Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

23 May 2016

The Research Director

Committee of the Legislative Assembly

Dear Sir/Madam

Thank you for accepting QAI's submission in relation to the Constitution of Queensland and Other Legislation Amendment Bill 2016.

Yours sincerely,

Michelle O'Flynn

Director

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About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems, legal and individual advocacy organisation for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights of the most vulnerable people with disability.

Queensland Advocacy Incorporated's directs its systems advocacy to attitudinal, law and policy change, and supports a range of other Queensland and national advocacy initiatives. QAI also operates three individual advocacy services: the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. The people who use these services provide us with insights into their experiences, needs and concerns.

Recommendations

1. QAI 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.

2. QAI supports the provision that empowers committees to initiate their own references, but on the *proviso* that such proposals must be subject to both public and parliamentary interest tests.

3. QAI supports the implementation of Recommendation 47 of the 2011 committee system reforms, namely, 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.

Introduction

Queensland's Governor-appointed Legislative Council voted itself out of existence in 1922, and Premier Ned Hanlon introduced electoral malapportionment in 1949. These measures helped to establish top-heavy state government, undermined parliamentary accountability, and later made Queensland[1] an object lesson in the dangers of unicameral parliaments.

Between 1922 and 1988 Queensland's party of government changed once: from Labor to the Country-Liberal coalition, in 1957. A strikingly offhand treatment of civil liberties and a convergence of public duty and private interest were the hallmarks of the Bjelke-Petersen era, when an unchecked executive gave Queensland the 1971 'state of emergency', Cedar Bay, the street march ban and the Essential Services legislation of 1979, and a biddable, corrupt police service.

Premier Ahern commissioned an investigation and the Fitzgerald Commission conducted a comparative study of other government systems, including Australia's federal parliament and the House of Commons. Fitzgerald dismissed the 'innocuous "in House" concerns' of Queensland's pre-1988 committees, and recommended 'a comprehensive system of Parliamentary Committees to enhance the ability of Parliament to monitor the efficiency of Government'.[2]

Parliamentary committees, he advised, would enhance the skills of backbenchers, increase their experience in and familiarity with public administration, and reinforce their sense of purpose and appreciation of their independent Parliamentary role and responsibility.[3] Committees should conduct public hearings, investigate and obtain information and documents, and accept and report on petitions and complaints. The legislative process should allow sufficient time for committee work.[4]

Committees could examine the expenditure and administration of Government departments and associated public bodies, as well as the policies they administer, and thereby increase the chance that misconduct, incompetence or inefficiency would be exposed. They could conduct inquiries into major areas of policy or investigate matters of public concern, or both. The Goss government largely implemented Fitzgerald's recommendations, but in QAI's view the system still needs fine-tuning and strengthening.

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[1] UCL -The Constitution Unit School of Public Policy. 1998. *Checks and Balances in Single Chamber Parliaments: a Comparative Study*, page 6. British Columbia, too, was dominated by one party or another for long periods. Until change began in 1972, Parliament was called for only a few weeks a year. Opposition members were not given permanent office space.
[2] *Fitzgerald Report* 1989: 3.1.2 Parliamentary Committees: p. 124.
[3] Ibid: p. 124.
[4] *Ibid*: p. 125.

QAI Recommendations

A strong democracy is one that protects the public interest via a robust system of 'checks and balances':[5] an independent judiciary; competitive and uncensored media; an elected legislature and executive government subject to substantive parliamentary review mechanisms such as opportunities, under privilege, for the legislature to quiz the executive, a house of review or an effective committee system. Committees are well placed to perform functions which the House itself is not well fitted to perform, such as carrying out investigations, hearing witnesses, sifting evidence, discussing matters in detail and formulating reasoned conclusions. Committees can examine the operation of legislation and consider the case for new legislation. QAI applauds the government's intention to fortify the committee system by amending the State's constitution.

- **Recommendation 1: QAI 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.**

In this state, the committee system and parliamentary questions are the two principal mechanisms for the ongoing scrutiny of government. If designed appropriately, the committee system is the more potent, allowing for a particular focus and specialisation on policy matters and, more critically, fostering a group dynamic that offsets the partisanship found elsewhere in the legislative process, affording members of the legislative assembly a non-performative opportunity for group problem solving. In Queensland, media grandstanding has not yet undermined our committees as it has in some other Westminster democracies.[6]

However, in QAI's view, committees must be empowered to initiate their own inquiries so that they can have a more substantive influence on parliamentary business. Committee business is otherwise confined to the consideration, within portfolio, of Appropriation bills, other and proposed legislation, government financial management and public works.[7]

A cursory examination of committees' legislative scrutiny is enough to show that without reinforcement they are in danger of becoming 'toothless tigers'. Despite proceeding through a number of formal parliamentary stages, the dominant legislative pattern is that a bill can become law without much modification, despite public and committee scrutiny. With a few exceptions, the legislature refers a bill to the relevant committee after the First Reading. The second stage debate on the principles of a bill is rarely more than a theatrical set-piece: the Minister re-presents a bill for deliberation,[8] but not before the support of independents or minor parties, where necessary, has been secured. Even that can only be done once the essential principles of the bill have been set.

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[5] 'Checks and balances' appears in John Adams' (1735-1826, second President of the United States) *Defense of the Constitutions of the United States*, 1787, although "check and balance" was used by the radical Whig John Toland as early as 1701, and "balance or check" by the Civil War republican Marchamont Nedham in 1654. See David Wootton. 'Liberty, Metaphor, and Mechanism: "checks and balances" and the origins of modern constitutionalism.'

[6] For example, in Ireland: Eoin Daly & Tom Hickey. 2015. 'Introduction: Republican theory and republican constitutionalism' in The political theory of the Irish Constitution Republicanism and the basic law. Manchester: Manchester University Press.

[7] Sections 93 & 94 *Parliament of Queensland Act 2001* (Qld).

[8] The First Reading introduction of the bill is pure formality.

While a committee can scrutinize legislation referred to them, canvas public submissions, and recommend amendments, the power of amendment remains with the House as a whole. In the face of the government's numerical dominance the opposition has little incentive to advance or push for alternative provisions, and at this point only technical details and minor amendments are up for deliberation.

QAI supports the provision[9] that would allow committees to initiate their own inquiries, but 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.

Recommendation 2: QAI supports the provision[10] that would allow committees to initiate their own inquiries, subject to a public interest test.

Finally, the public needs a mechanism by which it can initiate committee inquiries without the parliamentary imprimatur. Inquiry by petition is the logical means to achieve this goal. On many occasions QAI has sought to have institutional practices against people with disability scrutinized by a body with strong investigative powers, but our calls have often been ignored.[11]

Recommendation 3: QAI supports the implementation of Recommendation 47 of the 2011 committee system reforms, namely, 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.

Conclusion

Committees' initiatives, reasons, processes, and deliberations on any inquiries should be subject to public critique and intense transparency. In a state that has no constitutionally-mandated distinction between executive and legislature, the committee system is a *de facto* upper house. The two -party system ensures that the majority of the legislature votes according to the wishes of the executive. In the absence of a house of review, Queensland's

[9] This is the new section 92 (1) (d)' initiate an inquiry into any other matter it considers appropriate'.
[10] This is the new section 92 (1) (d)' initiate an inquiry into any other matter it considers appropriate'.
[11] QAI, along with a number of other disability agencies, was successful in our call upon the Senate to –
1. examine institutional abuse (Community Affairs References Committee - Violence, **abuse** and neglect against people with disability in **institutional settings)**
2. examine the indefinite detention Forensic Order people in forensic detention.

separation of powers *vis-à-vis* Executive and Legislature is more a matter of convention than law. Any reform that serves to check executive power is good for governance and good for the state.

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