influencing voting) and 170 (Voting if not entitled etc.)

20 Criminal Code, section 59 (Member of Parliament receiving bribes) or 60 (Bribery of member of Parliament)

Bankruptcy Act 1966 (Cwlth), part X and the terms of the deed have not been fully complied with; or

(c) the person's creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X and a final payment has not been made under that composition; or

(d) the person is not entitled to be a candidate for election, or to be elected as a member of the Assembly, under another law.

(3) Also, the following persons are disqualified persons—

(a) the Governor-General, Administrator or head of government of the Commonwealth or the Governor, Administrator or head of government of a State;

(b) the holder of a judicial office of any jurisdiction of a State or the Commonwealth.

(4) For subsection (2)(a)(i), the circumstances in which a person is subject to a term of imprisonment or detention—

(a) include circumstances in which the person is released from the term of imprisonment or detention on parole, home detention, leave of absence or otherwise without being discharged from all liability to serve all or part of the term; but

(b) do not include circumstances in which a person is subject to a term of imprisonment but is at liberty because the term of imprisonment has been suspended.

(5) For subsection (2)(a)(ii), the following apply—

(a) if the sentence of imprisonment is suspended, the provision does not apply;

(b) however, if the person is ordered at any time to actually serve more than 1 year of the suspended term of imprisonment, the provision applies.

PART 2—CANDIDATES AND MEMBERS HOLDING PAID PUBLIC APPOINTMENT

Meaning of "paid public appointment" and related appointment [OPA s 5 + LAA s 7A + new, DD s 65]

65.(1) A person holds a **"paid public appointment"** if the person, for reward—

(a) holds an office under, or is employed by, the State, another State or the Commonwealth; or

(b) holds an appointment to or in or is employed by or in—

(i) an entity of the State, another State or the Commonwealth; or

(ii) the parliamentary service of the Assembly or an administrative office or service attached to the legislature of another State or the Commonwealth; or

(iii) a court or tribunal or a registry or other administrative office of a court or tribunal, of the State, another State or the Commonwealth; or

(iv) a local government of the State, another State or the Commonwealth.

(2) For subsection (1)(b), an entity of the State, another State or the Commonwealth includes an entity a majority or more of members of which, or of the governing body of which, are appointed by—

(a) an entity of the State, the other State or the Commonwealth; or

(b) a Minister of, or a person holding a paid public appointment under, the State, the other State or the Commonwealth.

(3) A **"paid State appointment"** held by a person, is a paid public appointment the person holds in connection with the State because of an office or appointment or employment mentioned in subsection (1)(a) or (b).[21]

(4) However, a member does not hold a paid public appointment if—

(a) an Act requires or expressly permits that the appointment be held by a member of the Assembly, however described; or

(b) when the appointment is held by a member of the Assembly, neither the member nor any other person is entitled to or is

[21] For the effect of this definition, see sections 66, 69 and 72(e).

entitled to and receives any reward on account of the member holding the appointment.

(5) For subsection (4)(b), a member is not taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward.

(6) For a waiver under subsection (5), the member must, as soon as practicable after becoming aware of the entitlement—

(a) waive the entitlement in writing; and

(b) give a copy of the waiver to the Speaker.

(7) In this section—

"reward" does not include—

(a) an amount decided under the *Parliamentary Members' Salaries Act 1988* or the *Parliamentary Contributory Superannuation Act 1970*; or

(b) reasonable expenses actually incurred by or for the member for any 1 or more of the following—

(i) accommodation;

(ii) meals;

(iii) domestic air travel;

(iv) taxi fares or public transport charges;

(v) motor vehicle hire; or

(c) an amount (other than an amount paid at the pleasure of the State, another State or the Commonwealth) paid as a pension, entitlement, remuneration, allowance or otherwise for—

(i) past service in a paid public appointment; or

(ii) past or existing service as a member of the Commonwealth's military reserve forces.

Effect of paid State appointment on candidate's election [LAA s 7A + OPA s 5 + new, DD s 66]

66.(1) If a person who holds a paid State appointment nominates as a

candidate for election to the Assembly, the person must be absent on leave from the appointment for the election period.

(2) To comply with subsection (1), the person is entitled to take any accrued leave or leave without reward, despite any other law.

(3) If the person fails to comply with subsection (1), the person is taken to be on unpaid leave and is not entitled to any reward from anyone for service in the paid State appointment during the election period.

(4) If the person is elected as a member, the person's paid State appointment ends on the day the person is elected, despite any other law.

(5) Subsection (4) applies whether or not the person complies with subsection (1).

(6) In this section—

"election period" means the period starting on the day the person is nominated for election to an electoral district and ending on the day of the election of the candidate who is elected for the electoral district.

Resignation of particular office holders on becoming candidates [new, DD s 67]

67.(1) A person who holds any of the following offices, or who is a deputy of anyone holding any of the following offices, must resign office immediately on the person being nominated under the *Electoral Act 1992*, section 84 as a candidate for election—

(a) anti-discrimination commissioner;

(b) auditor-general;

(c) the Clerk;

(d) chairperson or commissioner of the Criminal Justice Commission or director of any of its organisational units;

(e) children's commissioner;

(f) commissioner of the police service;

(g) crime commissioner;

(h) crown solicitor;

(i) director of public prosecutions;

(j) electoral commissioner;

(k) health rights commissioner;

(l) information commissioner;

(m) parliamentary commissioner for administrative investigations;

(n) parliamentary counsel;

(o) parliamentary criminal justice commissioner;

(p) public service commissioner;

(q) public trustee;

(r) solicitor-general.

(2) An office holder who fails to comply with subsection (1) is taken to resign office on becoming a candidate under the *Electoral Act 1992*, section 88(3),[22] despite any other law.

(3) For subsection (1), a person is not a deputy of anyone holding an office only because the person is temporarily acting in the office of deputy.

Effect of election on particular candidates [new, DD s 68]

68.(1) Any one of the following persons who is elected as a member can not take his or her seat until the person stops holding the membership or appointment mentioned in relation to the person—

(a) member of the Commonwealth Parliament or of a legislature of another State;

(b) mayor or a councillor of a local government of the State or another State;

(c) holder of a paid public appointment other than a paid State appointment.[23]

22 *Electoral Act 1992*, section 88 (Announcement of nominations)

23 For the effect of a paid State appointment on a candidate's election, see section 66.

(2) Subsection (1) does not affect section 72(1)(a).[24]

Appointment to paid State appointment is of no effect [OPA s 5 + LAA s 7A, DD s 69]

69.(1) A member must not accept a paid State appointment.

(2) Despite any other law, a purported appointment of a member to hold a paid State appointment is of no effect as an appointment.[25]

PART 3—RESTRICTIONS ON DEALINGS WITH THE STATE

Meaning of "transacts business" [CA ss 6–7A] [LAA s 7B, DD s 70]

70.(1) A member **"transacts business"** with an entity of the State if the member—

(a) has a direct or indirect interest in a contract with an entity of the State; or

(b) performs a duty or service for reward for an entity of the State.

(2) However, a member does not **"transact business"** with an entity of the State in the following circumstances—

(a) for a contract—

(i) the contract is required of, or expressly permitted for, the member, under an Act; or

(ii) the contract allows or permits the member to be provided with goods or to use services that are available to the public on the same terms the goods or services are available to the public; or

24 Section 72 (Vacating seats of members in particular circumstances)

25 For an effect of accepting a paid public appointment other than a paid State appointment, see section 72(e)

Examples of subparagraph (ii)—

1. A contract to use rail passenger transport.

2. The purchase of a vehicle at a public auction conducted by an entity of the State.

(iii) the contract is for the lawful payment of compensation; or

(iv) the contract is made, entered into, or accepted, by a listed or non-aligned corporation;

(b) for a duty or service—

(i) an Act requires or expressly permits the member to perform the duty or service; or

(ii) neither the member nor any other person is entitled to or is entitled to and receives any reward on account of the member performing the service or duty; or

(iii) the duty or service is the attendance at a court or other place or the giving of evidence at a court or other place in obedience to any court process.

(3) For subsection (2)(b)(ii), a member is not taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward.

(4) For a waiver under subsection (3), the member must, as soon as practicable after becoming aware of the entitlement—

(a) waive the entitlement in writing; and

(b) give a copy of the waiver to the Speaker.

(5) In this section—

"listed corporation" has the meaning given by the Corporations Law.

"non-aligned corporation" means a corporation with more than 20 shareholders 1 of whom is the member if the member does not—

(a) own 5% or more of the corporation's shares; or

(b) have control of the corporation's board;

"reward" does not include—

(a) an amount decided under the *Parliamentary Members' Salaries*

Act 1988 or the *Parliamentary Contributory Superannuation Act 1970*; or

(b) reasonable expenses actually incurred by or for the member for any 1 or more of the following—

(i) accommodation;

(ii) meals;

(iii) domestic air travel;

(iv) taxi fares or public transport charges;

(v) motor vehicle hire.

Restrictions on member transacting business with an entity of the State [CA ss 6–7A + LAA s 7B, DD s 71]

71.(1) A member must not transact business, directly or indirectly, with an entity of the State.[26]

(2) If a member contravenes subsection (1) in relation to a contract with an entity of the State—

(a) the contract is invalid to the extent of the contravention; and

(b) the member is not entitled to, and may not receive, the reward in connection with the contract.

(3) If a member contravenes subsection (1) in relation to the performance of a duty or service for an entity of the State, the member is not entitled to, and may not receive, the reward for the duty or service.

(4) A member does not contravene subsection (1) in relation to a contract with an entity of the State if the member—

(a) acquires the interest in the contract—

(i) under a testamentary disposition or because of the laws of succession; or

(ii) as executor, administrator or trustee of the estate of a deceased person; and

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26 The effect of a contravention of this subsection is dealt with under section 72(g) (Vacating seats of members in particular circumstances).

(b) disposes of the interest within—

(i) 1 year after the day the person whose death gave rise to the interest mentioned in paragraph (a) died; or

(ii) the longer period allowed by the Assembly.

(5) A new member does not contravene subsection (1) in relation to an interest in a contract with an entity of the State arising before the member's election if he or she disposes of the interest within 6 months after being elected.

(6) A new member does not contravene subsection (1) in relation to an obligation to perform a duty or service arising before the member's election if he or she discharges the obligation within 6 months after being elected.

(7) It is declared that subsection (1) does not extend—

(a) to a contract or agreement with WorkCover Queensland in relation to insurance business carried on by it; or

(b) to any contract or agreement securing the repayment of the principal, or the payment of interest on, or both the repayment of principal and the payment of interest on, moneys lent to an entity of the State; or

(c) to any contract or agreement for the provision of legal assistance under the *Legal Aid Queensland Act 1997*, or similar assistance under another law, directly or indirectly by a member who is a lawyer or by a legal practice in which a member who is a lawyer has an interest.

(8) In this section—

"new member" means a member who was not a member of the Assembly immediately before the Assembly was last dissolved.

PART 4—AUTOMATIC VACATION OF MEMBER'S SEAT

Vacating seats of members in particular circumstances [LAA s 7 + LGA s 224, DD s 72]

72.(1) A member's seat in the Assembly becomes vacant if any of the following happens—

(a) the member fails to take his or her seat within 21 sitting days after being elected as a member;

(b) the member ceases to be enrolled on the electoral roll for the members's electoral district or another electoral district;

(c) the member ceases to be an Australian citizen;

(d) the member becomes a member of the Commonwealth Parliament or of a legislature of another State;

(e) the member accepts a paid public appointment, other than a paid State appointment;[27]

(f) the member is elected or appointed as mayor or a councillor of a local government of the State or another State;

(g) the Assembly by resolution—

(i) decides the member has contravened section 71(1), whether or not after reference of the question to the Court of Disputed Returns under the *Electoral Act 1992*, section 143;[28] and

(ii) decides not to make a declaration under section 73;

(h) the member takes an oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to, or becomes an agent of, a foreign state or power;

(i) the member is convicted of any of the following offences—

(i) an offence against the law of Queensland, another State or the Commonwealth for which the member is sentenced to more than 1 year's imprisonment;

(ii) an offence against the *Electoral Act 1992*, section 151, 154,

27 The effect of purporting to accept a paid State appointment is dealt with under section 69 (Appointment to paid State appointment is of no effect).

28 *Electoral Act 1992*, section 143 (Reference of question as to qualification or vacancy)

168 or 170(a) or (b);[29]

(iii) an offence against the *Electoral Act 1992*, section 159[30] in relation to an enrolment application;

(iv) an offence against the *Commonwealth Electoral Act 1918* (Commonwealth) section 336(3) or 337(1)(d), in relation to an enrolment application;

(v) an offence against the Criminal Code, section 59 or 60;[31]

(vi) treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth;

(j) the member becomes a bankrupt under the *Bankruptcy Act 1966* (Cwlth);

(k) the member—

(i) has executed a deed of arrangement as debtor under the *Bankruptcy Act 1966* (Cwlth), part X; and

(ii) breaches the terms of the deed;

(l) the member's creditors accept a composition under the *Bankruptcy Act 1966* (Cwlth), part X and the member breaches the terms of the composition;

(m) the member is absent without the Assembly's permission from the Assembly for more than 21 consecutive sitting days, whether over 1 or more sessions.

(2) For subsection (1)(i)(i), the following apply—

(a) if the sentence of imprisonment is suspended, the provision does not apply;

(b) however, if the member is ordered at any time to actually serve more than 1 year of the suspended term of imprisonment, the

29 *Electoral Act 1992*, section 151 (False names etc. on electoral rolls), 154 (False, misleading or incomplete documents), 168 (Influencing voting) or 170 (Voting if not entitled etc.)

30 *Electoral Act 1992*, section 159 (Forging or uttering electoral papers etc.)

31 Criminal Code, section 59 (Member of Parliament receiving bribes) or 60 (Bribery of member of Parliament)

provision applies.

Assembly may disregard disqualifying events [new, DD s 73]

73.(1) This section applies if the Assembly considers that anything that happened whether before or after the commencement of this section (the **"disqualifying ground"**) may have caused—

(a) a person to be disqualified from being elected as a member; or

(b) the seat of a member to become vacant.

(2) The Assembly may declare by resolution the disqualifying ground to be of no effect.

(3) The Assembly may make the declaration only if the Assembly considers the ground—

(a) has stopped having effect; and

(b) was in all the circumstances trifling in nature; and

(c) happened or arose without the actual knowledge or consent of the person or member or was accidental or due to inadvertence.

(4) This section applies despite any other provision of this chapter.

(5) This section has no effect on the jurisdiction of the Court of Disputed Returns.

Effect of appeals against conviction or sentence [new, DD s 74]

74.(1) This section applies if a member whose seat becomes vacant because of anything mentioned in section 72(1)(i) (the **"disqualifying ground"**) appeals, or applies for leave to appeal, against the relevant conviction or sentence within 1 calender month after the conviction or sentence.

(2) If, on appeal, the conviction is quashed or set aside, or the sentence is changed to a sentence to which section 72(1)(i) does not apply, the disqualifying ground is taken never to have happened.

(3) To ensure that subsection (2) has effect, a writ for an election to fill the vacancy in the member's seat caused by the disqualifying ground can not be issued—

(a) until at least 1 calender month has passed after the seat becomes vacant; and

(b) if the member appeals, or applies for leave to appeal, within 1 calender month after the seat becomes vacant—until the appeal has ended without subsection (2) applying.

(4) Subsection (3) does not prevent a writ for a general election being issued.

PART 5—VACATION OF SEAT BY MEMBER

Resignation of seat in the Assembly [LAA s 8, DD s 75]

75.(1) A member may resign his or her seat by signed writing addressed to the Speaker.

(2) The member's seat becomes vacant when the Speaker receives the resignation.

Vacancy because of resignation to contest Commonwealth election [LAA s 8A, DD s 76]

76.(1) This section applies if, to seek election for the Parliament of the Commonwealth, a member—

(a) resigns the member's seat not later than 21 days after the issue of the writ for the election; and

(b) at the time of tendering the resignation, notifies in writing to the Speaker—

(i) the member's intention to seek his or her election as a Commonwealth member; and

(ii) the member's intention in the event of failing to secure his or her election as a Commonwealth member to become again a candidate for the vacancy in the member's seat in the Assembly arising because of the resignation.

(2) The issue of a writ for an election to fill the vacancy in the member's

seat in the Assembly must be deferred until—

(a) if the member is elected as a Commonwealth member and a petition against the member's election or return as elected is not lodged within the time allowed for the lodging of that type of petition—the expiration of the time so allowed; or

(b) if the member is elected as a Commonwealth member and a petition against the member's election or return as elected is lodged within the time allowed for the lodging of that type of petition—the final decision on that petition; or

(c) if the member is not elected as a Commonwealth member and does not lodge a petition against the election or return as elected of another person as a Commonwealth member within the time allowed for the lodging of that type of petition—the expiration of the time so allowed; or

(d) if the member is not elected as a Commonwealth member and lodges a petition against the election or return as elected of another person as a Commonwealth member within the time allowed for the lodging of that type of petition—the final decision on that petition; or

(e) if the member is not nominated as a Commonwealth member, or if nominated does not consent to the nomination, within the time required for nomination under the laws of the Commonwealth—the expiration of that time.

(3) In this section—

"Commonwealth member" means a member of either House of the Parliament of the Commonwealth.

PART 6—GENERAL

Particular matters not to affect function or power [EARC QCA ss 30–31 + new, DD s 77]

77. The performance of a function, or exercise of a power, by the

Assembly or a committee is not affected because of any of the following—

(a) the presence of a person who purports to be a member of the Assembly or committee, but who is not qualified to be a member;

(b) the presence of a person who purports to be a member of the Assembly or committee, but who is disqualified under an Act from being a member;

(c) the presence of a person whose seat has become vacant;

(d) the presence of a person who was never properly elected as a member of the Assembly or committee;

(e) a vacancy in the Assembly's or committee's membership.

CHAPTER 6—STATUTORY COMMITTEES OF THE ASSEMBLY

PART 1—OBJECTS AND DEFINITIONS

Main objects of ch 6 and their achievement [PCA s 2, DD s 78]

78.(1) The main objects of this chapter are to enhance the accountability and transparency of public administration, and to extend democratic government, in Queensland.

(2) The chapter's main object is to be achieved by establishing committees of the Assembly with areas of responsibility that include—

(a) administrative review reform, and constitutional, electoral and legal reform; and

(b) the ethical conduct of members and parliamentary powers, rights and immunities; and

(c) petitions lodged with the Clerk and received by the Assembly raising public policy issues within the legislative competence of the Parliament; and

(d) the integrity, economy, efficiency and effectiveness of

government financial management; and

(e) certain works undertaken by or for government; and

(f) the application of fundamental legislative principles to particular Bills and subordinate legislation and the lawfulness of particular subordinate legislation; and

(g) the Assembly's standing rules and orders.

Definitions for ch 6 [PCA Dictn, DD s 79]

79. In this chapter—

"Annual Appropriation Act" see the *Financial Administration and Audit Act 1977*, section 3(1).

"commercial entity" see section 100(4).[32]

"community service obligation" see the *Government Owned Corporations Act 1993*, section 121.

"consider" includes examine and inquire.

"constructing authority" see section 100.

"government financial documents" includes—

(a) a document tabled in the Assembly under the *Financial Administration and Audit Act 1977*; and

(b) the annual financial statements and annual reports of a GOC; and

(c) a document that would be a government financial document if it had been tabled in the Assembly as required by law;

but does not include estimates of receipts for the proposed expenditure under an Annual Appropriation Act.

"major GOC[33] works" means works (other than public works) undertaken as part of a major infrastructure investment outlined in a GOC's statement of corporate intent.

32 Section 100 (Meaning of "constructing authority" for works)

33 government owned corporation, see *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)

"proposed national scheme legislation" means a Bill—

(a) that is intended to be substantially uniform with, or complementary to, legislation of the Commonwealth or another State; and

(b) whose operation may, under the Act, be changed by amendment of a law of the Commonwealth or another State.

"public works" see section 99(1).[34]

"works" includes—

(a) a project, service, utility or undertaking; and

(b) a part or stage of works; and

(c) a repair, reconstruction or extension of works.

Examples of paragraph (b)—

1. Any intermediate stage of works between planning and completion.
2. Engagement of professional consultants for works.
3. Calling of tenders for works.

PART 2—ESTABLISHMENT

Establishment of statutory committees [PCA s 4, DD s 80]

80. The following committees of the Assembly (the **"statutory committees"**) are established—

- Legal, Constitutional and Administrative Review Committee
- Members' Ethics and Parliamentary Privileges Committee
- Petitions Committee
- Public Accounts Committee
- Public Works Committee

[34] Section 99 (Areas of responsibility of Public Works Committee)

- Scrutiny of Legislation Committee
- Standing Orders Committee.

Membership of statutory committees [PCA s 4A, DD s 81]

81.(1) A statutory committee must consist of an equal number of members nominated by—

(a) the member who is recognised in the Assembly as the Leader of the House; and

(b) the member who is recognised in the Assembly as the Leader of the Opposition.

(2) The chairperson of a statutory committee must be the member nominated as chairperson by the member mentioned in subsection (1)(a).

Quorum and voting at meetings of statutory committees [PCA s 4B, DD s 82]

82. At a meeting of a statutory committee—

(a) a quorum consists of half the number of members appointed to the committee plus 1; and

(b) a question is decided by a majority of the votes of the members of the committee present and voting; and

(c) each member of the committee has a vote on each question to be decided and, if the votes are equal, the chairperson of the committee has a casting vote.

Example of paragraph (a)—

If 6 members are appointed to a statutory committee, the quorum is 4 (half the number of members (3) plus 1).

PART 3—ROLE OF STATUTORY COMMITTEES

Purpose of pts 3 and 4 [PCA s 7, DD s 83]

83.(1) This part sets out the role of statutory committees for their areas of responsibility.

(2) Part 4 sets out the areas of responsibility for each statutory committee.

Role of statutory committees [PCA s 8, DD s 84]

84.(1) The main role of a statutory committee is to deal with issues within its areas of responsibility.

(2) The committee is to also deal with an issue referred to the committee by the Assembly or under another Act, whether or not the issue is within its areas of responsibility.

(3) The committee may deal with an issue by—

(a) considering it; and

(b) reporting on it, and making recommendations about it, to the Assembly.

PART 4—AREAS OF RESPONSIBILITY OF STATUTORY COMMITTEES

Division 1—Legal, Constitutional and Administrative Review Committee

Areas of responsibility of Legal, Constitutional and Administrative Review Committee [PCA s 9, DD s 85]

85. The Legal, Constitutional and Administrative Review Committee has the following areas of responsibility—

- administrative review reform
- constitutional reform
- electoral reform

- legal reform.

Administrative review reform [PCA s 10, DD s 86]

86.(1) The committee's area of responsibility about administrative review reform includes considering legislation, or provisions of legislation, about—

(a) access to information; or

(b) review of administrative decisions; or

(c) anti-discrimination; or

(d) equal employment opportunity; or

(e) the capacity of the crime commissioner, the director of public prosecutions, the information commissioner and the parliamentary commissioner for administrative investigations to discharge their duties effectively.

(2) The committee's area of responsibility does not include—

(a) investigating particular conduct; or

(b) reconsidering or reviewing a decision to investigate, conciliate or review, not to investigate, conciliate or review or to discontinue investigation, conciliation or review of a particular complaint or decision; or

(c) reconsidering or reviewing reports, findings, recommendations or decisions in relation to—

(i) a particular investigation, complaint or decision; or

(ii) particular conduct the subject of a report under the *Parliamentary Commissioner Act 1974*, section 24(6).[35]

Constitutional reform [PCA s 11, DD s 87]

87. The committee's area of responsibility about constitutional reform includes any Bill expressly or impliedly repealing any law relevant to the State's constitution.

35 *Parliamentary Commissioner Act 1974*, section 24 (Procedure on completion of investigation)

Electoral reform [PCA s 12, DD s 88]

88. The committee's area of responsibility about electoral reform includes monitoring generally the conduct of elections under the *Electoral Act 1992* and the capacity of the electoral commission to conduct elections.

Legal reform [PCA s 13, DD s 89]

89. The committee's area of responsibility about legal reform includes—

(a) recognition of Aboriginal tradition and Torres Strait Island custom under Queensland law; and

(b) proposed national scheme legislation referred to the committee by the Assembly.

Division 2—Members' Ethics and Parliamentary Privileges Committee

Areas of responsibility of Members' Ethics and Parliamentary Privileges Committee [PCA s 14, DD s 90]

90. The Members' Ethics and Parliamentary Privileges Committee has the following areas of responsibility—

- the ethical conduct of members
- parliamentary powers, rights and immunities.

Ethical conduct—registration of interests [PCA s 15, DD s 91]

91. The committee's area of responsibility about the ethical conduct of members includes—

(a) examining the arrangements, under resolutions of the Assembly, for compiling, keeping and allowing inspection of—

(i) a register of the interests of members; and

(ii) a register of the interests of persons related to a member; and

(b) considering proposals made by members and other persons about the form and content of the registers and documents relevant to the registers, including statements of interests to be made by

members; and

(c) considering complaints referred to the committee about the failure to register particular interests; and

(d) considering the classes of persons who should be treated as related to a member; and

(e) considering any other issue about the registration of interests.

Ethical conduct—code of conduct [PCA s 16, DD s 92]

92.(1) The committee's area of responsibility about the ethical conduct of members includes—

(a) recommending to the Assembly a proposed code of conduct for members (other than members in their capacity as Ministers); and

(b) recommending to the Assembly a procedure for complaints about a member not complying with the code of conduct adopted by the Assembly, including, for example, the persons who may make complaints, or the persons who must refer complaints, to the committee; and

(c) considering complaints against particular members for failing to comply with the code of conduct, reporting to the Assembly about complaints and recommending action by the Assembly.

(2) In recommending a proposed code of conduct for members to the Assembly, the committee must have regard to—

(a) the ethics principles and obligations set out in the *Public Sector Ethics Act 1994*; and

(b) the desirability of consistency between standards in the code of conduct and the ethics principles and obligations, to the extent the principles and obligations are relevant to members and their functions.

(3) A complaint about a member not complying with the code of conduct for members may be considered only by the Assembly or the committee.

(4) Subsection (3) has effect despite any other law, but the subsection does not apply to a court, tribunal or other entity if the entity may, under a law, consider an issue and the issue that is considered involves the

commission, or claimed or suspected commission, of a criminal offence.

(5) Subsection (4) does not limit or otherwise affect the powers, rights and immunities of the Assembly and its committees and members.

Parliamentary powers, rights and immunities [PCA s 17, DD s 93]

93. The committee's area of responsibility about parliamentary powers, rights and immunities includes the powers, rights and immunities of the Assembly and its committees and members.

Division 3—Petitions Committee

Area of responsibility of Petitions Committee

94.(1) The Petitions Committee's area of responsibility is petitions lodged with the Clerk and received by the Assembly raising public policy issues within the legislative competence of the Parliament.

(2) The committee's area of responsibility to consider a petition lodged with the Clerk and received by the Assembly includes considering whether the petition seeks, or appears to require, legislation to enact a proposal.

(3) If the petition does not seek, or appear to require, legislation to enact a proposal, the committee is to refer the petition to the Minister responsible for administering the relevant matter.

(4) If the petition seeks, or appears to require, legislation to enact a proposal, the committee's area of responsibility includes—

(a) considering the merits, including costs and legal implications, of the proposal;

(b) recommending to the Assembly whether the proposal should be submitted to electors in a referendum or indicative plebiscite.

Content of report

95.(1) If the committee decides to recommend that a proposal be submitted to electors in a referendum, the committee is to include the following in its report to the Legislative Assembly—

(a) a draft Bill for the proposal;

(b) a name for the proposal consisting of no more than 6 words clearly indicating the purpose and effect of the proposal;

(c) the names of petitioners entitled to appoint scrutineers for the referendum;

(d) arguments in favour of and against the proposal for the purposes of the *Referendums and Indicative Plebiscites Act 1997*, chapter 2, part 2.[36]

(2) If the committee decides to recommend that alternative proposals be submitted to electors in an indicative plebiscite, the committee is to include the following in its report—

(a) the alternative proposals in the form of alternative provisions of a draft Bill;

(b) a name for each alternative proposal consisting of no more than 6 words clearly indicating the purpose and effect of the proposal;

(c) the names of petitioners entitled to appoint scrutineers for the indicative plebiscite; and

(d) arguments in favour of and against each of the alternative proposals for the purposes of the *Referendums and Plebiscites Act 1997*, chapter 3, part 2, division 3 and part 3, division 3.

(3) Each argument included in the committee's report must be not more than 1 000 words.

Content of resolution adopting report

96.(1) A resolution of the Legislative Assembly that a question be submitted to electors in a referendum, and adopting the Petitions Committee's report for the purposes of the *Referendums and Indicative Plebiscites Act 1997*, is to be in the following form—

(a) that the report of the Petitions Committee is adopted;

(b) that a question is required to be submitted to electors asking whether the voters approve of the report proposal;

36 *Referendums & Indicative Plebiscites Act 1997*, part 2 (Statements of Arguments)

(c) that the report proposal required to be submitted to electors is the one set out in the draft Bill included in the report;

(d) that the report proposal is, on the writ and the ballot paper, to be given the name given to the proposal in the report and stated in the resolution;

(e) that the petitioners the report recommends should be entitled to appoint scrutineers for the referendum are entitled to appoint scrutineers;

(f) that the arguments set out in the report in favour of and against the proposal are to be distributed to electors.

(2) A resolution of the Legislative Assembly that a question be submitted to electors in an indicative plebiscite, and adopting the Petitions Committee's report for the purposes of the *Referendums and Indicative Plebiscites Act 1997*, is to be in the following form—

(a) that the report of the Petitions Committee is adopted;

(b) that a question is required to be submitted to electors in an indicative plebiscite asking which of the report alternative proposals should be submitted to electors in a referendum;

(c) that the report alternative proposals are the ones set out in the alternative provisions of a draft Bill included in the report;

(d) that the report alternative proposals are, on the writ and the ballot paper, to be given the names given to them in the report and stated in the resolution;

(e) that the petitioners the report recommends should be entitled to appoint scrutineers for the indicative plebiscite are entitled to appoint scrutineers;

(f) that the arguments set out in the report in favour of and against the report alternative proposals are to be distributed to electors.

(3) In this section—

"report alternative proposals" means the alternative proposals the report recommends should be submitted to electors in an indicative plebiscite.

"report proposal" means the proposal that the report recommends should be submitted to electors in a referendum.

Division 4—Public Accounts Committee

Area of responsibility of Public Accounts Committee [PCA s 18, DD s 94]

97. The Public Accounts Committee's area of responsibility is to assess the integrity, economy, efficiency and effectiveness of government financial management by—

(a) examining government financial documents; and

(b) considering the annual and other reports of the auditor-general; and

(c) monitoring the capacity of the auditor-general to inquire into the integrity, economy, efficiency and effectiveness of government financial management.

Reference of issues to auditor-general [PCA s 19, DD s 95]

98. The committee may refer issues within its area of responsibility to the auditor-general for consideration.

Division 5—Public Works Committee

Areas of responsibility of Public Works Committee [PCA s 20, DD s 96]

99.(1) The Public Works Committee's areas of responsibility are—

(a) works (**"public works"**) undertaken by an entity that is a constructing authority for the works if the committee decides to consider the works; and

(b) any major GOC works if the committee decides to consider the works.

(2) In deciding whether to consider public works, the committee may have regard to—

(a) the stated purpose of the works and the apparent suitability of the works for the purpose; and

(b) the necessity for, and the advisability of, the works; and

(c) value for money achieved, or likely to be achieved, by the works; and

(d) revenue produced by, and recurrent costs of, the works or estimates of revenue and costs for the works; and

(e) the present and prospective public value of the works, including, for example, consideration of the impact of the works on the community, economy and environment; and

(f) procurement methods for the works; and

(g) the balance of public and private sector involvement in the works; and

(h) the performance of—

(i) the constructing authority for the works; and

(ii) the consultants and contractors for the works;

with particular regard to the time taken for finishing the works and the cost and quality of it; and

(i) the actual suitability of the works in meeting the needs and in achieving the stated purpose of the works.

Meaning of "constructing authority" for works [PCA s 21, DD s 97]

100.(1) An entity is a constructing authority for works if the entity is the State or a department.

(2) An entity is also a constructing authority for a works if—

(a) the entity is established under an Act, or under State or local government authorisation for a public, State or local government purpose; and

(b) the works are funded from—

(i) the public accounts; or

(ii) the proceeds of a financial arrangement within the meaning of the *Statutory Bodies Financial Arrangements Act 1982*.

(3) In addition, a GOC is a constructing authority for works if the works are undertaken specifically or substantially for a community service obligation of the GOC.

(4) Also, an entity (a **"commercial entity"**) is a constructing authority for works if, under an agreement for the works—

(a) the State or another entity representing the State—

(i) has, or will or may have, a financial liability or interest; or

(ii) has granted, or will or may grant land, or an interest in land or another right, privilege, monopoly, concession, franchise or interest; or

(iii) has contributed, or will or may contribute, resources of any kind; and

(b) the works have become, or will or may become, the absolute property of the State or another entity representing the State.

(5) A GOC is a constructing authority for major GOC works referred to the committee by the Assembly.

Issues to which committee may have regard [PCA s 27, DD s 98]

101. In considering works, the Public Works Committee may have regard to the issues mentioned in section 99(2)(a) to (i).[37]

Entry and inspection of places [PCA s 28, DD s 99]

102.(1) The Public Works Committee may authorise a committee member or anyone else (the **"authorised person"**) to enter and inspect a place where works that the committee is considering is proposed to be, is being or has been carried out.

(2) The authorised person may inspect anything in the place relevant to the works.

(3) Nothing in subsection (1) prevents the committee from authorising all members of the committee to enter and inspect the place.

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37 Section 99 (Areas of responsibility of Public Works Committee)

(4) However, the authorised person may enter the place only if the committee or authorised person gives reasonable written notice about the entry to the chief executive of the constructing authority for the works.

(5) On being given the notice, the chief executive must promptly make arrangements for the entry, including, for example, obtaining the consent of the following—

(a) if the place is occupied—the occupier of the place;

(b) if the place is not occupied—the owner of the place.

(6) The arrangements must ensure proper regard is given to safety.

(7) The authorised person may enter and inspect the place without the consent mentioned in subsection (5) if the chief executive attempted to obtain the consent, but—

(a) the attempt was unsuccessful (whether because the occupier or owner refused consent or otherwise); and

(b) the chief executive gave written notice about the entry (of at least 7 days) to the occupier or owner.

(8) In this section—

"building" includes any structure.

"chief executive", of a constructing authority, includes its chief executive officer, however called.

"place" includes premises.

"premises" includes—

(a) a building; and

(b) a part of a building; and

(c) land where a building is situated.

Restriction on procurement of capital works project [PCA s 29, DD s 100]

103.(1) This section applies if the Assembly—

(a) refers works to the Public Works Committee; and

(b) directs that procurement for the works must not start until the committee has considered the works and reported to the Assembly about it.

(2) The works must not start or further proceed until the committee's report is tabled in the Assembly and considered by it.

(3) This section applies despite any other Act.

Dealing with commercially sensitive information in private session [PCA s 30, DD s 101]

104.(1) This section applies if, while considering works, it appears to the Public Works Committee that confidential information may be given to the committee in a public hearing and publication of the information at the hearing could—

(a) have a serious effect on the commercial interests of a GOC or commercial entity; or

(b) reveal trade secrets of a GOC or commercial entity.

(2) The committee must deal with the information in private session.

(3) This section does not limit any other power of a committee to deal with an issue in private session.

Reporting commercially sensitive information to Assembly [PCA s 31, DD s 102]

105.(1) This section applies if the Public Works Committee considers that information obtained by the committee while considering works could, if reported to the Assembly—

(a) have a serious effect on the commercial interests of a GOC or commercial entity; or

(b) reveal trade secrets of a GOC or commercial entity.

(2) The committee may report the information to the Assembly only if it considers it is in the public interest to report the information.

Division 6—Scrutiny of Legislation Committee

Area of responsibility of Scrutiny of Legislation Committee [PCA s 22, DD s 103]

106.(1) The Scrutiny of Legislation Committee's area of responsibility is to consider—

(a) the application of fundamental legislative principles[38] to particular Bills and particular subordinate legislation; and

(b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation.

(2) The committee's area of responsibility includes monitoring generally the operation of—

(a) the following provisions of the *Legislative Standards Act 1992*—

- section 4 (Meaning of "fundamental legislative principles")
- part 4 (Explanatory notes); and

(b) the following provisions of the *Statutory Instruments Act 1992*—

- section 9 (Meaning of "subordinate legislation")
- part 5 (Guidelines for regulatory impact statements)
- part 6 (Procedures after making of subordinate legislation)
- part 7 (Staged automatic expiry of subordinate legislation)
- part 8 (Forms)
- part 10 (Transitional).

38 "Fundamental legislative principles" are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act 1992*, section 4(1)). The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

Division 7—Standing Orders Committee

Area of responsibility of Standing Orders Committee [PCA s 23, DD s 104]

107. The Standing Orders Committee's area of responsibility is standing orders about the conduct of business by, and the practices and the procedures of, the Assembly and its committees.

PART 5—CHANGE IN COMPOSITION OF STATUTORY COMMITTEE

Issues dealt with by previously constituted committees [PCA s 32, DD s 105]

108.(1) If the composition of a statutory committee changes before it finishes dealing with an issue, the newly constituted committee may continue and finish dealing with the issue as if it had dealt with the issue from the beginning.

Example—

Evidence given to the previous committee may be taken to have been given to the newly constituted committee.

(2) Subsection (1) applies even if the committees are constituted during different Parliaments.

CHAPTER 7—OTHER PROVISIONS ABOUT COMMITTEES

Act does not limit Assembly's powers [PCA s 5, DD s 106]

109. The Assembly's power to establish committees, and confer

functions and powers on committees (including statutory committees), is not limited by this Act.

Example—

The Assembly may, by resolution, establish a standing or select committee.

Ministerial response to committee report [PCA s 24, DD s 107]

110.(1) This section applies if a report of a committee, other than the Scrutiny of Legislation Committee, recommends the Government or a Minister should take particular action, or not take particular action, about an issue.

(2) The Minister who is responsible for the issue the subject of the report must provide the Assembly with a response.

(3) The response must set out—

(a) any recommendations to be adopted, and the way and time within which they will be carried out; and

(b) any recommendations not to be adopted and the reasons for not adopting them.

(4) The Minister must table the response within 3 months after the report is tabled.

(5) If a Minister can not comply with subsection (4), the Minister must—

(a) within 3 months after the report is tabled, table an interim response and the Minister's reasons for not complying within 3 months; and

(b) within 6 months after the report is tabled, table the response.

(6) If the Assembly is not sitting, the Minister must give the response, or interim response and reasons, to the Clerk.

(7) The response, or interim response and reasons, is taken to have been tabled on the day they are received by the Clerk.

(8) The receipt of the response, or interim response and reasons, by the Clerk, and the day of the receipt, must be recorded in the Assembly's votes and proceedings for the next sitting day after the day of receipt.

(9) The response, or interim response and reasons, is a response, or

interim response and reasons, tabled in the Assembly.

(10) Subsection (1) does not prevent a Minister providing a response to a recommendation in a report of the Scrutiny of Legislation Committee if it is practicable for the Minister to provide the response having regard to the nature of the recommendation and the time when the report is made.

Example—

If the committee recommends that a Bill be amended because, in the committee's opinion, it does not have sufficient regard to fundamental legislative principles and the Bill has not been passed by the Assembly, it may be practicable for the Minister to provide a response.

(11) Subsection (6) does not limit the Assembly's power by order to provide for the tabling of a response, or interim response and reasons, when the Assembly is not sitting.

(12) This section does not apply to an annual report of a committee.

Annual report of committee [PCA s 33, DD s 108]

111.(1) Within 4 months and 14 days after the end of each financial year, the chairperson of each committee that has met and conducted business during the year must table in the Assembly a report about the committee's activities during the year.

(2) The report must include—

(a) a list of meetings of the committee and the names of members attending or absent from each meeting; and

(b) a summary of issues considered by the committee, including a description of the more significant issues arising from the considerations; and

(c) a statement of the committee's revenue and spending for the year; and

(d) a brief description of responses by Ministers to recommendations of the committee.

(3) This section is subject to the Act or resolution of the Assembly under which the committee is established.

CHAPTER 8—REPEALS, AMENDMENTS AND TRANSITIONAL

PART 1—REPEALS

Repeals[DD s 110]

112. The following Acts are repealed—

- *Constitution Act Amendment Act 1896*
- *Parliamentary Committees Act 1995*
- *Parliamentary Papers Act 1992*.

PART 2—AMENDMENT OF ACTS INTERPRETATION ACT 1954

Act amended in pt 2 [DD s 111]

113. This part amends the *Acts Interpretation Act 1954*.

Omission of s 29A (Tabling of reports when Legislative Assembly not sitting) [DD s 112]

114. Section 29A—

omit.

PART 3—AMENDMENT OF CRIMINAL JUSTICE ACT 1989

Amendment of section 118(Functions and powers)

115. Section 118(1)(a), after 'functions'—

insert—

'and the capacity to discharge those functions'.

PART 4—AMENDMENT OF THE DISTRICT COURT ACT 1967

Act amended in pt 3[DD s 113]

116. This part amends the *District Court Act 1967*.

Amendment of s 13 (Judges not to practise or sit in Parliament) [DD s 114]

117.(1) Section 13, heading, '**or sit in Parliament**'—

omit.

(2) Section 13, ', and a judge shall not be capable of being summoned or being chosen as a member of the Legislative Assembly'—

omit.

PART 5—AMENDMENT OF ELECTORAL ACT 1992

Act amended in pt 4 [DD s 115]

118. This part amends the *Electoral Act 1992*.

Replacement of s 83 (Who may be nominated) [DD s 116]

119. Section 83—

omit, insert—

'**Who may be nominated**

'**83.** Provisions about who may be nominated as a candidate for election, and may be elected, as a member of the Assembly for an electoral district are set out in the *Parliament of Queensland Act 2000*, section 64.[39]'.

PART 6—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 5 [DD s 117]

120. This part amends the *Local Government Act 1993*.

Omission of s 224 (Termination of membership of Legislative Assembly on becoming councillor) [DD s 118]

121. Section 224—

omit.

PART 7—AMENDMENT OF PARLIAMENTARY MEMBERS' SALARIES ACT 1988

Act amended in pt 6 [DD s 119]

122. This part amends the *Parliamentary Members' Salaries Act 1988*.

39 *Parliament of Queensland Act 2000*, section 64 (Qualifications to be a candidate and be elected a member)

Amendment of s 2 (Salary entitlement of Legislative Assembly members) [DD s 120]

123. Section 2(2), 'the *Constitution Act Amendment Act 1896*'—

omit, insert—

'part 6'.

Insertion of new ss 6A and 6B [DD s 121]

124. After section 6—

insert—

'**Additional salary of Deputy Speaker [CAAA 1896 s 3]**

'**6A.** If the Chairperson of Committees acts as the Speaker for a continuous period of 30 days or more, the chairperson is to be paid for the period additional salary at the rate for the time being applicable to the office of the Speaker, instead of the additional salary payable to him or her as chairperson.

'**Additional salary of temporary Chairperson of Committees [CAAA 1896 s 3]**

'**6B.** If a temporary Chairperson of Committees acts in the office of the Chairperson of Committees for a continuous period of 30 days or more, the temporary chairperson is to be paid for the period additional salary at the rate for the time being applicable to the office of the Chairperson of Committees, in addition to the salary payable to him or her as a member.'.

Renumbering of pt 6 [DD s 122]

125. Part 6—

renumber as part 7.

Renumbering of s 12 [DD s 123]

126. Section 12—

renumber as section 15.

Insertion of new pt 6 [DD s 124]

127. After section 11—

insert—

‘PART 6—WHEN SALARIES ARE PAID

‘**Salary when to be paid [CAAA 1896 s 6]**

‘**12.(1)** A member is as follows entitled to salary as a member from the day of the poll at which the person is elected until—

(a) if the person is a member on a dissolution of the Parliament and is not elected at the poll after the dissolution—the day of the poll;

(b) in any other case—the day on which the person stops being a member.

‘**(2)** An officer of the Assembly is entitled as follows to additional salary under section 5[40] from the day of—

(a) for an officer appointed by the Assembly—the appointment;

(b) in any other case—notification to the Speaker of the appointment to the Assembly;

until the day on which the person stops holding the office.

‘**(3)** For subsection (2), but subject to subsection (4), the person stops holding the office on the day on which—

(a) the person stops being a member or resigns the office; or

(b) for an officer appointed by the Assembly—a successor is appointed to the office; or

(c) in any other case—the Assembly is notified of the appointment of a successor.

‘**(4)** For subsection (3), if the person is, on the dissolution of the Parliament, an officer mentioned in section 5(1)(a) to (h)[41] the person does not stop being a member on the dissolution, but if the person is not

40 Section 5 (Rates of additional salaries)

41 Section 5 (Rates of additional salaries)

re-elected at the poll after the dissolution, the person is taken to stop being a member on the day of the poll.

'**(5)** All the amounts are to be certified fortnightly by the Clerk, and when so certified are to be paid out of the consolidated fund.

'**Apparent vacation of seat when Assembly not sitting**

'**13.(1)** This section applies if at any time when the Assembly is not sitting it is made to appear to the Speaker that the seat of any member has become vacant for any cause.

'**(2)** The Speaker may direct the Treasurer to retain the amounts that would be payable to the member for the interval between the happening of the cause and the next sitting or session of the Assembly.

'**(3)** If the Assembly declares the seat to have been vacated, no payment is to be made to the member for the time that has elapsed since the happening of the cause.

'**(4)** However, if the seat is not declared to have been vacated, the amounts retained by the Treasurer is to be immediately paid to the member.

'**Annual reversion to treasury of undrawn moneys**

'**14.(1)** If amounts payable to any member under any provision of this part have not been drawn by the member before the expiration of 7 days after 1 July in each year, the amounts are to revert to the treasury and become part of the consolidated fund.

'**(2)** The member is no longer entitled to payment of the amounts.'.

PART 8—AMENDMENT OF REFERENDUMS ACT 1997

Act amended

128. This part and schedule 1 amend the *Referendums Act 1997.*

Amendment of s1(Short title)

129. Section 1, after '*Referendums*'—

insert—

'*and Indicative Plebiscites*'.

Amendment of s11(When must an argument in favour of or against the Bill or question be published)

130. Section 11(2)—

omit, insert—

'**(2)** An argument in favour of or against the question must be distributed or published by the commission under section 12—

(a) if the argument is—

(i) set out in a report of the Petitions Committee adopted by the Legislative Assembly in the resolution requiring the question to be submitted to electors; and

(i) required to be distributed to electors under the resolution; or

(b) otherwise—if the argument is—

(i) not more than 1 000 words; and

(ii) authorised by—

(A) for an argument in favour of a 'yes' answer to the question—a majority of the members who voted in favour of the 'yes' answer and wish to forward the argument to the commission; or

(B) for an argument in favour of a 'no' answer to the question—a majority of the members who voted against the 'yes' answer and wish to forward the argument to the commission.

(iii) forwarded to the commission by members within 4 weeks after the Assembly's resolution.'.

Amendment of s12 (How an argument for or against a Bill or question is distributed or published)

131.(1) Section 12(1)—

omit, insert—

'**12.(1)** If—

(a) an argument is—

(i) set out in a Petitions Committee report adopted by the Legislative Assembly in the resolution requiring the question to be submitted to electors; and

(ii) required to be distributed to electors under the resolution; or

(b) a majority of the members who authorise an argument forwarded to the commission under section 11 ask the commission to post the argument to each elector;

the commission must, not later than 14 days before the polling day for the referendum, print and post to each elector a pamphlet containing the argument and, if another argument was forwarded to the commission under section 11, the other argument.'.

(2) Section 12(2), 'If a request is not made under subsection (1)'—

omit, insert—

'If subsection (1) does not apply to an argument forwarded to the commission by members under section 11,'.

Insertion of new ch 3—

132. After section 46—

insert—

‘CHAPTER 3—INDICATIVE PLEBISCITES

‘PART 1—GENERAL

‘**Purpose of chapter**

‘**47.(1)** This chapter provides for the conduct of an indicative plebiscite.

(2) Part 2 provides for the indicative plebiscite if the writ for the indicative plebiscite does not require it to be conducted by postal ballot.

(3) Part 3 provides for the indicative plebiscite if the writ for the indicative plebiscite requires it to be conducted by postal ballot.

‘**An indicative plebiscite is started by a resolution of Legislative Assembly**

‘**48.(1)** The Governor must issue a writ for the indicative plebiscite if a resolution of the Legislative Assembly requires that a question be submitted to electors asking which of alternative proposals named on the writ should be submitted to the electors at a referendum.

‘**(2)** The objective of the indicative plebiscite is to ensure that the most popular of the alternative proposals is submitted to electors in the referendum in the form of a Bill or question.

‘**Content of resolution if a Petitions Committee report is not being adopted**

‘**49.(1)** This section applies only if the resolution of the Legislative Assembly is not one adopting a report of the Petitions Committee as mentioned in the *Parliament of Queensland Act 2000*, section 96.

(2) The resolution of the Legislative Assembly is to be in the following form—

(a) that a question is required to be submitted to electors asking which of alternative proposals named in the resolution should be submitted to electors in a referendum;

(b) that the alternative proposals are those set out in the alternative provisions of a draft Bill included in the resolution;

(c) that the alternative proposals are, on the writ and ballot paper, to be given the names stated in the resolution;

(d) that arguments, each being no more than 1 000 words, set out in the resolution, in favour of and against the alternative proposals, are to be distributed to electors.

‘**Commission to conduct indicative plebiscite**

‘**50.(1)** The commission must conduct the indicative plebiscite if the Governor issues a writ for the indicative plebiscite to the commission under section 48.

‘**(2)** The commission must conduct the indicative plebiscite in accordance with the writ and this Act.

‘**Application of referendum provision**

‘**51.** If a provision of this chapter applies a provision of chapter 2 to the indicative plebiscite, the provision applies as if a reference in the provision, and in any definition applying to the provision, to a referendum or a referendum paper were a reference to the indicative plebiscite or an indicative plebiscite paper.

‘PART 2—INDICATIVE PLEBISCITE OTHER THAN BY POSTAL BALLOT

‘*Division 1—Application*

‘Application of ch 3, pt 2

‘**52.** This part applies if the resolution of the Legislative Assembly does not require the indicative plebiscite to be conducted by postal ballot.

‘*Division 2—Writ*

‘Form

‘**53.** The writ for the indicative plebiscite must be issued in form 6.

‘Ch 2 provisions applying

‘**54.** Sections 6(2) to (4), 7(b), 8 and 9 apply to the indicative plebiscite.

‘*Division 3—Statements of arguments*

‘Statements of arguments in resolution must be distributed

‘**55. (1)**The commission must print and post to each elector a single pamphlet containing every argument required by the resolution of the Legislative Assembly to be distributed to electors.

‘**(2)** The commission must comply with subsection (2) not later than 14 days before the polling day for the indicative plebiscite.

‘More than 1 argument published for same indicative plebiscite

‘**56.** If more than 1 argument is published in the same pamphlet under section 54, the format and printing style used must not unfairly favour 1 argument.

'**Limitation on expenditure by State**

'**57.** The State must not spend money on the presentation of arguments about alternative proposals in a question to be submitted to electors in the indicative plebiscite other than—

(a) to prepare, print and distribute pamphlets under section 54, or prepare, print and distribute the pamphlets in languages other than English; and

(b) to enable the commission to provide other publications about the question; and

(c) to provide for the salaries and allowances of members and their staff and of officers of the public service; and

(d) to provide for a daily allowance for petitioners authorised by the resolution to appoint scrutineers, that is fixed by the commission and payable for the period from the issue of the writ to the return of the writ.

'***Division 4—Voting and conduct of indicative plebiscite***

'***Subdivision 1—Arrangements for, and who may vote in, an indicative plebiscite***

'**Application of ch 2, pt 3, div 1 and 2**

'**58.** Chapter 2, part 3, divisions 1[42] and 2[43] apply to the indicative plebiscite, subject to sections 59 and 60.

'**Supply of ballot papers**

'**59.(1)** Ballot papers for the indicative plebiscite must be in form 7.

'**(2)** This section applies instead of section 18(2)(a) and (d) and (3).

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42 Chapter 2, part 3, division 1 (Arrangements for referendum)

43 Chapter 2, part 3, division 2 (Who may vote at a referendum)

'**Scrutineers**

'**60.(1)** This section applies to the indicative plebiscite if it is conducted under a resolution of the Legislative Assembly made to adopt a report of the Petitions Committee of the Legislative Assembly for the purposes of this chapter.

'**(2)** A reference in section 19 to each member is taken to be a reference to each petitioner entitled to appoint scrutineers under the resolution.

'***Subdivision 2—How voting takes place at an indicative plebiscite***

'**Application of ch 2, pt 3, div 3**

'**61.** Chapter 2, part 3, division 3, subdivisions 1 and 2 apply to the indicative plebiscite.

'**How electors must vote**

'**62.(1)** An elector must vote in accordance with subsection (2) or (3).

'**(2)** An elector may vote by writing on a ballot paper the number 1, a tick, or a cross, in the square opposite only 1 alternative proposal to indicate the elector's preference for the proposal.

'**(3)** Instead of voting in accordance with subsection (2), an elector may vote by—

(a) writing on a ballot paper the number 1, a tick, or a cross, in the square opposite an alternative proposal to indicate the elector's first preference for the proposal; and

(b) writing—

(i) the number 2 in another square; or

(ii) the numbers 2, 3 and so on in other squares;

to indicate the order of the elector's preferences for 1 or more (but not necessarily all) of the other proposals.

'**Formal and informal ballot papers**

'**63.(1)** Subject to this section, for a ballot paper to have effect to indicate a vote for the purposes of this part—

(a) the ballot paper must contain writing that is in accordance with section 62 or other writing or marks that indicate the voter's intended preference or intended order of preferences; and

(b) the ballot paper must not contain any writing or mark (other than as authorised by this part) by which the elector can be identified; and

(c) the ballot paper must have been put into a ballot box by the elector as required by this part; and

(d) if the ballot paper was put into a declaration envelope as required by this part—the envelope must have been signed, and the signature must have been witnessed, as required by this part.

'**(2)** For the purposes of subsection (1)(a) and other provisions of this part—

(a) if a ballot paper contains 2 or more squares in which the same number is written or marked—the numbers and any higher numbers written or marked in other squares are to be disregarded; and

(b) if there is a break in the order of the preferences indicated in writing or marks in the squares on a ballot paper—any preference after the break is to be disregarded.

'**(3)** Subsection (1)(d) does not apply to the witnessing of a signature if—

(a) the person required to witness the signature was a member of the commission's staff; and

(b) the person certifies in writing to the returning officer that the envelope was signed by the elector concerned.

'**(4)** If a ballot paper has effect to indicate a vote, it is a formal ballot paper.

'**(5)** If a ballot paper does not have effect to indicate a vote, it is an informal ballot paper.

'***Subdivision 3—Counting of votes***

'**Votes to be counted in accordance with division**

'**64.** Votes at the indicative plebiscite are to be counted in accordance with this subdivision.

'**Preliminary processing of declaration envelopes and ballot papers**

'**65.(1)** The commission or the returning officer for each electoral district must ensure that members of the commission's staff examine all declaration envelopes received by the commission or returning officer to decide whether the ballot papers in them are to be accepted for counting.

'**(2)** A ballot paper must be accepted for counting only if the person examining the declaration envelope is satisfied that—

(a) the elector concerned was entitled to vote at the indicative plebiscite; and

(b) the declaration was signed and witnessed before the end of voting hours on polling day; and

(c) if the declaration on the envelope was witnessed by a person other than a member of the commission's staff—the signature on the envelope corresponds with that in the request and the requirements of section 30(5)(d)[44] (as applied under section 61) were complied with; and

(d) if the ballot paper is in a declaration envelope received by post—the envelope was received before 6 p.m. on the 10th day after polling day for the indicative plebiscite.

'**(3)** If the ballot paper is accepted, the person must take it out of the envelope and, without unfolding it or allowing another person to unfold it, put it in—

(a) if the envelope was received by the returning officer and not sent to the commission to be dealt with under this section—a sealed ballot box; and

44 Section 30 (Making a declaration vote using posted referendum papers)

(b) if the envelope was received by the commission—a sealed ballot box in which ballot papers for the appropriate electoral district, and no other ballot papers, are placed.

'**(4)** If a declaration envelope received by a returning officer is for a different electoral district, it must be sent to the commission or the appropriate returning officer without being examined under this section.

'**(5)** Members of the commission's staff must also seal up in separate parcels, and keep, all unopened envelopes and all opened envelopes.

'**(6)** The commission or returning officer must advise all members and persons entitled to appoint scrutineers of the times when, and places where, declaration envelopes will be examined under this section.

'**Preliminary and official counting of votes**

'**66.** The commission must arrange for votes to be counted—

(a) on polling day—in accordance with section 67; and

(b) after polling day—in accordance with section 68.

'**Preliminary counting of ordinary votes**

'**67.(1)** As soon as practicable after the end of ordinary voting hours on polling day, the member of the commission's staff in charge of a polling booth must ensure that the commission's staff at the polling place follow the procedures set out in subsections (2) and (3).

'**(2)** The staff must—

(a) open all ballot boxes from the polling booth; and

(b) identify and keep in a separate parcel all declaration envelopes; and

(c) identify and keep in a separate parcel all informal ballot papers that are not in declaration envelopes; and

(d) arrange all formal ballot papers that are not in declaration envelopes under the alternative proposals by placing in a separate parcel all those on which a first preference vote is indicated for the same proposal; and

(e) count the first preference votes for each alternative proposal on all of the formal ballot papers; and

(f) prepare and sign a statement, in the form approved by the commission for this paragraph, setting out—

(i) the number of first preference votes for each alternative proposal; and

(ii) the number of informal ballot papers; and

(g) advise the returning officer for the electoral district concerned of the contents of the statement; and

(h) seal up each parcel of ballot papers or declaration envelopes separately, write on each a description of its contents, sign the description and permit any scrutineers who wish to do so to countersign the description; and

(i) send the parcels and the statements referred to in paragraph (f) to the returning officer for the appropriate electoral district.

'**(3)** This section applies to votes received by the commission under section 65[45] for an electoral district in the same way, subject to any prescribed changes and any other necessary changes, as it would apply if the commission's office were a polling booth for the electoral district.

'**Official counting of votes**

'**68.(1)** As soon as practicable after polling day, the procedures stated in this section must be followed.

'**(2)** For the counting of votes for each electoral district, the returning officer for the electoral district must ensure that the commission's staff follow the procedures required of them.

'**(3)** Firstly, for each electoral district, the staff must—

(a) open all ballot boxes in relation to the electoral district that have not previously been opened; and

(b) identify all declaration envelopes and keep those in relation to different electoral districts in separate parcels; and

45 Section 65 (Preliminary processing of declaration envelopes and ballot papers)

(c) seal up each parcel of envelopes for an electoral district other than the returning officer's electoral district, write on each a description of its contents, sign the description and permit any scrutineers who wish to do so to countersign the description; and

(d) send the parcels to the returning officer for the appropriate electoral district.

'**(4)** Secondly, for each electoral district, the staff must—

(a) open all sealed parcels of ballot papers sent to the returning officer under section 67; and

(b) arrange all formal ballot papers under the names of the alternative proposals by placing in a separate parcel all those on which a first preference vote is indicated for the same proposal ; and

(c) count the first preference votes for each proposal on all of the formal ballot papers.

'**(5)** Thirdly, for each electoral district, the staff must—

(a) open all ballot boxes on hand in which ballot papers from declaration envelopes have been placed under section 65(3);[46] and

(b) arrange all formal ballot papers under the names of the alternative proposals by placing in a separate parcel all those on which a first preference vote is indicated for the same proposal and

(c) count the first preference votes for each proposal on all of the formal ballot papers and add the number to that obtained under subsection (4)(c); and

(d) reapply paragraphs (a) to (c) as more envelopes are placed in ballot boxes under section 65(3), until there are no more envelopes required to be placed in ballot boxes under that section; and

'**(6)** Fourthly, as the commission directs, the returning officer for each electoral district must advise the commission of the number of first preference votes counted for the electoral district for each proposal.

46 Section 65 (Preliminary processing of declaration envelopes and ballot papers)

'**(7)** Fifthly, the commission, after it has received the information mentioned in subsection (6) from every returning officer, must count all the first preference votes received for each proposal for the whole State.

'**(8)** If, because of final counting under subsection (7), a majority of the first preference votes for the whole State is for 1 proposal, that proposal is approved.

'**(9)** If not, then, as the commission directs, a second count must take place.

'**(10)** On the second count—

(a) the proposal that had the fewest first preference votes for the whole State in the previous count must be excluded; and

(b) each ballot paper recording a first preference vote for that proposal that is not exhausted must be transferred to the proposal next in the order of the voter's preference; and

(c) that ballot paper must be counted as a vote for that proposal.

'**(11)** If, on the second count, a proposal has a majority of the votes remaining in the count for the whole State, the proposal is approved.

'**(12)** If not, the process must be repeated in 1 or more subsequent counts, taking place as directed by the commission, until 1 proposal has a majority of the votes remaining in the count for the whole State, with each count involving—

(a) the returning officer for each electoral district ensuring—

(i) that the proposal that had the fewest votes for the whole State in the previous vote is excluded; and

(ii) each ballot paper of that proposal that is not exhausted is transferred to the continuing proposal next in the order of the voter's preference; and

(iii) that the transferred ballot paper is counted to that proposal as a vote; and

(b) the returning officer for each electoral district, as the commission directs, advising the commission of the number of votes for each continuing proposal; and

(c) the commission counting all the votes received for each continuing proposal for the whole State.

'**(13)** The proposal that, under subsection (12), has a majority of the votes remaining in the count for the whole State is approved.

'**(14)** Despite subsections (10) and (12), the process of transferring to a continuing proposal each of the ballot papers that is not exhausted and counting it to the proposal as a vote must not be repeated if there is only 1 continuing proposal, but that proposal is approved.

'**Objections by scrutineers**

'**69.(1)** If, while a member of the commission's staff is complying with section 67 or 68, a scrutineer objects to the member's treatment of a ballot paper as informal, the member must mark on the back of it 'formal' or 'informal' according to whether the member's decision is to treat it as formal or informal.

'**(2)** If, while a member of the commission's staff is complying with section 67 or 68, a scrutineer objects to the counting of a vote for a particular proposal, the member must mark on the back of the relevant ballot paper the proposal for which it is counted or that it was rejected as informal.

'**Recounting of votes**

'**70.(1)** At any time before the commission returns the writ for the indicative plebiscite under section 71, the commission may order a recount of some or all of the ballot papers for the indicative plebiscite as directed by the commission.

'**(2)** A recount of ballot papers must, so far as practicable, be carried out so as to ensure that the requirements of section 68 are complied with.

'***Subdivision 4—Notifying the results of the indicative plebiscite***

'**Return of writ for the indicative plebiscite**

'71.(1) As soon as practicable after the commission has finished the counting or recounting of votes in the indicative plebiscite, the commission must write on the writ which proposal has been approved by a majority of the electors voting.

'**(2)** The commission must—

(a) return the writ to the Governor; and

(b) publish in the gazette the indicative plebiscite result.

'**Application of s44-46**

'**72.** Sections 44 to 46 apply to the indicative plebiscite.

'PART 3—INDICATIVE PLEBISCITE CONDUCTED BY POSTAL BALLOT

'***Division 1—Application***

'**Application of ch 3, pt 3**

'**73.(1)** The Governor in Council may, in the writ for the indicative plebiscite, direct that the indicative plebiscite be conducted by postal ballot.

'**(2)** This part applies if the indicative plebiscite is conducted by postal ballot.

'**(3)** The indicative plebiscite must be conducted in accordance with this part.

'***Division 2—Writ***

'**Form and content of writ**

'**74.(1)** The writ for the indicative plebiscite must be issued in form 8.

'**(2)** A writ must state the following—

(a) the day of its issue;

(b) the cut-off day for electoral rolls for the indicative plebiscite, which must be not less than 5 days, or more than 7 days, after its issue;

(c) the day after which ballot papers and return envelopes may be posted to electors, which must be not less than 5 days, or more than 7 days, after its issue;

(d) the day by which the commission must receive ballot papers posted by electors, which must be a day not less than 26 days, not more than 70 days, after its issue;

(e) the return day for the writ, which must be not more than 91 days after its issue.

'**(3)** For deciding a day mentioned in subsection (2)(b) to (e), that day and the day of issue of the writ are both to be included in any number of days specified in subsection (2)(b) to (e).

'**(4)** Subsection (3) applies despite the *Acts Interpretation Act 1954*, section 38.

'**Question must be attached to writ**

'**75.** There must be attached to the writ a statement of the question presenting the alternative proposals.

'**Commission to publish writ and prepare for the indicative plebiscite**

'**76.** On receiving a writ, the commission must—

(a) publish a copy of the writ in the gazette; and

(b) advertise the days stated in the writ in other ways the commissioner considers appropriate; and

(c) make available for inspection by anyone, without fee, a copy of the writ and the text of the attached question at offices of the commission and anywhere else the commission considers appropriate; and

(d) make appropriate arrangements for the conduct of the indicative plebiscite.

'**Governor's powers for the indicative plebiscite**

'**77.(1)** The Governor may by gazette notice—

(a) substitute a later day for a day stated under section 74(2) in the writ; or

(b) provide for anything to be done to overcome any difficulty that might otherwise affect the indicative plebiscite.

'**(2)** A gazette notice substituting a cut-off day for electoral rolls or return day for the writ may be published before, on or after the cut-off day or return day stated in the writ.

'**(3)** A gazette notice substituting the day by which the commission must receive ballot papers posted by electors —

(a) must be published before the day stated in the writ; and

(b) must not substitute a day that is more than 21 days after the day stated in the writ.

'***Division 3—Statements of arguments***

'**Statements of arguments—in resolution must be distributed**

'**78.** The commission must print and post to each elector a single pamphlet containing every argument required by the resolution of the Legislative Assembly to be distributed to electors.

'**Limitation on expenditure by State**

'**79.** The State must not spend money on the presentation of arguments about alternative proposals in a question to be submitted to electors in the indicative plebiscite other than—

(a) to prepare, print and distribute pamphlets under section 78, or prepare, print and distribute the pamphlets in languages other than English; and

(b) to enable the commission to provide other publications about the question; and

(c) to provide for the salaries and allowances of members and their staff and of officers of the public service; and

(d) to provide for a daily allowance for petitioners authorised by the resolution to appoint scrutineers, that is fixed by the commission and payable for the period from the issue of the writ to the return of the writ.

'***Division 4—Voting and conduct of indicative plebiscite by postal ballot***

'Subdivision 1—Arrangements for, and who may vote at, the indicative plebiscite

'**Form of ballot papers**

'**80.** Ballot papers for the indicative plebiscite must be in form 9.

'**Scrutineers**

'**81.(1)** Each member, or person entitled under the Legislative Assembly's resolution to appoint scrutineers, (**"scrutineer appointer"**) may, by notice given to a member of the commission's staff, appoint adults as scrutineers for the indicative plebiscite conducted by postal ballot.

'**(2)** Scrutineers are entitled to be present to observe the opening of return envelopes and the counting of votes.

‘**(3)** At the opening of return envelopes and the counting of votes, each scrutineer appointer is entitled to have 1 scrutineer present for each member of the commission’s staff at the place.

‘**(4)** A scrutineer may—

(a) object to the counting of votes on a ballot paper at the indicative plebiscite; or

(b) do anything else permitted by this Act.

‘**(5)** Each scrutineer must carry adequate identification to show that the person is a scrutineer.

‘**(6)** Each member is taken to be a scrutineer under this Act.

‘**Application of s 20 and ch 3, pt 3, div 2**

‘**82.** Section 20[47] and chapter 2, part 3, division 2[48] applies to the indicative plebiscite conducted by postal ballot.

‘***Subdivision 2—How voting takes place at an indicative plebiscite conducted by postal ballot***

‘**Ballot papers, return envelopes and arguments must be posted to electors**

‘**83.(1)** Within a period of time complying with the writ for the indicative plebiscite, the commission must post to every elector—

(a) a ballot paper and return envelope; and

(b) any argument required to be distributed to electors under section 78.

‘**(2)** The return envelope must not include any information other than the address of the commission and the electoral district in which the elector is enrolled.

47 Section 20 (correction of errors)

48 Chapter 2, part 3, division 2 (who may vote at a referendum)

'**(3)** The commission must keep a record of every ballot paper and return envelope sent under subsection (1).

'**(4)** In this section—

"return envelope" means an envelope addressed to the commission.

'**Voting**

'**84.(1)** On receiving the ballot paper and return envelope, the elector must—

(a) mark a vote on the ballot paper in accordance with section 85; and

(b) place the ballot paper in the return envelope and seal the envelope; and

(c) post the envelope to the commission.

'**(2)** If the elector is unable to vote without help, another person may help by doing any of the things mentioned in subsection (1) for the elector.

'**How electors must vote on a ballot paper**

'**85.(1)** An elector must vote in accordance with subsection (2) or (3).

'**(2)** An elector may vote by shading on a ballot paper the square opposite the proposal that is designated to indicate the elector's first preference for the proposal.

'**(3)** Instead of voting in accordance with subsection (1), an elector may vote by, on a ballot paper—

(a) shading the square opposite the proposal that is designated to indicate the elector's first preference for the proposal; and

(b) shading—

(i) the square designated to indicate the elector's second preference; or

(ii) the squares designated to indicate the elector's second, third and any subsequent preferences;

to indicate the order of the elector's preference for 1 or more, but not necessarily all, of the other proposals.

‘**Formal and informal ballot papers**

‘**86.(1)** Subject to this section, for a ballot paper to have effect to indicate a vote for the purposes of this part—

(a) the ballot paper must contain shading that is in accordance with section 86 or other writing or marks that indicate the voter’s intended preference or intended order of preferences; and

(b) the ballot paper must not contain any writing or mark (other than as authorised by this part) by which the elector can be identified; and

(c) as required by section 84(1)(b) and (c), the ballot paper must have been put into a return envelope, and the envelope posted to the commission.

‘**(2)** For the purposes of subsection (1)(a) and other provisions of this part—

(a) if a ballot paper contains 2 or more squares designated to indicate the same preference that have been shaded—the squares and any squares designated to indicate subsequent preferences that have been shaded are to be disregarded; and

(b) if there is a break in the order of the preferences indicated by shading in the squares on a ballot paper—any preference after the break is to be disregarded.

‘**(3)** If a ballot paper has effect to indicate a vote, it is a formal ballot paper.

‘**(4)** If a ballot paper does not have effect to indicate a vote, it is an informal ballot paper.

‘***Subdivision 3—Counting of votes***

‘**Counting of votes in a postal ballot**

‘**87.(1)** As soon as practicable after the day by which the commission must receive ballot papers posted by electors, the commission’s staff must follow the procedures set out in this section.

'**(2)** Firstly, the staff must—

(a) open all return envelopes received by the commission by the end of the day by which ballot papers posted by electors were required to be received by the commission; and

(b) arrange all formal ballot papers under the names of the alternative proposals by placing in a separate parcel all those on which a first preference vote is indicated for the same proposal; and

(c) count the first preference votes for each proposal on all of the formal ballot papers.

'**(3)** If, because of counting under subsection (2)(c), a majority of the first preference votes is for 1 proposal, that proposal is approved.

'**(4)** If not, then a second count must take place.

'**(5)** On the second count—

(a) the proposal which has the fewest first preference votes must be excluded; and

(b) each ballot paper recording a first preference vote for that proposal that is not exhausted must be transferred to the proposal next in the order of the voter's preference; and

(c) that ballot paper must be counted as a vote for that proposal.

'**(6)** If, on the second count, a proposal has a majority of the votes remaining in the count, the proposal is approved.

'**(7)** If not, the process of—

(a) excluding the proposal that has the fewest votes; and

(b) transferring each ballot paper of that proposal that is not exhausted to the continuing proposal next in the order of the voter's preference; and

(c) counting it to that proposal as a vote;

must be repeated until 1 proposal has a majority of the votes remaining in the count.

'**(8)** The proposal that, under subsection (7), has a majority of the votes remaining in the count is approved.

‘**(9)** Despite subsections (5) and (7), the process of transferring to a continuing proposal each of the ballot papers that is not exhausted and counting it to the proposal as a vote must not be repeated if there is only 1 continuing proposal, but that proposal is approved.

‘**Counting of votes in a postal ballot electronically**

‘**88.** Instead of counting all votes by hand in the way stated in section 88, the commission may electronically count or record and count all or some of the votes in a way that achieves the same result as if the votes were counted by hand under section 87.

Example—

The commission may electronically record all the voting preferences of the votes and then electronically distribute votes according to the preferences until the proposal with the majority of votes is ascertained.

‘**Counting envelopes**

‘**89.** Sections 87 or 88 do not prevent the commission from counting at any time return envelopes received by it from electoral districts.

‘**Objections by scrutineers**

‘**90.(1)** If a scrutineer objects to the treatment of a ballot paper as informal by a member of the commission’s staff while the ballot paper is being considered under section 87 or 88, the member must mark on the back of it ‘formal’ or ‘informal’ according to whether the member’s decision is to treat it as formal or informal.

‘**(2)** If a scrutineer objects to the treatment of a ballot paper as a vote counted for a particular proposal while the ballot paper is being considered under section 87 or 88, a member of the commission’s staff must mark on the back of it that the ballot paper has been counted for a particular proposal or has been rejected as informal.

‘**Recounting of votes**

‘**91.(1)** At any time before the commission returns the writ for the indicative plebiscite under section 92, the commission may order a recount

of some or all of the ballot papers for the indicative plebiscite as directed by the commission.

'**(2)** A recount of ballot papers must, so far as practicable, be carried out so as to ensure that the requirements of sections 88 or 89 are complied with.

'***Subdivision 4—Notifying the results of the indicative plebiscite***

'**Application of ss 71 and 72**

'**92.** Sections 71 and 72 apply to the indicative plebiscite conducted by postal ballot.

'PART 4—MORE THAN 1 INDICATIVE PLEBISCITE

'**A resolution of the Legislative Assembly may provide for more than 1 indicative plebiscite**

'**93.** A Legislative Assembly resolution may provide for more than 1 indicative plebiscite to achieve the objective mentioned in section 48(2).

'**Arguments must be published in same pamphlet**

'**94.(1)** This section applies if more than 1 indicative plebiscite is to be conducted at the same time, whether or not under section 93.

'**(2)** All arguments required to be published under section 55 or 78 must be published in the same pamphlet at the same time.

'**Ballot papers may be printed on 1 piece of paper**

'**95.** If more than 1 indicative plebiscite is held at the same time, whether or not under section 93, the ballot papers for each indicative plebiscite may be—

(a) printed on the 1 piece of paper; and

(b) in a form, prescribed by regulation, containing the same material as a ballot paper for a single indicative plebiscite, adjusted solely to present the 2 or more indicative plebiscites.'.

Insertion of new sch 2

133. After schedule 1—

insert—

'SCHEDULE 2

'INDICATIVE PLEBISCITE FORMS

Sections 53, 59(1), 74 and 80

FORM 6

Referendums and Indicative Plebiscites Act 1997

WRIT FOR AN INDICATIVE PLEBISCITE ON A QUESTION

To Electoral Commissioner

I, (*insert name)*, Governor direct you to submit the attached question presenting alternative proposals, approved by the Legislative Assembly, to electors within the meaning of the *Referendums and Indicative Plebiscites Act 1997.*

The following days are appointed—

- for the issue of this writ—(*insert day and date)*
- for the cut-off day for the electoral rolls for the indicative plebiscite—(*insert day and date)*

- for the polling day for the indicative plebiscite—(*insert day and date)*
- for the return of this writ—(*insert day and date)*

Witness

[*insert the Governor's title and the date*]

Governor

By Command

Reverse

This writ was received by me on (*insert day and date)*

Electoral commissioner

_____

I declare that on (*insert day and date)* the electors qualified to vote at the indicative plebiscite voted to approve that the following proposal be submitted to electors within the meaning of the *Referendums and Indicative Plebiscites Act 1997* in a referendum under that Act—

(*insert proposal approved by majority of electors voting)*

Electoral commissioner

FORM 7

Referendums and Indicative Plebiscites Act 1997

BALLOT PAPER

(FOR SUBMISSION OF A QUESTION)

HOW TO VOTE—

WRITE THE NUMBER 1, A TICK, OR A CROSS, IN THE SQUARE OPPOSITE ONLY 1 ALTERNATIVE PROPOSAL TO INDICATE YOUR PREFERENCE FOR THE PROPOSAL

OR

WRITE THE NUMBER 1, A TICK, OR A CROSS, IN THE SQUARE OPPOSITE AN ALTERNATIVE PROPOSAL TO INDICATE YOUR FIRST PREFERENCE FOR THE PROPOSAL; AND

WRITE—

(A) THE NUMBER 2 IN ANOTHER SQUARE; OR

(B) THE NUMBERS 2, 3 AND SO ON IN OTHER SQUARES;

TO INDICATE THE ORDER OF THE ELECTOR'S PREFERENCES FOR 1 OR MORE (BUT NOT NECESSARILY ALL) OF THE OTHER PROPOSALS.

Proposal	**Preferences**
(insert below names of proposal as on the writ)	
. . . . .	☐
. . . . .	☐
. . . . .	☐
. . . . .	☐

FORM 8

Referendums and Indicative Plebiscites Act 1997

WRIT FOR AN INDICATIVE PLEBISCITE ON A QUESTION BY POSTAL BALLOT

To Electoral commissioner

I, (*insert name)*, Governor direct you to submit the attached question presenting alternative proposals, approved by the Legislative Assembly, to electors within the meaning of the *Referendums and Indicative Plebiscites Act 1997* by postal ballot.

The following days are appointed—

- for the issue of this writ—(*insert day and date)*
- for the cut-off day for the electoral rolls for the indicative plebiscite—(*insert day and date)*
- for the day after which ballot papers and return envelopes may be posted to electors—(*insert day and date)*
- for the day by which the commission must receive ballot papers posted by electors—(*insert day and date)*
- for the return of this writ—(*insert day and date)*

Witness

[*insert the Governor's title and the date*]

Governor

By Command

Reverse

This writ was received by me on (*insert day and date)*

Electoral commissioner

I declare that in a postal ballot ending on (*insert day and date by which commission was to receive ballot papers under the writ)* the electors qualified to vote at the indicative plebiscite voted to approve that the following proposal be submitted to electors within the meaning of the *Referendums and Plebiscites Act 1997* in a referendum under that Act—

(*insert proposal approved by majority of electors voting)*

Electoral commissioner

FORM 9

Referendums and Indicative Plebiscites Act 1997

BALLOT PAPER

(FOR SUBMISSION OF A QUESTION IN A POSTAL VOTE)

HOW TO VOTE—

SHADE WITH A LEAD PENCIL ON THE BALLOT PAPER THE SQUARE OPPOSITE THE PROPOSAL THAT IS DESIGNATED TO INDICATE THE ELECTOR'S FIRST PREFERENCE FOR THE PROPOSAL.

OR

SHADE WITH A LEAD PENCIL THE SQUARE OPPOSITE THE PROPOSAL THAT IS DESIGNATED TO INDICATE THE ELECTOR'S FIRST PREFERENCE FOR THE PROPOSAL; AND

SHADE—

(A) THE SQUARE DESIGNATED TO INDICATE THE ELECTOR'S SECOND PREFERENCE; OR

(B) THE SQUARES DESIGNATED TO INDICATE THE ELECTOR'S SECOND, THIRD AND ANY SUBSEQUENT PREFERENCES;

TO INDICATE THE ORDER OF THE ELECTOR'S PREFERENCE FOR 1 OR MORE, BUT NOT NECESSARILY ALL, OF THE OTHER PROPOSALS.

Proposal	**Preferences**			
(insert below names of proposal as on the writ)				
	1st	**2nd**	**3rd**	**4th**
. . . . .	☐	☐	☐	☐
. . . . .	☐	☐	☐	☐
. . . . .	☐	☐	☐	☐
. . . . .	☐	☐	☐	☐ ’.

PART 9—TRANSITIONAL PROVISIONS

Continuation of existing statutory committees [DD s 125]

134. Each statutory committee established under section 80[49], other than the Petitions Committee, is a continuation of the corresponding committee established under the *Parliamentary Committees Act 1995*.

Continuation of the Speaker [DD s 126]

135. The member holding office as Speaker immediately before the commencement of this section, from the commencement is taken to hold office under section 14.

Continuation of the Chairperson of Committees [DD s 127]

136. The member holding office as Chairperson of Committees immediately before the commencement of this section, from the commencement is taken to hold office under section 17.

Saving of standing rules and orders [DD s 128]

137. The standing rules and orders of the Assembly in existence immediately before the commencement of this section, from the commencement are taken to have been prepared and adopted under section 11.

49 Section 80 (Establishment of statutory committees)

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS OF REFERENDUMS ACT 1997

Section 128

1. Part 1—

renumber as chapter 1.

2. After section 3—

insert—

‘**CHAPTER 2—REFERENDUMS**’.

3. Parts 2 to 4—

renumber as chapter 2, parts 1 to 3.

4. Part 5—

renumber as chapter 3.

5. Sections 47 and 48, after ‘referendum’—

insert—

‘or indicative plebiscite’.

6. Section 49, after ‘referendum’—

insert—

‘or indicative plebiscite’.

7. Section 49, after '43(2)(c)'—

insert—

' or 71(2)(a)'.

8. Section 51, after 'referendum'—

insert—

'or indicative plebiscite'.

9. Section 55, after 'referendum'—

insert—

'or indicative plebiscite'.

10. Section 55(4), after 'declaration vote envelope'—

insert—

'or return envelope'.

11. Sections 56 to 58, after 'referendum'—

insert—

'or indicative plebiscite'.

12. Part 6—

renumber as chapter 4.

13. Chapter 4 as renumbered, divisions 1 to 4—

renumber as chapter 4, parts 1 to 4.

14. Section 66, after ‘referendum’—

insert

‘or indicative plebiscite’.

15. Section 66(3)(b), from ‘or disapproval of’—

omit, insert—

‘, disapproval of, or preference for, the Bill or question or proposal.’.

16. Section 67, after ‘referendums’—

insert—

‘or indicative plebiscites’.

17. Section 69, after ‘referendum’—

insert—

‘or indicative plebiscite’.

18. Section 70, heading, ‘etc.’—

omit, insert—

‘or indicative plebiscite papers’.

19. Section 70, after ‘referendum paper’—

insert—

‘or indicative plebiscite paper’.

20. Section 72, after ‘referendum period’—

insert—

‘or indicative plebiscite period’.

21. Section 72, after ‘referendum’—

insert—

‘or indicative plebiscite’.

22. Section 73, after ‘referendum’—

insert—

‘or indicative plebiscite’.

23. Section 74, after ‘referendum period’—

insert—

‘or indicative plebiscite period’.

24. Section 74, after ‘referendum’, 2nd and 4th mention—

insert—

‘or indicative plebiscite’.

25. Section 75, after ‘referendum’—

insert—

‘or indicative plebiscite’.

26. Section 76, after ‘referendum’—

insert—

‘or indicative plebiscite’.

27. Section 77(1), after ‘referendum period’—

insert—

‘or indicative plebiscite period’.

28. Section 77, after ‘referendum’, 2nd mention—

insert—

‘or indicative plebiscite’.

29. Section 78, after ‘referendum’—

insert

‘or indicative plebiscite’.

30. Section 79, after ‘referendum’—

insert—

‘or indicative plebiscite’.

31. Section 80(1), after ‘referendum period’—

insert—

‘or indicative plebiscite period’.

32. Section 80(1), after ‘referendum’, 2nd and 3rd mention—

insert—

‘or indicative plebiscite’.

33. Section 80(2), definition “referendum statement”, from ‘or disapproval’—

omit, insert—

‘, disapproval of, or preference for, the Bill or question or proposal submitted to electors.’.

34. Section 81, after ‘referendum’—

insert—

‘or indicative plebiscite’.

35. Section 82(1), after ‘referendum’—

insert—

‘or indicative plebiscite’.

36. Section 82(1)(a) ‘or 30(6)(c) or (d)’—

omit, insert—

‘, 30(6)(c) or(d) or those sections as applied under section 58’.

37. Section 83(1), after ‘31’—

insert—

‘or those sections as applied under section 58’.

38. Section 83(2), after ‘30(6)(d)(ii)’—

insert—

‘or that section as applied under section 58’.

39. Section 84, after ‘referendum’—

insert—

‘or indicative plebiscite’.

40. Section 85, after ‘38(2)(h)’—

insert—

‘or 67(2)(h)’.

41. Section 86, after ‘30(6)(a)’—

insert—

‘or that section as applied under section 58’.

42. Part 7—

renumber as chapter 5.

43. Sections 89 to 94, after ‘referendum’—

insert—

‘or indicative plebiscite’.

44. Sections 94(a), (b) and (c), after ‘respectively’—

insert—

‘, or those sections as applied under section 58’.

45. Section 95, after ‘22(8)’—

insert—

‘or that section as applied under section 58’.

46. Section 96, after ‘referendum’—

insert—

‘or indicative plebiscite’.

47. Part 8—

renumber as chapter 6.

48. Section 99, after ‘referendum’—

insert—

‘or indicative plebiscite’.

49. Sections 47 to 100—

renumber as sections 96 to 149.

50. Section 104(6), as renumbered, '56 and 57'—

omit, insert—

'105 and 106'.

51. Schedule 3, dictionary—

insert—

"alternative proposal" means an alternative proposal submitted to electors in a question in an indicative plebiscite.

"indicative plebiscite paper" means a ballot paper, declaration envelope, return envelope or other document issued by the commission for an indicative plebiscite.

"indicative plebiscite period" means the period—

(a) beginning on the day after the writ for the indicative plebiscite is issued; and

(b) ending—

(i) for an indicative plebiscite conducted other than by postal ballot—at 6pm on the polling day for the indicative plebiscite; or

(ii) for an indicative plebiscite conducted by postal ballot—at the end of the last day on which the commission may receive votes in the indicative plebiscite.

"Petitions Committee" means the Petitions Committee of the Legislative Assembly.

"return envelope" means an envelope addressed to the commission provided to an elector to send the elector's vote to the commission in an indicative plebiscite conducted by postal ballot.

52. Schedule 3, dictionary, "ballot paper" and "polling place", after 'referendum'—

insert—

'or indicative plebiscite'.

53. Schedule 3, dictionary, “referendum paper”, ‘for this Act’—

omit, insert—

‘for a referendum’.

SCHEDULE 2

section 3

DICTIONARY

"Annual Appropriation Act" for chapter 6, see section 79.

"Assembly" means the Legislative Assembly.

"authorised committee" see section 25(2).

"authorising person" for chapter 4, part 3, see section 48.

"Bill" means a Bill for an Act proposed for enactment by the Parliament.

"candidate", for election, see *Electoral Act 1992*, section 3, definition "candidate".

"Chairperson of Committees" means the Chairperson of Committees in the Assembly.

"chief reporter" means the chief reporter, parliamentary reporting staff.

"Clerk" means the Clerk of the Parliament.

"commercial entity" for chapter 6, see section 79.

"committee" means a committee of the Assembly, whether or not a statutory committee.

"community service obligation" for chapter 6, see section 79.

"consider" for chapter 6, see section 79.

"constructing authority" for chapter 6, see section 79.

"entity" of a State, means—

(a) the relevant State; or

(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office, or other entity, established for a government purpose of the relevant State; or

(c) a part of an entity mentioned in paragraph (b).

SCHEDULE (continued)

"entity of the Commonwealth", means—

(a) the Commonwealth; or

(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office, or other entity, established for a Commonwealth government purpose; or

(c) a part of an entity mentioned in paragraph (b).

"fundamental legislative principles" see the *Legislative Standards Act 1992*, section 4.

"government printer" in relation to a document or evidence that the Assembly or a committee orders or otherwise authorises to be printed, or that is taken to be printed by the Assembly, includes a person authorised by the Assembly to print the document or evidence.

"indicative plebiscite" means an indicative plebiscite under the *Referendums and Indicative Plebiscites Act 1997*.

"inquiry" means an inquiry held under the authority of the Assembly.

"major GOC works" for chapter 6, see section 79.

"medical certificates" means certificates of legally qualified medical practitioners.

"member" means a member of the Assembly.

"office" held by a person, includes position.

"paid public appointment" see section 65(1).

"paid State appointment" see section 65(3).

"possession"—

(a) for a document in the possession of the Assembly, or a committee or an inquiry, includes a document tabled in, or presented or submitted to the Assembly, the committee or the inquiry; and

SCHEDULE (continued)

(b) generally includes the following—

(i) control;

(ii) power.

"proceedings in the Assembly" see section 9.

"proposed national scheme legislation" for chapter 6, see section 79.

"public works" for chapter 6, see section 79.

"referendum" means a referendum under the *Referendums and Indicative Plebiscites Act 1997*.

"reward" includes fee.

"rights" includes privileges.

"Speaker" means the Speaker of the Assembly.

"standing rules and orders" means the standing rules and orders made under section 11.

"State entity" means—

(a) the State; or

(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office, or other entity, established for a State government purpose; or

(c) a part of an entity mentioned in paragraph (b).

"statutory committee" means a statutory committee established under section 79.

"tabled" includes laid before.

"works" for chapter 6, see section 79.

KEY

AIA	*Acts Interpretation Act 1954*
Bill Rts	Bill of Rights (1 William and Mary Sess.2.c.2 (Imp))
CA	*Constitution Act 1867*
CAAA 1896	*Constitution Act Amendment Act 1896*
DCA	*District Court Act 1967*
EA	*Electoral Act 1992*
EARC	Electoral and Administrative Review Commission
EARC QCA	*Queensland Constitution Act 1993 (Reprint)* in Appendix A to EARC's *Report on Consolidation and Review of the Queensland Constitution* (1993)
EARC QPB	*Queensland Parliament Bill 1993* in Appendix G to EARC's *Report on Review of Parliamentary Committees* (1993)
LAA	*Legislative Assembly Act 1867*
LGA	*Local Government Act 1993*
OPA	*Officials in Parliament Act 1896*
PCA	*Parliamentary Committees Act 1995*
PPA	*Parliamentary Papers Act 1992*
PPVA	*Parliamentary Privileges Act 1987 (Cwlth)*