Constitution of Queensland and Other Legislation Amendment Bill 2016

Report No. 18
COMMITTEE OF THE LEGISLATIVE ASSEMBLY
August 2016
COMMITTEE OF THE LEGISLATIVE ASSEMBLY

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Chair’s Foreword

This report presents a summary of the Committee of the Legislative Assembly’s examination of the Constitution of Queensland and Other Legislation Amendment Bill 2015.

The committee’s task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and those who appeared before the committee.

I would also like to thank the committee’s secretariat and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Hon Peter Wellington MP
Speaker of the Legislative Assembly of Queensland and
Chair, Committee of the Legislative Assembly
Recommendations

Recommendation 1
The Committee of the Legislative Assembly recommends that the Constitution of Queensland and Other Legislation Amendment Bill 2016 be passed.

Recommendation 2
The Committee of the Legislative Assembly recommends that the amendment to the Bill submitted by the Queensland Government requiring an absolute majority for changes to the Constitution of Queensland Act 2001 be accepted by the House.
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1. Introduction

1.1 Role of Committee

The Committee of the Legislative Assembly (CLA) is established under section 80 of the *Parliament of Queensland Act 2001* (POQA).

Section 84 of the POQA provides the following areas of responsibility for the CLA:

**Areas of responsibility**

The committee has the following areas of responsibility—

(a) the ethical conduct of members;

Note—

However, under section 104C(2), a complaint about a particular member not complying with the code of ethical conduct for members may be considered only by the Assembly or the Ethics Committee.

(b) parliamentary powers, rights and immunities;

(c) standing rules and orders about the conduct of business by, and the practices and the procedures of, the Assembly and its committees;

(d) any other matters for which the committee is given responsibility under the standing rules and orders;

(e) any matter referred to the committee by the Speaker.

Standing Order 135A of the Standing Rules and Orders of the Legislative Assembly (Standing Orders) further provides that:

*The Committee of the Legislative Assembly shall:*

(a) monitor and review the business of the Legislative Assembly to aim for the effective and efficient discharge of business;

(b) monitor and review the operation of committees, particularly the referral of Bills to committees, and where appropriate vary the time for committees to report on Bills or vary the committee responsible for a Bill.

1.2 Inquiry process

On 21 April 2016, the Premier and Minister for the Arts, Hon Annastacia Palaszczuk MP, introduced the Constitution of Queensland and Other Legislation Amendment Bill 2016 (the Bill) into the Queensland Parliament. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the CLA for detailed consideration. By motion of the House, the CLA was required to report to the Assembly by 12 July 2016, however subsequent to the introduction of the Bill, the Leader of the House moved a Motion Without Notice to vary the reporting date for the Bill from 12 July 2016 to 15 August 2016, which was agreed to by the Assembly on 24 May 2016.

On 4 May 2016, the CLA called for written submissions by placing notification of the inquiry on its website and notifying its email subscribers. Each of the Parliament’s portfolio committees also notified its email subscribers of the call for submissions.

The closing date for submissions was originally 3 June 2016, but was subsequently extended by the CLA to 8 July 2016. The CLA received eight submissions (see Appendix A for a list of submitters).

The CLA invited witnesses to give evidence and respond to questions on the Bill at a public hearing on 29 July 2016 (see Appendix B for a list of public hearing witnesses).
Copies of the submissions and the transcript of the public hearing are available from the CLA’s webpage.¹

1.3 Policy objectives of the bill

The Bill seeks to achieve the following:

- statutorily recognise the ‘core matters’ of the parliamentary committee system in the Constitution of Queensland 2001 (the Constitution Act); and

- provide that the Parliament’s portfolio committees are able to initiate inquiries within their area of responsibility on their own motion.

The Bill implements some of the recommendations made by the CLA in Report No. 17: Review of the Parliamentary Committee System, which was tabled on 25 February 2016.

1.4 Background

On 3 December 2015, an inquiry into the Queensland Parliament’s (the Parliament) committee system was referred to the CLA on issues raised in the Finance and Administration Committee (FAC) report Inquiry into the introduction of four year terms for the Queensland Parliament, including consideration of Constitution (Fixed Term Parliament) Amendment Bill 2015 and Constitution (Fixed Term Parliament) Referendum Bill 2015 (FAC report).

The FAC report recommended a bill and referendum for a fixed-four year term of Parliament in Queensland, and was of the view that the likelihood of a referendum to introduce a fixed four year term succeeding would be improved if the Parliament could demonstrate a commitment to greater accountability and transparency. Hence, the FAC recommended that the Parliament enhance the accountability mechanism by entrenching the role of committees.

The referral required the CLA to inquire into and report on issues raised in recommendation nine regarding entrenchment and recommendation ten regarding a review of the parliamentary committee system of the FAC report, and consider the implications and method of entrenching matters and consider alternative accountability mechanisms in lieu of entrenchment.

Following its review, the CLA reported that it did not support entrenchment of the committee system, but did support statutory recognition of the parliamentary committee system in Queensland and that the appropriate statute for the provision is the Constitution Act. The CLA stated that the ‘location of the provision in the Constitution of Queensland Act 2001 will not only emphasise its importance, but place a psychological political impediment to its alteration without just cause’. In terms of the content of the provision in the Constitution Act, the CLA recommended that the basic principles and structure of the committee system be recognised but only the core matters should be in the Constitution Act, leaving each Assembly the flexibility to adopt a committee system that suits that Assembly and which allows the committee system to adapt and evolve.

The core matters identified by the CLA to be included in the provision were:

- the Legislative Assembly must, at the commencement of every session, establish a minimum number of committees of the Legislative Assembly. The CLA recommends that six (6) committees be set as the minimum number.

- committees established by the Legislative Assembly will be allocated areas of responsibility that collectively cover all areas of government activity.

- every Bill introduced into the Legislative Assembly must be referred to a committee of the Legislative Assembly for a review period. The Committee suggests that the minimum review period be six (6) weeks.

Inquiry into the Constitution of Queensland and Other Legislation Amendment Bill 2016

- the annual Appropriation Bills (the budget) must be:
  o accompanied by the estimates of expenditure; and
  o referred to a committee or committees of the Legislative Assembly for examination in a public hearing.

The CLA recommended at least initially, the provision should explicitly enable the Legislative Assembly by ordinary majority to declare Bills urgent.

The CLA also recommended that an amendment to the Constitution Act must be passed by a majority of the Legislative Assembly equal to a majority of the number of seats in the Assembly (an absolute majority of the Legislative Assembly).

In addition to the changes to the Constitution Act, the CLA also recommended that the Parliament of Queensland Act 2001 (POQA) be amended to provide a general power for portfolio committees to initiate inquiries on their own motion on matters within their portfolio areas. The CLA considered that this amendment would empower portfolio committees to conduct inquiries in relation to petitions that are relevant to each committee’s portfolio responsibilities.

All of these recommendations have been reflected in the Bill, except for that regarding an absolute majority being required to make an amendment to the Constitution Act.

1.5 Consultation on the bill

The Explanatory Notes state that consultation was undertaken with the Clerk of the Parliament. The Explanatory Notes also advise that:

Community stakeholder consultation on the Bill has not been undertaken but it is noted that the CLA called for submissions from the community for their inquiry. The CLA received 17 submissions and held a public hearing on 9 February 2016. The inquiry highlighted the importance of the Parliament’s committee system as an accountability mechanism. The public submissions informed the CLA’s report and recommendations which in turn informed the preparation of the Bill.

1.6 Outcome of Committee deliberations

Standing Order 132(1)(a) requires that the CLA after examining the Bill determine whether to recommend that the Bill be passed.

The CLA considered whether it should make a recommendation for the Bill to be passed. Pursuant to Standing Order 132(1)(a), the CLA recommends that the Bill be passed.

Recommendation 1

The Committee of the Legislative Assembly recommends that the Constitution of Queensland and Other Legislation Amendment Bill 2016 be passed.
2. Examination of the bill

2.1 Amendments to the Constitution of Queensland Act 2001

Currently the POQA sets the requirements for portfolio committees, including the establishment, membership and role of portfolio committees.

The Standing Rules and Orders of the Legislative Assembly (Standing Orders) establishes committees of the Assembly under section 88 of the POQA and must state for each portfolio committee its name and its primary area of responsibility (portfolio area). Chapter 32 of the Standing Orders also provides for the appointment and conduct of all committees.

In keeping with the recommendations made by the CLA as outlined in the previous chapter, the Bill inserts a new part (Part 5) into Chapter 2 of the Constitution Act ‘to recognise the basic principles and structure of the parliamentary committee system’ to provide that:

- the Legislative Assembly must at the commencement of every session establish a minimum of six portfolio committees, as defined in the POQA, which are to be allocated areas of responsibility that collectively cover all areas of government activity;
- every Bill introduced into the Assembly must be referred to a committee for a minimum review period of six weeks, but that the Assembly can declare a Bill urgent by ordinary majority under the Standing Rules and Orders of the Legislative Assembly (which means a bill may be referred to a committee for a review period of less than six weeks, may be discharged from a committee or may not be referred to a committee before the bill is passed by the Assembly); and
- the annual Appropriation Bills must be referred to the portfolio committees for examination at a public hearing (budget estimates process), and the Appropriation Bill must be accompanied by associated documentation.\(^2\)

The POQA will retain sections 88(2) to 88(5) which provide further detail about how the portfolio committees are established, and the membership and role of the parliamentary committees will also remain in the POQA. The rules regarding appointment and conduct of members remain in the Standing Orders.

2.1.1 Stakeholder views

All of the submissions received supported the statutory recognition of the ‘core matters’ of the parliamentary committee system in the Constitution Act.

The submissions from Queensland Advocacy Incorporated (QAI) and the Queensland Teachers’ Union (QTU) both noted the importance of a strong committee system due to the absence of an upper house. QAI stated that it ‘supports any strengthening of the committee system in a parliament that lacks a house of review. A robust committee system is one of the key ‘checks and balances’ that augment the separation of Executive and Legislature’.\(^3\)

The QTU’s submission stated that the QTU believes the intention of the Bill should be realised because:

…the absence of an Upper House increases the importance of committees in assisting the Parliament to effectively hold the Government to account on behalf of the Queensland people.

By providing a forum for discussion and investigation into issues of public importance, committees gives members of the voting public an opportunity to enhance their knowledge of

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\(^2\) Explanatory notes, p 3.

\(^3\) Queensland Advocacy Incorporated, Submission 1, p 2.
such matters and have input. Policy and administration functions of Government are made more open and accountable by the existence of Committees.\(^4\)

Mr Brynn Mathews’ submission also raised the issue of the unicameral Parliament stating that while he supported the legislation, he believed that the parliamentary committee system is a poor substitute for an upper house elected by proportional representation due, at least in part, to the bias committee members brought to the committee’s proceedings and when committee members attempt to impose their views on witnesses.\(^5\)

The Queensland Greens (the Greens) supported in principle the provisions of the Bill, although stated they ‘remain considerably disappointed in the approach taken by the government on this issue’.\(^6\) The Greens advised they believe that:

*The changes proposed are at best a minor improvement on the existing system and arguably could represent no substantive change. It is evident that the proposed changes could easily be either misused by an executive government with complete control over committees or simply circumvented to avoid any challenge.

Most disappointing is that the focus is wholly on internal process rather than participatory democratic principles. The bill does nothing to open up our parliamentary system to more scrutiny or input from the public.*\(^7\)

2.1.1.1 Establishment of six portfolio committees

The Greens specifically noted their support for the Bill identifying a minimum number of committees that must cover all areas of government activity. However, their submission also noted that the minimum proposed number of six committees is less than that proposed by the FAC report in Recommendation No. 9, which recommended a minimum of seven committees. The Greens noted potential problems with a minimum of six committees, but also considered these low risk, stating:

*The concern raised by a lower floor number of committees is that it might encourage a theoretical future government to commit to only a “skeleton committee system”, so overloaded with work that it would be too inefficient to operate at anything other than the barest level of scrutiny. We did consider this potential outcome, but rate it a very low risk due to committees having bipartisan support, represent little risk to the legislative agenda of the executive and the risk of disruption the evolution of the political careers of non-ministerial parliamentarians.*\(^8\)

2.1.1.2 CLA comments

The CLA notes that the provision refers to a minimum of six committees, and that it is open to the government of the day to have a higher number of committees than the minimum provided. The CLA notes that the current provisions do not provide for a minimum number of committees and that there are currently seven portfolio committees, in addition to the CLA, Ethics Committee and Parliamentary Crime and Corruption Committee.

2.1.1.3 Referral of bills to a committee for a minimum of six weeks unless declared urgent

Submissions received by the CLA expressed support for the requirement that bills be referred to a committee for a minimum period, but concerns were raised by a number of submitters regarding the provision that allows bills that are declared urgent to bypass committee review.

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\(^4\) Queensland Teachers Union, Submission 2, p 2.
\(^5\) Mr Brynn Mathews, Submission 4.
\(^6\) Queensland Greens, Submission 8, p 1.
\(^7\) Ibid.
\(^8\) Queensland Greens, Submission 8, p 3.
The Queensland Law Society (QLS) endorsed the section of the Bill mandating that bills be referred to a portfolio committee for consideration ‘as a necessary and safeguarding precondition to their being proposed for enactment’.9

However, the QLS also expressed its concern at the provision that bills declared as urgent were not required to be referred to a committee for examination. The QLS noted that Chapter 24 of the Standing Orders regulates the manner with which urgent Bills are to be dealt, but:

...do not appear to provide guidance, by way of definition or any other mechanism, around the criteria determining whether a Bill is declared urgent.

Consequently, and emphasising its concerns for the operation of good law, the Society holds reservations around the ostensible capacity, by this amendment, for a party to circumnavigate the requirement to receive bi-partisan support where a Bill which is justifiably declared ‘urgent’ ought, in the Society’s opinion, be subject to these rigours by that very state of urgency. The subject matter is therefore, presumably, of sufficiently high import (for example, national security or health) that it is a matter of public interest in relation to which parties are able to reach a union, or at a minimum, a negotiated consensus, of minds.

The Society recommends:

- terms importing clarity into the declaration of an ‘urgent’ Bill, as well as
- the Committee’s reconsideration of whether the specific criteria giving rise to urgency in fact justify the removal of the requirement to receive bi-partisan support.10

At the public hearing, the QLS representatives further clarified their position by stating:

In terms of bipartisan support, what we mean by that is urgency being defined in such a way that it really deals with and speaks to issues that are and would be objectively seen by everyone as urgent issues that need to be fixed and dealt with.

...the urgency motion should be something that is seen objectively by everyone as being something that has that quality of urgency and therefore needs to bypass the scrutiny process for that particular reason, and being urgent for both the opposition and any crossbenches and urgent for the government of the day rather than necessarily just being something that is urgent for the policy platform of the day and a broader concept than that. I would not suggest that you would have to get every member of the House to concur, because otherwise there is no point in having urgency in the circumstances.11

The QAI also ‘urged’ the committee to consider the provision in the Bill providing the government with the ability to declare a bill urgent and the lack of clarity regarding the definition of urgent. At the public hearing, the QAI stated:

We agree with the Law Society submission that there should be further clarification of what urgency is in these circumstances. We also urge the committee to consider perhaps, rather than an ordinary majority of the House permitting bypassing of committee scrutiny, a special majority—for example, 65 per cent plus at least one member of the opposition.12

The Greens expressed their support for setting a minimum review time and allowing for an ‘override’ for when legislation is genuinely urgent, but stated that ‘the bar has been set in a way that advantages executive government to rush committees and in effect bypass their scrutiny’ and also suggested the

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10 Queensland Law Society, Submission 6, p 2.
12 Public hearing transcript, 29 July 2016, p 1.
motion be required to be passed by a special majority.\textsuperscript{13} The Greens drew the CLA’s attention to Recommendation 9 of the FAC report, which in part recommended that:

\textit{Every Bill introduced into the Legislative Assembly must be referred to and reviewed by a committee of the Legislative Assembly, for a period of not less than six weeks, unless –}

\begin{itemize}
  \item a \textbf{special majority} of the Assembly agrees to the Bill not being referred to a committee or being referred for a period less than six weeks; or
  \item the resolution for the Bill not being referred to a committee is passed without division or dissent.
\end{itemize}

\begin{itemize}
  \item a special majority to be defined as at least 65 per cent of the Members of the Legislative Assembly, including at least one Member of the official opposition. This recommendation would also apply to any other Bill(s) with similar intent which are introduced.\textsuperscript{14}
\end{itemize}

The Greens also proposed an additional requirement to the above:

\textit{For any amendment, the content of which has not been a part of discussions in committee or amendments to bills that has not been referred to a committee, the amendment must}

\begin{itemize}
  \item be agreed to by a special majority of the Assembly as defined above; or
  \item be passed without division or dissent of the Assembly.
\end{itemize}

\textit{or be suspended in its current reading, and referred back to the committee stage for one half of the original time allocated to the parent bill to consider the impacts of the amendments.}\textsuperscript{15}

The Greens provided further clarification on their proposal regarding amendments that had not been before a committee at the public hearing:

\begin{quotation}
...I am not recommending that 100 per cent of the parliament vote towards an amendment in that situation. I am recommending the special majority provisions of recommendation No. 9, which is 65 per cent plus one member of the official opposition. There was talk of including crossbenchers. That is a difficult thing to manage, but if we are only talking about crossbenchers who are not providing confidence or supply to the government that might work, but that might require quite a bit of good faith from the parliament.

...I do not expect every amendment to go back if the amendment is likely to fail anyway; just failing the amendment would probably be fine. If the amendment is likely to pass it might be worth sending it back to the committee for further inquiry, or if a vote is held and it passes but not with a special majority it could go back. Because we are talking about amendments we are usually not talking about something that is massively big, although admittedly compulsory preferential voting is a rather large change to the system.\textsuperscript{16}
\end{quotation}

Ms Amelia Hasson also supported the requirement that bills be referred to a committee for review, stating that ‘Such codification of convention is significant in recognising and mandating the Committee as an essential step in the legislative process and accountability process’.\textsuperscript{17} However, she also raised a concern about the provision in the Bill allowing for a motion to be raised to declare a bill urgent to prevent referral of a bill to a committee. Ms Hasson stated that:

\textit{The provision under section 26B(3)(d) is potentially problematic as it effectively enables the government of the day to bypass any referral to the Committee by way of motion under the}

\textsuperscript{13} Queensland Greens, Submission 8, p 3.
\textsuperscript{14} Queensland Greens, Submission 8, pp 3-4.
\textsuperscript{15} Queensland Greens, Submission 8, p 4.
\textsuperscript{16} Public hearing transcript, 29 July 2016, p 10.
\textsuperscript{17} Ms Amelia Hasson, Submission 5, p 10.
Standing Rules. It is difficult to envisage a scenario where a Bill would be so urgent as to justify circumventing a Committee review period of less than 6 weeks provided for in section 268(3)(b). Moreover, there is no definition or criteria of urgency from which to ascertain its scope or limitations. With such broad language of urgency, there is thus the potential for a government hostile to transparent Committee review to undermine the purposes of the Bill as it may employ such language disingenuously, thereby enabling such improper and substandard law making as the Committee System is designed to work to prevent.18

2.1.1.4 CLA comments

The CLA notes the concerns raised about urgency procedures, however the CLA believes there needs to be a capacity for the government of the day to declare a bill urgent, and that this capacity should be subject to the ordinary majority required for the passing of motions.

The CLA also notes the suggestion that amendments made to a bill need to be agreed to by a special majority, passed without division or dissent or referred back to a committee for subsequent investigation. However, the CLA does not believe this is necessary for the passage of legislation as amendments are debated in the House.

2.1.1.5 Additional amendment to the Constitution of Queensland Act 2001

Ms Hasson in her submission referred to the constitutional recognition of the importance of the role of committees, and notes that while the changes may be described as a psychological impediment:

...there is no ‘double entrenchment’ of the Bill’s provisions; only a limited number of the provisions of the Queensland Constitution are entrenched through the referendum process. It instead remains within the category of ‘single entrenchment’ and may therefore be introduced, and altered in the future if so desired, by ordinary legislative amendment.19

In its Report Number 17: Review of the Parliamentary Committee System, the CLA recommended that an amendment to the Constitution Act must be passed by an absolute majority of the Legislative Assembly. The Queensland Government’s (the Government) response to the CLA’s report supported the recommendation, but noted that the Government would seek appropriate advice to ensure the constitutional validity of any necessary amendment before implementing the recommendation.

During the introductory speech for the Bill, the Premier, Hon Annastacia Palaszczuk MP, stated:

As I outlined earlier, the Constitution is the foundation document upon which Queensland’s system of parliamentary democracy and government is based. Proposed amendments to the Constitution should be viewed by members with care. To this end, and as I flagged in the government’s response to the CLA’s report that I tabled on 19 April, the government was seeking appropriate advice to ensure the constitutional validity of any necessary amendment to implement the government’s response.

Constitutional amendments of this nature proposed by the CLA are complex, and the government will give further consideration to this particular recommendation before reaching a final position on the question of requiring that future amendments to the Constitution require an absolute majority of the Legislative Assembly. Once this bill has been read for a first time it will be referred to the CLA for consideration. I advise the House that once the government has come to a decision on this matter I will advise the CLA accordingly.

The government respects the CLA’s view that an absolute majority should be required on votes on bills proposing amendments to the Constitution, but, in my view, we as a parliament need to be cautious and ensure that any proposal has no unintended consequences. Importantly, the bill in its current form still inserts the core matters of the parliamentary committee system into

18 Ms Amelia Hasson, Submission 5, pp 10-11.
19 Ms Amelia Hasson, Submission 5, p 7.
the Constitution. The statutory recognition of these matters in the Constitution will emphasise their importance on an ongoing basis and will, as the CLA has described it, ‘place a psychological political impediment on altering them without just cause’. This will provide more certainty around the continued existence of the parliament’s powers, through the committee system, to scrutinise government activity.\(^{20}\)

Having sought advice, the submission from the Government provided an amendment to the Bill for the CLA’s consideration. The Government’s amendment proposes to insert a new section 4A into the Constitution Act to ‘provide that a Bill which amends the Constitution Act with respect to the constitution, powers or procedures of the Parliament, must not be presented to the Governor for assent unless the Bill has been passed by an absolute majority of the Legislative Assembly’, in keeping with the CLA’s recommendation.\(^{21}\)

2.1.1.6 CLA comments

The CLA supports the proposed amendment to the Bill submitted by the Government in keeping with the CLA’s recommendation and recommends the amendment be accepted by the House. The CLA notes that this may address the concern raised regarding single and double entrenchment.

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<th>Recommendation 2</th>
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<td>The Committee of the Legislative Assembly recommends that the amendment to the Bill submitted by the Queensland Government requiring an absolute majority for changes to the <em>Constitution of Queensland Act 2001</em> be accepted by the House.</td>
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2.2 Amendment of Parliament of Queensland Act 2001

Section 92(1) of the POQA currently provides that the role of portfolio committees is to:

- a) consider Appropriation Bills; and
- b) consider other legislation and proposed legislation as provided in section 93; and
- c) perform its role in relation to public accounts and public works as provided in this division.\(^{22}\)

Clause 8 of the Bill inserts a new subsection in Section 92 providing that a portfolio committee can initiate an inquiry into any matter in relation to its portfolio area.\(^{23}\)

2.2.1 Stakeholder views

There was again general support for the provision to allow committees to initiate their own inquiries from all submitters.

Mr Ross Thurlow’s submission noted both benefits and drawbacks to the proposal, but stated that the benefits outweigh the drawbacks. Mr Thurlow identified the benefits as including giving committees more autonomy and independence, bringing public and media attention to public policy issues,

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22 Parliament of Queensland Act 2001

23 Explanatory notes, p 4.
enabling and increasing public participation during policy making, creating an informal separation of powers, and protecting rights and preventing rights abuses.24

Ms Hasson in her submission supported the amendment, but noted that the addition to the Parliament of Queensland Act 2001 ‘while it confers some level of statutory protection that is desirable, it does not afford the symbolic protection and psychological deterrence of constitutional recognition’.25

2.2.1.1 Committee recommendations

The QLS commended the Bill’s amendment of the POQA to empower portfolio committees to initiate inquiries on their own motion. As an ‘aspirational’ next step to the process of providing greater empowerment to committees, the QLS suggested in their submission that committees be given the power, similar to the New Zealand Parliament, to propose amendments to the floor of the House, which are then drafted into the bill as reported back, with the House automatically adopting unanimous changes.26

At the public hearing, QLS representatives stated that:

One of the benefits about being able to consider a mechanism to achieve that is that it could permit the policy committee review processes to be a little more effective as an opportunity for both parties to come together and deal with some of the more complex or controversial policy issues and come to a bit of a landing in a slightly less heated environment than the chamber to determine what is picked up in a unanimous way, have that taken into the House and then refine the issues where there is some difference of opinion, some difference of view, and also to be informed by stakeholder groups and further consultation with the community... If the process were brought to that point where those types of unanimous issues could be brought to the parliament directly rather than having to be at the discretion of the minister of the day, that may allow those sorts of things to be dealt with more easily and more quickly and not be a partisan issue as much as simply a good law issue.27

Mr Thurlow also raised the issue of the government’s response to committee recommendations in his submission, stating:

The use of own motion inquiries should, in theory, give greater scope and volume to the amount of inquiries conducted by portfolio committees. At present the sitting Queensland government is not bound by the recommendations of the relevant committees report... This author would recommend that an inquiry be launched into this issue. It is submitted that binding governments to committee recommendations be supported...28

2.2.1.2 CLA comments

The CLA notes that whilst the Queensland Parliament’s portfolio committee system is loosely modelled on the New Zealand Committee system, there are significant differences in each committee system that reflects the differences in the normal composition of each parliament and other governmental structures and conventions. The CLA is not convinced that it should recommend that committees may directly amend bills or majority recommendations to be adopted by government.

2.2.1.3 Committee independence and triggers for an inquiry

The Greens supported the idea of committees having some autonomy to investigate their area of oversight, although they also described it as ‘a very minor change’, and stated that:

24 Mr Ross Thurlow, Submission 3, pp 11.
25 Ms Amelia Hasson, Submission 5, p 2.
27 Public hearing transcript, 29 July 2016, p 3.
28 Mr Ross Thurlow, Submission 3, p 12.
While the Queensland Greens do support this measure, overall we are expecting it to have no impact whatsoever on the legislative agenda that is not already largely agreed to by the executive branch of the Queensland Government, and in that sense represents little substantive change to the status quo.29

Mr Thurlow also noted concerns about the independence of a committee, stating in his submission:

A serious concern regarding the use of own motion inquires is, as Rozzoli notes, enforcing “their independence from executive control.” As mentioned above, a key purpose of parliamentary committees is to scrutinise the actions of the executive. However, as Leyne argues, “the expected depth of this scrutiny is questionable.” The lack of independence of parliamentary committees from executive control is a prevalent issue in numerous jurisdictions.30

In the submission from the QAI, support was stated for the provision to empower committees to initiate their own inquiries, but QAI qualified their support by stating that it should be “on the proviso that such proposals must be subject to both public and parliamentary interest tests”.31 The QAI stated:

...these proposals first must be subject to a test for relevance, gravity and public interest. A committee may use its originating power to promote public debate on the subject at issue, but an unabridged right to initiate inquiries may be:

- costly,
- inefficient, and
- open the door for those who may use their influence to manipulate parliamentary processes.

Committees must heed governmental priorities when determining references. Government will not take up committee recommendations if they are not a priority, and if government does not take up those recommendations the value of the exercise is doubtful.32

The QAI also expressed an interest in providing a mechanism by which the public could initiate committee inquiries without the ‘parliamentary imprimatur’, and suggested that ‘inquiry by petition is the logical means to achieve this goal’.33 The QAI referred to Recommendation 47 of the 2011 committee system reforms, stating its support for the recommendation that ‘Standing Orders be amended to provide that a committee can on its own initiative consider any petition received by the House, the subject matter of which falls within the jurisdiction of the committee’.34

Subsequently at the public hearing, the QAI suggested an e-petition similar to those used in the United Kingdom (which can trigger debate in the House if it receives a certain number of signatures) as an example of a public interest test, and the requirement for a majority of the House after debate on the floor as the parliamentary interest test, although again stressed that the QAI is not opposed to self-initiated inquiries per se, but instead wished to see inquiries that were in the public interest.35

Similar to the QAI, the Greens’ submission proposed petition-triggered inquiries as a means of committees initiating inquiries that are not necessarily agreed to by the executive as a way of supporting independence, although saw petitions as only one trigger for an inquiry. The proposal put forward by the Greens included the following:

We suggest for this process that when a petition is registered, it indicates all the Local Government areas (LGA) that it affects, otherwise it is taken to affect all of Queensland. The

29 Queensland Greens, Submission 8, p 6.
30 Mr Ross Thurlow, Submission 3, p 8.
31 Queensland Advocacy Incorporated, Submission 1, p 5.
32 Queensland Advocacy Incorporated, Submission 1, p 5.
33 Ibid.
34 Ibid.
35 Public hearing transcript, 29 July 2016, p 2.
petitioners would also indicate if they would like a committee to review the evidence and make a recommendation to government, with parliamentary services determining the appropriate committee.

For a petition to be considered by the committee, the threshold of petitioners is 2.5% of all registered voters in Queensland, or for a local petition 5% of the voters in the LGA/s nominated with 50% of that target being drawn from the LGA/s involved, with a floor value of 50 petitioners overall. The checks on this detail can be done from the electoral rolls held by the ECQ. The only other stipulation is that the issue cannot have been subject of a successful petition in the current term of government.

... We also recommend slightly different review rules for local petitions, a shorter process involving the petitioners, overseeing department and the minister making a submissions, and attending either a private or public meeting on the matter. The outcome of all of these hearings should be a recommendation for action on the issue, either through regulation or legislation, or by executive directive of the department responsible for the area of concern.

While the executive would still have considerable control over these actions, it will divorce the start of an inquiry from the direct control of the executive branch and may yield a line of inquiry that parliamentarians have not considered or do not wish to initiate themselves. The airing of these concerns publically also gives petitioners a challenging but realistic campaigning goal to see their issues taken seriously, rather than the more “set and forget” version of the process we have now where it’s almost impossible to gauge at what level of support a minister or government will take an action seriously.36

At the public hearing, the Greens referred to it as ‘a citizen-initiated referenda with a control from the executive and the government to make sure that the things are appropriate for everyone in the state rather than just a small number of people in the state’.37

In contrast, when speaking about a trigger for an inquiry, Mr Mathews expressed concern about populist politics. While Mr Mathews did not put forward a position on this matter in his submission, during the public hearing Mr Mathews stated:

I do not really endorse the idea of particularly an online petition, because it is very easy to get people excited and agitated and to generate thousands of people signing off on electronic petition. I think it does need to be more formal. It needs to be something like a parliamentary petition presented by an MP where you have to go through a more lengthy process than just ticking a box in an e-petition; you have to go to the parliamentary website, you have to put your data in and you have to make more effort.38

On the matter of a trigger for a committee instigated inquiry, and on e-petitions as a trigger in particular, the QLS stated that:

Certainly, in terms of committees initiating inquiries, you would think that the committee should be empowered to take whatever type of feedback it wants to initiate an inquiry. If it chooses an e-petition to be the trigger for that, then that is all well and good. It might be stymieing those committees to require an e-petition before there can be an own motion inquiry. I thought the purpose of the report and the discourse of this committee was about trying to increase the scope of the areas that the committees can take their inquiries on. It may come down to an issue of whether a committee needs to come to a vote in order to be able to bring on an own motion inquiry and then what type of vote that needs to be. Is it just a simple majority of members? In that case, the government members might be able to start an inquiry without the concurrence of the non-

36 Queensland Greens, Submission 8, pp 7-8.
37 Public hearing transcript, 29 July 2016, p 10.
38 Public hearing transcript, 29 July 2016, p 13.
government members. Or should it be a higher threshold than that? That may be some of those issues.

In terms of limitation, it is not an issue we have considered. It would probably be valuable that that should be an input, but it is probably not to be determinative because then there will be other opportunities that might not arise if there is not an e-petition or if an e-petition needs to be created and manufactured in order for a committee to do what it actually obviously needs or wants to do.39

2.2.1.4 CLA comments

The CLA notes the concerns regarding independence from the executive, but believes the provision for committee-initiated inquiries is an important step in the development of the Parliamentary committee system, and does support committee independence.

The CLA also notes the comments made on triggers such as petitions as a means of initiating an inquiry, but also notes that the provision in the Bill would allow portfolio committees to conduct inquiries in relation to petitions that are relevant to the committee’s portfolio and would allow petition topics to be incorporated into an inquiry that may be broader than the petition itself.

Furthermore, given the overall legislative and inquiry responsibilities of parliamentary committees, the CLA is not convinced that a petition-based trigger for a committee inquiry is warranted at this time.

The CLA also believes committees should not be limited in the way in which an own-motion inquiry is initiated, and that a parliamentary interest test may defeat the purpose of the introduction of the provision.

2.2.1.5 Committee inquiry process

Both Mr Thurlow and Mr Mathews raised issues with the inquiry process undertaken by committees. Both expressed a belief that the general Queensland public were not educated in the separation of powers, structure of Parliament or on how the committee system worked and how the public could get involved in the examination of legislation.

In his submission, Mr Thurlow specifically referred to the influence of interest groups and the lack of public understanding of the committee system as a drawback to the committees initiating their own inquiries. He stated that:

Submissions to inquiries are generally from larger interest groups. This is why Leyne has argued that “committees often struggle to engage the community in inquiries.” This is evident by the fact that “inquiry terms of reference and advertising are generally written in a manner that assumes an understanding of the inquiry process and reasonably high literacy skills.” This leads to a situation where respondents to committee inquiries are therefore generally lobby groups or well organised organisations.”

Unfortunately, this can lead to situations where the general public does not get an adequate chance to voice their opinions on an inquiry because of a lack of understanding of the committee’s functions, or because of a lack of time and resources. These problems are generally not faced by larger interest groups because they have a greater understanding of the committee process. They also have significantly more resources to dedicate to inquiries than other members of the general public.40

At the public hearing, Mr Thurlow stated that:

Another issue with parliamentary committees and inquiries is the inquiry process itself. This is quite a formal process. I am somewhat educated and somewhat confident speaking in front of people in a situation like this, but the vast majority of the general public would not be able to,

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39 Public hearing transcript, 29 July 2016, p 5.
40 Mr Ross Thurlow, Submission 3, p 9.
first of all, have the resources to even investigate into these matters and then be able to actually participate in this process. Unfortunately, I think that leads to a situation where these processes are dominated by larger interest groups because they have the time and the resources to be able to put submissions forth and to speak. Just even being able to get here, to take time off work, things like that—people do not always have that option.

Mr Thurlow suggested that an inquiry in regards to the structure, logistics and procedures of the committee inquiry process should be undertaken.

Mr Mathews stated at the public hearing:

I am a little disappointed that so few people have bothered to make submissions on this bill. I think that highlights some of the problems with the process unless you are continually monitoring the parliamentary committee’s website or you get the emails like I do.

I think there is a lack of understanding of what the committee’s role is and what the role of the legislation is that you are looking at in a lot cases and how it all fits together.\(^4\)

2.2.1.6 CLA comments

The CLA notes that the Parliamentary Service has an education program in place that seeks to educate the public service and the public about the portfolio committee system and how to engage with the system. This program incorporates regional areas.

The CLA also notes that portfolio committees continually attempt to engage with the wider public on the legislation or issue of inquiry currently before the committee. Inquiries and hearings are advertised in an effort to engage with the public, and committees have attempted to gain input from across the state. In the 55th Parliament to 30 June 2016, there were 68 hearings held outside Brisbane, which is 24% of all hearings over this period.

The CLA acknowledges that the Parliament needs to continue with its ongoing effort to inform, educate and involve the Queensland community. The CLA also notes that the portfolio committee system has only been in existence for five years and public awareness and engagement is likely to increase over time.

2.2.1.7 Composition of committees

Another issue raised by both Mr Thurlow and Mr Mathews was the issue of committee members and their political affiliations and motivations.

In his submission, Mr Thurlow expressed concern at the political motivations of committee members:

One of the biggest drawbacks of allowing own motion inquiries is the possibility that they will be dictated by the political motivations and influences of committee members... Although there are specific requirements about who can become a member of Queensland’s portfolio committees all committee members are also members of parliament (MP’s). These MP’s all possess political party affiliations, not to mention their own political ambitions. It would be naïve to think that these MP’s would not be motivated by either party politics or these ambitions.\(^4\)

As a solution to this perceived issue, Mr Thurlow suggested the following:

The composition of the Crime and Misconduct Commission (‘CMC’) could be duplicated by other committees to avoid political motivations and executive dominance. The chairperson and deputy chairperson of the CMC must have served as, or is qualified to be either a judge of the Supreme Court of Queensland, the Supreme Court of another State, the High Court of Australia

\(^4\) Public hearing transcript, 29 July 2016, p 12.

\(^4\) Mr Ross Thurlow, Submission 3, p 6.
or the Federal Court of Australia. Other members of the CMC must meet the relevant requirements and prior consultation as well as bi-partisan support for appointments must be achieved.

It is recommended that an inquiry be launched into the composition of portfolio membership in Queensland. It is submitted that portfolio committees be comprised of members who are not MP’s, not affiliated with political parties and as independent from the executive as possible. Experienced bureaucrats or public servants, members of the private sector or members from experienced and reputable non-governmental organisations are examples of potentially suitable members for portfolio committees. These potential members would all have to be “approved” by a relevant body or institution to ensure their independence and that they do not have any potential conflicts of interests. It is recognised that this leads to the issue of costs but again that is something that could be adequately addressed through an inquiry.43

Although not directly in relation to the provision for committees to initiate their own inquiries, Mr Mathews also expressed a concern about the political bias of committee members and the need for qualified people within the community with specific interests and knowledge in a particular area to be involved with committees. At the public hearing Mr Mathews stated:

One of the previous presenters talked about professionally qualified people and various boards. I would reflect on the composition of things like the Wet Tropics management committee, the Great Barrier Reef management committee et cetera where you go out and you actively seek qualified people within the community with specific interests and knowledge in a particular area. I think there is an opportunity there to generate committees that have a broader cross-section of views that are not quite as politically biased.44

2.2.1.8 CLA comments

Parliamentary committees are necessarily made up of Members of Parliament, as they are elected to represent the views of their constituency in the development and passing of legislation. While the CLA acknowledges the importance of input from experts in an area, the parliamentary members of committees gain information and knowledge through submissions and hearings and have access to specialised advice and research. The CLA sees as one of the benefits of the portfolio committee system the ability for MPs to gain greater exposure to the portfolio area and gain greater expertise.

2.2.1.9 Formal public review of committees

In an effort to address the drawbacks identified in his submission, including political motivations, abuse of process, lack of independence from the executive and interest group influences, Mr Thurlow recommended that each portfolio committee should be reviewed at the end of each term:

A further recommendation is for each portfolio committee to be formally reviewed at the end of each parliamentary term. This must be done prior to the appointment of new portfolio committees and members. It is also recommended that this review be available to the public. This would ensure greater transparency and accountability. It would ensure that ineffective committees and committee members are not continued.45

Ms Amelia Hasson also recommended a review, suggesting that the CLA should ‘review the Bill on an annual basis to monitor its implementation and minimise or avoid any unintended or undesirable consequences’.46

43 Mr Ross Thurlow, Submission 3, p 12.
45 Mr Ross Thurlow, Submission 3, p 13.
46 MS Amelia Hasson, Submission 5, p 11.
2.2.1.10 CLA comments

The CLA undertook a thorough review of the committee system and tabled its report in February 2016. The CLA made a number of recommendations to strengthen the committee system, some of which have led to the Bill currently before the CLA.

The CLA also refers to its ongoing role to monitor and review the committee system. Under the POQA, one of the CLA’s areas of responsibility is the ‘standing rules and orders about the conduct of business by, and the practices and the procedures of, the Assembly and its committees’\(^47\). The Standing Orders provide that the CLA shall:\(^48\)

(a) monitor and review the business of the Legislative Assembly to aim for the effective and efficient discharge of business;

(b) monitor and review the operation of committees, particularly the referral of Bills to committees, and where appropriate vary the time for committees to report on Bills or vary the committee responsible for a Bill.

2.2.2 Other issues

2.2.2.1 Fundamental Legislative Principles

The Queensland Law Society raised the issue of enshrining the Fundamental Legislative Principles, stating in their submission that:

Against the backdrop of a unicameral system, therefore, it is of particular import that protections be implemented in order to ensure that fundamental legal principles are upheld in the making and passing of laws. The Society’s recommended considerations contained in this correspondence, therefore, might also be considered in the context of enshrining these as fundamental provisions establishing a foundational document (perhaps in the Constitution of Queensland, for example) as a steadfast token of the government’s commitment to ensuring that the central tenets of natural justice and democracy remain upheld in this State.\(^49\)

At the public hearing, the QLS raised this issue again, stating:

The fourth issue we would like to raise which is a key issue is also aspirational, and it is about the role of the fundamental legislative principles which are presently in the Legislative Standards Act. They are a very valuable and very important guideline for the standards that the Queensland parliament sees as being fundamental to all good law and good legislation. Those provisions are currently parked in the Legislative Standards Act that I mentioned. This is the piece of legislation that creates the Office of Parliamentary Counsel, and that is good, but those principles are more important than just being the concern of the Office of the Queensland Parliamentary Counsel. Those principles are the concern of the parliament, of stakeholders, of the community and of the Parliamentary Counsel.

Our submission is that perhaps in a symbolic way those principles need to be elevated into one of the more foundational documents in Queensland, whether that be the parliament act or the Constitution act because they are not simply the province of Parliamentary Counsel. Those types of principles should transcend not only the formation of legislation but also inform

\(^47\) Section 84(c), Parliament of Queensland Act 2001


\(^48\) Legislative Assembly of Queensland, Standing Rules and Orders of the Legislative Assembly


\(^49\) Queensland Law Society, Submission 6, p 2.
government policy, the administration and development of departmental policies and procedures as well as being an important yardstick to measure regulation and subordinate legislation against.50

2.2.2.2 CLA comments

The CLA notes that the Legislative Assembly directed the Legal Affairs and Community Safety Committee to inquire into whether it is appropriate and desirable to legislate for a Human Rights Act in Queensland, other than through a constitutionally entrenched model. The committee reported on 30 June 2016, and the House is yet to note the report.

2.2.2.3 Debate for petitions

As noted earlier in this report, some submitters proposed that petitions, over a certain number of signatories be referred to the relevant portfolio committee for automatic inquiry.

In the Legislative Assembly of the New South Wales Parliament, after a petition has been received by the House its subject matter and the Member who presented it are published in the Votes and Proceedings and in Hansard.

Under Standing Order 125, the Clerk forwards the petition to the Minister with responsibility for the subject of the petition. If the petition has 500 or more signatures, the Minister is required to respond within 35 calendar days after receipt of the petition. The Minister’s response is announced in the House and published on the Parliament’s website. A copy of the response is also forwarded to the Member who lodged the petition.

On 15 September 2015 a Sessional Order (561) was agreed to establishing Sessional Order 125A51. This Sessional Order provides that any petition which has been signed by 10,000 or more persons is set down for discussion at 4:30pm on the Thursday of the next sitting week following the receipt of the petition by the House. If further petitions are received before the first Order is disposed of they are set down for discussion on the succeeding Thursday in the order they are presented.

The petition is allocated 16 minutes for the discussion. The following time limits apply to the discussion on petitions of 10,000 or more signatures:

- First speaker – 5 minutes
- Member who speaks next – 5 minutes
- Two other members – 3 minutes each.

If a Member does not seek the call when the Order of the Day is called on it will lapse. The Order of the Day cannot be amended and at the conclusion of the discussion no question is put. A division on any question or quorum call shall not be permitted during discussion of the Order of the Day.

2.2.2.4 CLA comments

The CLA recognises the importance of petitions as a means of citizens making requests direct to Parliament with the object of persuading the Parliament to take some particular action. While the CLA does not support petitions forming an automatic trigger for an inquiry by the committee responsible for the subject area of the petition, the CLA will consider methods by which petitions may be considered by the House.

50 Public hearing transcript, 29 July 2016, p 4.
51 Parliament of New South Wales Legislative Assembly
3. Compliance with the Legislative Standards Act 1992

3.1 Fundamental legislative principles

Section 4 of the Legislative Standards Act 1992 states that fundamental legislative principles are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of FLPs to the Bill and considers that there are no issues relating to the fundamental legislative principles.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The CLA considers that the notes provide sufficient detail and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.
## Appendix A – List of Submissions

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<td>Queensland Teachers’ Union of Employees</td>
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<td>Mr Ross Thurlow</td>
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<td>Mr Brynn Mathews</td>
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<td>Ms Amelia Hasson</td>
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<td>Queensland Law Society</td>
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<td>Queensland Government</td>
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# Appendix B – List of public hearing witnesses

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