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**Submission on the Constitution of Queensland and Other Legislation Amendment Bill
2016**

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Please note: references in this submission are in accordance with the 3rd edition of the Australian Guide to Legal Citation.

1. Introduction

1.1. The *Constitution of Queensland and Other Legislation Amendment Bill 2016* (Qld) (‘the Bill’) seeks to amend the *Constitution of Queensland 2001* (Qld) (‘the Constitution’) and the *Parliament of Queensland Act 2001* (Qld) (‘the Act’) in order to achieve two main objectives:

- To give statutory recognition to the ‘core matters’ of Queensland’s Parliamentary Committee system; and
- To allow portfolio committees to conduct own motion inquiries on matters within areas of their responsibility.

1.2. These objectives were proposed in the Committee of the Legislative Assembly’s 17th report titled, *Review of the Parliamentary Committee System*, which was produced in February 2016.¹

2. Executive Summary

2.1. This submission will assess the validity of the second objective of the Bill which seeks to allow portfolio committees to conduct own motion inquiries into matters within their portfolio.

2.2. This submission is outlined as followed:

- (a) Overview and Impact of Proposed Amendment;
- (b) Benefits of Allowing Own Motion Inquiries;
- (c) Negatives of Allowing Own Motion Inquiries;
- (d) Recommendations; and
- (e) Conclusion

3. OBJECTIVE II: Allowing Portfolio Committee’s to conduct own motion inquiries into matters within their responsibility.

3.1. Overview and Impact of the Proposed Amendment

3.1.1. At present the Act allows portfolio committees to “consider appropriation bills,”² “consider other legislation and proposed legislation as provided in section 93”³ and “perform its role in relation to public accounts and public works.”⁴ The Bill seeks to insert a new subsection which will provide portfolio committees with the ability to “initiate an inquiry into any other matter it considers appropriate.”⁵

¹ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 4.

² *Parliament of Queensland Act 2001* (Qld) s (1)(a).

³ *Parliament of Queensland Act 2001* (Qld) s (1)(b).

⁴ *Parliament of Queensland Act 2001* (Qld) s (1)(c).

⁵ *Constitution of Queensland and Other Legislation Amendment Bill 2016* (Qld) s 8.

- 3.1.2. This amendment will not have any impact on the establishment, composition, structure or existing duties of Queensland’s portfolio committees. What it seeks to do is to provide Queensland’s portfolio committees with the additional power to initiate inquiries into matters within their responsibility on their own accord. This would mean that Queensland’s portfolio committees could initiate inquiries into matters within their portfolio without it being referred to them from any institutions.
- 3.1.3. This amendment should, prima facie, give greater autonomy and independence to Queensland’s portfolio committees. It should also enable portfolio committees to hold the government to greater account and foster a stricter separation of powers between the three branches of government. This is of particular importance in Queensland, a unicameral parliamentary system, where executive oversight is needed to ensure that flagrant abuses of executive privileges and corruption, such as those experienced during the Bjelke-Petersen years,⁶ does not occur.
- 3.1.4. It should also be noted, however, that allowing portfolio committees to conduct own motion inquiries could lead to some unfavourable outcomes. This submission will now address the benefits and drawbacks of the proposed amendment.

3.2. The Benefits of Allowing Own Motion Inquiries

Ensuring Oversight and Accountability

- 3.2.1. Parliamentary committees, such as Queensland’s portfolio committees, are an important and necessary institution for an effective political system in Queensland. Grenfell believes that parliamentary committees are an “integral part of Australia’s system of responsible government”⁷ because they “seek to assert oversight of the executive and its actions.”⁸ Alvey argues that they “safeguard the public interest.”⁹ These viewpoints are held by this author and numerous others.¹⁰

⁶ This was highlighted by the 1989 Fitzgerald Report; Tony Fitzgerald, Parliament of Queensland, *Commission of Inquiry into Possible Illegal Activities and Associate Police Misconduct* (1989).

⁷ Laura Grenfell, ‘An Australian spectrum of political rights scrutiny: Continuing to lead by example?’ (2015) 26 *Public Law Review* 19, 19.

⁸ *Ibid.*

⁹ John Alvey ‘Parliament’s Accountability to the People, The role of Committees: A Queensland View,’ Paper presented to the Australian Study of Parliament Group conference, Parliament House, Adelaide, 23-25 August 2007, 6.

¹⁰ Tony Fitzgerald, Parliament of Queensland, *Commission of Inquiry into Possible Illegal Activities and Associate Police Misconduct* (1989) 124; Peter Coaldrake, *Working the System* (University of Queensland Press, 1989); James Spigelman, ‘The Integrity Branch of Government’ (2004) 78 *Australian Law Journal* 724; Siobhan Leyne, ‘The changing role of parliamentary committees and the place of the community,’ Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008; Geoffrey Lindell, ‘Future directions and developments,’ Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008; Kevin Rozzoli, ‘Evolution of the Committee System in the House of Representatives – A Path Forward – Increasing Parliamentary

- 3.2.2. Portfolio committees are essential to Queensland's political system because they operate as a 'de facto' upper house. This means that they are responsible for monitoring the actions of the executive, overseeing aspects of parliamentary procedures and scrutinising particular areas of policy and legislation.
- 3.2.3. Allowing portfolio committees to conduct own motion inquiries will give them more autonomy and independence which will help ensure that these objectives are achieved. This argument is supported by Coghill,¹¹ and others,¹² who believe that the ability to initiate own motion inquiries is an important aspect of a strong, independent and effective committee system.
- 3.2.4. Another added benefit of allowing own motion inquiries is that inquiries are an effective way to bring public and media attention to important public policy issues. This is a very effective way to hold the executive, Parliament or any other institution accountable and also enables a greater degree of transparency. Providing portfolio committees with the ability to initiate own motion inquiries is a valuable tool because it allows the public to become aware of all matters relevant to public policy and decision making, especially contentious areas that a sitting government may not want exposed.

Public Participation and Consultation

- 3.2.5. Portfolio committees enable the public to participate during policy making and decision making processes. This also has the added benefit of enabling policy makers an opportunity to hear the public's opinions about policy decisions and consult with them. This is of fundamental importance and is necessary to ensure that there is a vibrant, pluralistic democracy. These beliefs are mirrored by Thomson-Senanayake, who argues that "public participation in the decisions of government is the cornerstone of representative democracy."¹³ The use of parliamentary committees to foster high levels of public participation and

Accountability,' Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008; John Alvey, 'Parliament's accountability to the people, the role of committees: A Queensland view' (2008) 23 *Australasian Parliamentary Review* 62; Suman Ojha, 'The effectiveness of parliamentary committees in Queensland: 1996-2001' (2012) 27 *Australasian Parliamentary Review* 71; Phil Larkin, 'The House of Representative's Committee System: The Changing Committee System of the British Parliament,' Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008; John Uhr, 'Marketing Parliamentary Committees' (2001) 16 *Australasian Parliamentary Review* 101; Elizabeth McLeay, 'Parliamentary Committees in New Zealand: A house continuously reforming itself?' (2001) 16 *Australasian Parliamentary Review* 121; Marcus Ganley, 'Select Committees and their Role in Keeping Parliament Relevant: Do New Zealand select committees make a difference?' (2001) 16 *Australasian Parliamentary Review* 140; Liz Gordon, 'Radical Democracy on Committees in an MMP Parliament' 16 *Australasian Parliamentary Review* 151.

¹¹ Ken Coghill, 'Queensland's parliamentary committees: dead, on life support, or lively?' (2012) 27 *Australasian Parliamentary Review* 99, 105.

¹² Australasian Study of Parliament Group (Queensland Chapter) (2012), *Whether or Not Parliamentary Committees are Alive or Dead After the Landslide Transcript of Proceedings*; Lyndel Bates, 'Parliamentary Committees are important in developing policy: Evidence from a Queensland Case Study' (2010) 25 *Australasian Parliamentary Review* 14.

¹³ Jane Thomson-Senanayake, 'Political trust, community engagement in public policy and the role of parliamentary committees' (PLPP Research Paper, January 2012) 1.

consultation has also been noted by numerous authors.¹⁴

- 3.2.6. Enabling portfolio committees the ability to conduct own motion inquiries should lead to an increase in public participation and consultation. It should also provide more opportunities for policy makers to understand the viewpoints of the public in relation to public policy decisions. Furthermore, it will allow the public to participate in and be involved with, inquiries that may not have been investigated if this power were not available. This is due to the fact that portfolio committees will not be restricted in regards to the scope and volume of their inquiries.
- 3.2.7. This should create a more fluid, open dialogue between the public and policy makers. It should also help increase social learning, “the contribution of political processes to the understanding of policy issues amongst relevant participants,”¹⁵ between political institutions and the general public as advocated by Marsh. Own motion inquiries are therefore necessary to ensure that Queensland’s portfolio committees can effectively “bring parliament to the people”¹⁶ and act as an “interface between representative democracy and participatory democracy.”¹⁷

Separation of Powers

- 3.2.8. An additional benefit of allowing own motion inquiries as proposed by the Bill, is that it will further strengthen the separation of powers between Queensland’s legislature, executive and judiciary. This of significant importance because Queensland currently does not formally recognise a separation of powers between these institutions. This deficiency in Queensland’s Constitution, whilst not within the scope of this submission, has been noted by several

¹⁴ Ian Marsh, ‘Australia’s Representation Gap: A Role for Parliamentary Committees?’ (Papers on Parliament no 44, 2006); John Warhurst, ‘What’s the Matter with Parliament?’ Paper presented to Order of Australia Association, Australian National University, Canberra, 9 November 2011; Kate Burton, ‘Community Participation in Parliamentary Committees: Opportunities and Barriers (Research Paper 10, Parliamentary Library, 30 November 1999); John Alvey, ‘Parliament’s accountability to the people, the role of committees: A Queensland view’ (2008) 23 *Australasian Parliamentary Review* 62; Senate Legal and Constitutional Affairs Standing Committee, Australian Government Publishing Service, *The Twentieth Anniversary of the Committee* (2001); Robyn Webber, *Increasing Public Participation in the Work of Parliamentary Committees* (Parliamentary Paper, Queensland Parliament, 2000); Siobhan Leyne, ‘The changing role of parliamentary committees and the place of the community,’ Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008; Ian Marsh and David Yencken, *Into the Future: The Neglect of the Long Term in Australian Politics* (Black Inc, 2004); Ken Coghill, ‘Queensland’s parliamentary committees: dead, on life support, or lively?’ (2012) 27 *Australasian Parliamentary Review* 99; Clare James, ‘Government responses to Parliamentary Committee Inquiries’, Paper presented to the Twentieth Anniversary of the Establishment of the House of Representatives Committee System, Parliament House, Canberra, 15 February 2008.

¹⁵ Ian Marsh, ‘Can Parliamentary Committees Contribute to ‘Social Learning’?’ (Papers on Parliament 45, Commonwealth Parliament, August 2006) 29.

¹⁶ *Ibid.*

¹⁷ House Standing Committee on Procedure, House of Representatives, *Building a modern committee system: An inquiry into the effectiveness of the House Committee System*, (2010) 41 cited in Jane Thomson-Senanayake, ‘Political trust, community engagement in public policy and the role of parliamentary committees’ (PLPP Research Paper, January 2012) 1.

authors.¹⁸ Alvey argues that Queensland has a “history of the executive infringing on the functions of the legislature and the judiciary.”¹⁹ The lack of a formally recognised separation of powers has no doubt contributed to this.

- 3.2.9. Allowing portfolio committees to conduct own motion inquiries is an effective, albeit informal way, of ensuring that the executive does not abuse or impede on the functions of the legislature and the judiciary. This is due to the fact that portfolio committees will be able to conduct inquiries whenever it suspects or is alerted by the public that there has been a breach of the separation of powers between the three branches of government. This will draw light to the issue and act as a deterrent.

Protection of Rights and the Prevention of Rights Abuses

- 3.2.10. Granting portfolio committees the power to conduct own motion inquiries would also be an effective, but yet again informal, way to ensure that rights abuses by the executive are not committed. Although lawmakers must apply certain fundamental legal principles when drafting legislation,²⁰ Queensland does not currently have any formal recognition of its citizen’s rights. Such recognition is not within the scope of this submission, however, it should be noted that this lack of formal recognition could potentially lead to unfavourable outcomes.

- 3.2.11. This further highlights the importance of a strong, independent and autonomous portfolio committee to ensure that any matters that negatively impact on certain rights are highlighted, inquired into and reported on in a public manner. Granting portfolio committees own motion inquiry powers will enable them to further scrutinise, and potentially prevent, any actions which may lead to rights abuses from occurring.

3.3. The Negatives of Allowing Own Motion Inquiries

Political Motivations

- 3.3.1. 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. As Jones asserts, “Committees are what the members

¹⁸ John Alvey, ‘Parliament’s accountability to the people, the role of committees: A Queensland view’ (2008) 23 *Australasian Parliamentary Review* 62, 69; Ken Coghill, ‘Queensland’s parliamentary committees: dead, on life support, or lively?’ (2012) 27 *Australasian Parliamentary Review* 99, 102; Lyndel Bates ‘Parliamentary Committees are Important in Developing Policy: Evidence from a Queensland Case Study’ (2012) 25 *Australasian Parliamentary Review* 14.

¹⁹ John Alvey ‘Parliament’s Accountability to the People, The role of Committees: A Queensland View, Paper presented to the Australian Study of Parliament Group conference, Parliament House, Adelaide, 23-25 August 2007, 7

²⁰ *Legislative Standards Act 1992* (Qld) s 4; *Parliament of Queensland Act 2001* (Qld) s 93(1).

make them.”²¹ Although there are specific requirements about who can become a member of Queensland’s portfolio committees²² 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. As Paul Lobban, a former executive of South Australia’s Economic and Finance Committee (‘EFC’), stated “committees comprise Members of Parliament, they are limbs of the Parliament, politics is inherent to their operation.”²³

- 3.3.2. This could no doubt have an impact on portfolio committees use of own motion inquiries. It is not hard to envision a scenario where a committee chooses to conduct or not conduct an own motion inquiry to try and discredit political opponents or rival political parties for their own political gain. Such an outcome would clearly be a flagrant abuse of the committee system and would be antithetical to an effective democracy.
- 3.3.3. This type of scenario is exactly what Lobban found when he investigated the use of the EFC. Looking at the issues the EFC reported on since 2002, Lobban contends that there was a “clear trend for issues that do not reflect on the government’s economic management or the administration of public finances to be reported.”²⁴ Lobban went on to further argue that “effectively, the majority position of the Committee has been to look for issues that constitute, in political terms, victimless crimes – or at least crimes where the government is not the victim or especially the accused.”²⁵ Lobban also argues that South Australia’s Budget and Finance Committee “has the inclination to inquire in spades but no desire to do anything with its evidence other than promulgate it, often for tactical political advantage.”²⁶
- 3.3.4. Another example from South Australia highlights the problems that political motivations may have on the use of own motion inquiries. In 2007 South Australia’s Budget and Finance Select Committee of the Legislative Council, which featured a membership without a Government majority and the Opposition Finance Spokesman as chair, was appointed with the terms of reference to monitor and scrutinise all matters relating to the State Budget and the financial administration of the State, a remit that includes any matter relating

²¹ Grant Jones, ‘Preferential Roles of MPs on Parliamentary Committees’ (2008) 23 *Australian Parliamentary Review* 79, 80 cited in Paul Lobban, ‘Who cares wins: Parliamentary Committees and the executive’ (2012) 27 *Australasian Parliamentary Review* 178, 188.

²² *Parliament of Queensland Act 2001* (Qld) ss 91, 91A, 91B, 91C.

²³ Paul Lobban, ‘Who cares wins: Parliamentary Committees and the executive’ (2012) 27 *Australasian Parliamentary Review* 178, 183.

²⁴ *Ibid*, 182.

²⁵ *Ibid*.

²⁶ *Ibid*, 185.

to past, current, proposed and future expenditure by the public sector.²⁷ This was clearly a politically motivated act.

- 3.3.5. These examples highlight the possible dangers of allowing own motion inquiries because of the political factors involved with parliamentary committees and parliamentary committee membership. This type of behaviour is something that must be avoided at all costs and would suggest that reforms regarding the composition of committee membership be addressed.

Abuse of Process

- 3.3.6. Of further concern regarding the use of own motion inquiries, is the possibility that they could also be abused by political parties in an attempt to discredit political opponents. A contemporary example of this is when the Palmer United party was able to successfully convince the federal senate to conduct a senate inquiry into the actions of the former Newman Queensland government.²⁸ It should also be noted though that the Labour party and the Greens party also backed the actions of the Palmer United party.²⁹ The actions of these respective parties were obviously politically motivated and were actioned with intention of discrediting the Newman government. This is a clear demonstration of how the use of an own motion inquiry could amount to an abuse of process.

Lack of Independence from the Executive

- 3.3.7. A serious concern regarding the use of own motion inquiries is, as Rozzoli notes, enforcing “their independence from executive control.”³⁰ 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.”³¹ The lack of independence of parliamentary committees from executive control is a prevalent issue in numerous jurisdictions.
- 3.3.8. Queensland’s unicameral parliament, Grenfell argues, makes “policy scrutiny by parliamentary committees less fraught from the perspective of government.”³² This is especially relevant when there is a sitting government with a vast

²⁷ *Report on the Operations of the Budget and Finance Committee of the Legislative Council, 2009-2010*, 1-2 cited in Paul Lobban, ‘Who cares wins: Parliamentary Committees and the executive’ (2012) 27 *Australasian Parliamentary Review* 178, 184.

²⁸ Australian Associated Press, ‘Clive Palmer wins green light for inquiry into Newman Government’, *The Australian* (online), 30 September 2014 <<http://www.theaustralian.com.au/national-affairs/clive-palmer-wins-green-light-for-inquiry-into-newman-government/news-story/6d2741c87b439172d68bb8c70811b85b>>;

²⁹ *Ibid.*

³⁰ Kevin Rozzoli, ‘Evolution of the Committee System in the House of Representatives – A Path Forward – Increasing Parliamentary Accountability,’ Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008, 85.

³¹ Siobhan Leyne, ‘The changing role of parliamentary committees and the place of the community,’ Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008, 66.

³² Laura Grenfell, ‘An Australian spectrum of political rights scrutiny: “Continuing to lead by example”’ (2015) 26 *Public Law Review* 19, 30.

majority such as the Newman Government in 2012 and to a lesser extent the Beattie Government in 2006. Furthermore, as noted by McLeay, “governments elected by first past the post electoral systems,”³³ such as Queensland, “have the best opportunities for executive dominance.” Bastoni and Macintyre have also noted that “in parliaments that are small and especially when the government of the day is in a commanding position, there is an inevitable temptation to treat the parliament with disrespect, and to begin to evidence complacency and hubris.”³⁴

- 3.3.9. In South Australia, Lobban argues that “domination of memberships by government members with government chairs, with a government intent on managing its political profile, has caused committees to withdraw from the full reach of their capacities and instead seek out politically neutralised issues, or issues on which there is a clear government line to which they can cleave.”³⁵ Lobban goes on to further argue that “motions for inquiries are often aimed at issues currently in the political spotlight, for which Government members have little enthusiasm and are responded to with pre-prepared media releases.”³⁶
- 3.3.10. This demonstrates that the current portfolio committee system can lead to high levels of executive influence over the committee’s decision making. This can result in situations mentioned above, where own motion inquiries are either conducted or not conducted to ensure that the executive is not too heavily scrutinised and therefore inadequately held accountable. Conversely it can mean that committees are used to discredit opponents to the executive. This also demonstrates that possible reforms to the composition of committee members should be investigated further.

Interest Group Influences

- 3.3.11. Another drawback associated with the use of own motion inquiries is the possibility that they will be influenced by powerful interest groups. 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.”³⁷ 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.”³⁸ This leads to a situation where

³³ Elizabeth McLeay, ‘Parliamentary Committees in New Zealand: A house continuously reforming itself?’ (2001) 16 *Australasian Parliamentary Review* 121, 122.

³⁴ Jordan Bastoni and Clem Macintyre, ‘What’s In It for Us? Why Governments Need Well Resourced Parliaments’ (2010) 25 *Australian Parliamentary Review* 177, 178 cited in Paul Lobban, ‘Who cares wins: Parliamentary Committees and the executive’ (2012) 27 *Australasian Parliamentary Review* 178, 179.

³⁵ Paul Lobban, ‘Who cares wins: Parliamentary Committees and the executive’ (2012) 27 *Australasian Parliamentary Review* 178, 183.

³⁶ *Ibid.*

³⁷ Siobhan Leyne, ‘The changing role of parliamentary committees and the place of the community,’ Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008, 66

³⁸ *Ibid.*, 68.

“respondents to committee inquiries are therefore generally lobby groups or well organised organisations.”³⁹

- 3.3.12. 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.
- 3.3.13. To demonstrate the impact that submissions from the public have on commission/committee reports and recommendations Tranter conducted a study regarding the Australian Law Reform Commission’s (‘ALRC’) final reports from 1992 to 2012.⁴⁰ The purpose of this study was to investigate the sources used by the ALRC when arriving at its recommendations for their final reports. Tranter found that submissions were the most frequently cited sources and the ALRC did not extensively reference academic sources.⁴¹
- 3.3.14. Another study by Tranter, Gollan and Moses into the Australian Productivity Commission produced very similar findings.⁴² It is presumed that the Productivity Commission relies on academic literature and data when arriving at its recommendations.⁴³ However, similar to the ALRC, this was not the case as the study found that the Productivity Commission often relied on “non-quantitative forms of evidence, including bare assertions and personal experiences.”⁴⁴
- 3.3.15. This findings could be explained by the commissions ‘community engagement approach’ to law reform.⁴⁵ However, this does not deny the fact that these submissions can be very influential on a commission/committee’s recommendations. It also demonstrates how a powerful interest group or groups could influence an own motion inquiry to receive a benefit which is not bestowed upon other members of the public.
- 3.3.16. Unless reforms are made to the inquiry process for own motion inquiries, submissions to inquiries will continue to be dominated by the interests of powerful lobby groups and will not accurately reflect all of the viewpoints of the general public.
- 3.3.17. Another relevant factor is the possibility that powerful lobby groups will be able to influence committee members and committees in general to either

³⁹ Ibid.

⁴⁰ Kieran Tranter, ‘Citation Practices of the Australian Law Reform Commission in Final Reports 1992-2012’ (2015) 38 *University of New South Wales Legal Journal* 323.

⁴¹ Ibid, 323.

⁴² Lyria Moses, Nicola Gollan and Kieran Tranter, ‘The Productivity Commission: a different engine for law reform’ (2015) 24 *Griffith Law Review* 657.

⁴³ Ibid, 657.

⁴⁴ Ibid, 657.

⁴⁵ Kieran Tranter, ‘Citation Practices of the Australian Law Reform Commission in Final Reports 1992-2012’ (2015) 38 *University of New South Wales Legal Journal* 323, 324.

conduct or not conduct own motion inquiries to suit their agenda. This could potentially occur because of the political nature of committees and this must be avoided at all costs.

3.4. *Conclusion*

3.4.1. In conclusion, the benefits of allowing portfolio committees to conduct own motion enquiries include:

- Ensuring oversight and accountability
- Increasing public participation and consultation
- Creating an informal separation of powers
- Protecting rights and preventing rights abuses

3.4.2. The drawbacks of allowing portfolio committees to conduct own motion enquiries include:

- Influence of political motivations
- Lack of independence from the Executive
- Influence of interest groups on the inquiry process
- Abuses of process

4. **Recommendations**

4.1. It is submitted that the granting of own motion inquiry powers for Queensland's portfolio committees, as prescribed by the above amendment, should be supported. This submission takes the view that the granting own motion inquiry powers is beneficial to Queensland's political system and democracy in general. However, as demonstrated in the above section, there are potential flaws involved with the potential use, or non-use, of own motion inquiries. Therefore, the following reforms are proposed to strengthen the own motion inquiry power and Queensland's portfolio committees in general.

Portfolio Committee Membership

4.2. The present composition of Queensland's portfolio committees opens up avenues for political influence because they consists of MP's. Queensland's unicameral parliament also means that whenever a government has a large majority they will dominate portfolio committees. This essentially gives executive control over the portfolio committees. As demonstrated in the section above, this can have disastrous consequences for Queensland's political system and the public policy process.

4.3. 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 Queensland⁴⁶, the Supreme Court of another State⁴⁷, the High Court of Australia⁴⁸ or the Federal Court of Australia.⁴⁹ Other members of the CMC must meet the relevant requirements⁵⁰ and prior consultation as well as bi-partisan support for appointments⁵¹ must be achieved.

- 4.4. 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.

Government Responses to Committee Inquiry Reports

- 4.5. This is a very contentious issue that needs to be addressed. In regards to the federal government's response to committee reports, Senator Andrew Bartlett argues that "the government's lack of response is a key flaw and I believe it is significantly diminishing the effectiveness of the committee report process."⁵² The June 2005 Sydney Morning Herald articles titled a 'special Herald investigation into federal government responses to parliamentary inquiries'⁵³ drew significant public attention to this issue. The crux of these articles was that parliamentary committees were ineffective because the vast majority of committee reports did not receive a formal government response.⁵⁴
- 4.6. This example shows how important government responses to committee inquiries are for ensuring a strong committee system. 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. Rozzoli argues that governments should be bound by the recommendations of the relevant committee's

⁴⁶ *Crime and Corruption Act 2001* (Qld) s 224(a).

⁴⁷ *Crime and Corruption Act 2001* (Qld) s 224(b).

⁴⁸ *Crime and Corruption Act 2001* (Qld) s 224(c).

⁴⁹ *Crime and Corruption Act 2001* (Qld) s 224(d).

⁵⁰ *Crime and Corruption Act 2001* (Qld) s 225.

⁵¹ *Crime and Corruption Act 2001* (Qld) s 228.

⁵² Senate Debates, 24.6.06, 143 (Senator Andrew Bartlett) cited in Clare James, 'Government responses to Parliamentary Committee Inquiries', Paper presented to the Twentieth Anniversary of the Establishment of the House of Representatives Committee System, Parliament House, Canberra, 15 February 2008, 159.

⁵³ Gerald Ryle and Lisa Pryor, 'Democracy denied', *Sydney Morning Herald*, 20 June 2005.

⁵⁴ *Ibid.*

report.⁵⁵ Aldons argues that government responses be provided in a standardised format.⁵⁶

- 4.7. This author would recommend that an inquiry be launched into this issue. It is submitted that binding governments to committee recommendations be supported, however, this would only apply if the composition of the membership of portfolio committees be addressed first.

Formal Public Review

- 4.8. 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.
- 4.9. It is acknowledged that there is some difficulty in evaluating parliamentary committees. Such acknowledgement has been expressed by Ojha⁵⁷ and Bates.⁵⁸ Therefore, it is submitted that the way in which portfolio committees would be evaluated be investigated further.

Inquiry Procedures

- 4.10. It is submitted that an inquiry be conducted in regards to the structure, logistics and procedures of the inquiry process. This is to ensure that the general public has access, and can contribute to, the inquiry process. At present the inquiry process is tailored more towards large lobby groups and experts in the field of the inquiry. This restricts the vast majority of the general public which leads to a decreased diversity of views and consultation. Additionally, the increase in technology in Queensland, particularly internet access, has opened up new potential avenues for the general public to be involved in the inquiry process at a lesser cost. It is arguable that an inquiry into this issue could prove extremely fruitful in increasing public participation and consultation. This should in turn make the committee system more effective and promote a stronger democracy.

⁵⁵ Kevin Rozzoli, 'Evolution of the Committee System in the House of Representatives – A Path Forward – Increasing Parliamentary Accountability,' Paper presented to the 20th Anniversary of the House Committee System, Parliament House, Canberra, 15 February 2008, 88.

⁵⁶ Michael Aldons, 'Rating the Effectiveness of Parliamentary Committee Reports: The Methodology' (2000) 15 *Legislative Studies* 22, 29 cited in Clare James, 'Government responses to Parliamentary Committee Inquiries', Paper presented to the Twentieth Anniversary of the Establishment of the House of Representatives Committee System, Parliament House, Canberra, 15 February 2008, 173.

⁵⁷ Suman Ojha, 'The effectiveness of parliamentary committees in Queensland: 1996-2001' (2012) 27 *Australasian Parliamentary Review* 71, 72.

⁵⁸ Lyndel Bates 'Parliamentary Committees are Important in Developing Policy: Evidence from a Queensland Case Study' (2012) 25(2) *Australasian Parliamentary Review* 14, 14.

5. Overall Conclusion: Supporting the Proposed Amendment

5.1. In conclusion, it is submitted that the proposed amendment be supported. The benefits of allowing own motion inquiries outweighs the negatives. However, it should be stressed that the possible drawbacks of allowing this power be addressed and investigated more thoroughly. This submission has suggested a number of recommendations that could achieve this. Further inquiries and investigations into these issues could lead to a more effective and democratic political system in Queensland.