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Committee of the Legislative Assembly
Parliament House□
George Street□
BRISBANE QLD 4000

Committee of the Legislative Assembly

Dear Honourable Members,

This submission has been written as part of the assessment component for the course Law Reform, which is mandatory in the Law Honours program at Griffith University. If the Committee has any queries about the course, Dr Kieran Tranter can be contacted by telephone on [REDACTED] or by email on [REDACTED]. Please note that references in this submission are in accordance with the 3rd edition of the Australian Guide to Legal Citation.

Executive Recommendations

This submission makes the following key recommendations:

1. Recommend the Bill to the House in its current form, excluding section 26B(3)(D);
2. Provide for the Committee of the Legislative Assembly to review the Bill on an annual basis to monitor its implementation and minimise or avoid any unintended or undesirable consequences; and
3. Provide the necessary and appropriate supporting measures to administer and fund the Parliamentary Committee System.

Contents

This submission relates only to the first objective of the Bill to statutorily recognise the 'core matters' of the parliamentary committee system. It will address:

1. Introduction;
2. Overview of the Parliamentary Committee System;
3. The Functions And Benefits of the Parliamentary Committee System;
4. The Meaning of 'Core Matters';
5. The Purpose of Constitutional Recognition;
6. Recognising the Importance of the Parliamentary Committee System;
7. Deterring Abolition of the Parliamentary Committee System;
8. Certainty of the Continuation of the Parliamentary Committee System;
9. The Potential For Committee Bypassing; and
10. Conclusion as to Support For the Bill.

Yours faithfully,

Amelia Hasson

3 June 2016

1. Introduction

- 1.1. The *Constitution of Queensland and Other Legislation Amendment Bill 2016* ('the Bill') seeks to amend the Queensland *Constitution* by way of ordinary statute to imbue Queensland Parliamentary Committee's with recognition and protection as a fundamental aspect of Queensland's legislative system.
- 1.2. It is recognised that this endeavour stems from previous efforts, the most recent development being the Committee's 17th report of February 2016, 'Review of the Parliamentary Committee System,'¹ the recommendations of which are replicated in the Bill's current objectives, and related activity in the State Referendum on four year Parliamentary terms.
- 1.3. This submission does not consider at length Chapter 5 of the *Parliament of Queensland Act 2001* (Qld), however it is relevant to the project of constitutional recognition in the Queensland *Constitution*.² Two basic points should be noted. First, while it confers some level of statutory protection that is desirable,³ it does not afford the symbolic protection and psychological deterrence of constitutional recognition. Second, the legislation is designed only to provide the machinery, or in some cases default rules, for the establishment, membership, and operation of Parliamentary Committees.

2. Overview of the Parliamentary Committee System

- 2.1. This section seeks to provide an overview of the Parliamentary Committee System in its development, characteristics, and current structures.

Recommendations:

- That the Bill make reference to the core values of the Parliamentary Committee System.
 - That the Bill make reference to the significance of the culture of the Parliamentary Committee System.
- That the Bill acknowledge the bipartisan, collaborative, and inquisitorial spirit of the Parliamentary Committee System.

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

² *Constitution of Queensland Act 2001* (Qld).

³ Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (Report No 129), Chapter 16 Delegating Legislative Power, 443-444, 449-450.

- 2.2. The Committee System is a tradition inherited from the Westminster system.⁴ Historically in Queensland, Parliamentary Committees were adopted early in the establishment of the colony, but declined in the 1900s with the abolition of the Legislative Council⁵ in 1922.⁶ However, they were reinvigorated after the Fitzgerald Inquiry as an accountability measure for Queensland's then fragile democracy with a unicameral Queensland Parliament with little oversight or monitoring systems.⁷
- 2.3. Queensland Parliamentary Committees can be categorized according to their mode of creation. The three categories of Parliamentary Committees by mode of creation are: statutory committees (created by an Act of Parliament), standing committees (created by Standing Orders), and select committees (created by Resolution).⁸
- 2.4. The Queensland Parliamentary Committee System is currently made up of 10 Parliamentary Committees, with each possessing discrete and relatively well delineated areas of responsibility:
- Committee of the Legislative Assembly;
 - Agriculture and Environment Committee,
 - Education, Tourism, Innovation and Small Business Committee;
 - Ethics Committee;
 - Finance and Administration Committee;
 - Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee;
 - Infrastructure, Planning and Natural Resources Committee;
 - Legal Affairs and Community Safety Committee;
 - Parliamentary Crime and Corruption Committee; and
 - Transportation and Utilities Committee.

⁴Wayne Goss, 'Parliamentary Committees in Queensland' (2001) 16(2) *Australasian Parliamentary Review* 73, 74; David Monk 'Committee Inquiries in the Australian Parliament and their Influence on Government: Government Acceptance of Recommendations as a Measure of Parliamentary Performance' (2012) 12(2) *The Journal of Legislative Studies* 137, 137.

⁵ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 4.

⁶ Queensland Government, Everyone's Parliament, *Abolition of the Legislative Council*, Factsheet 3.20; Justin Harding, 'Ideology or Expediency? The Abolition of the Queensland Legislative Council 1915-1922' (2000) 79 *Labour History* 162, 173.

⁷ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 4, citing Fitzgerald, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (July 1989) 124.

⁸ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 3.

- 2.5. While the Committees' currently rely upon government referral with specified terms of reference, they generally operate outside of the direct control of the government of the day. For example, many Committees are constituted by an even split, such as the current Legal and Community Safety Committee, or majority of non-government MP's. The executive has no grounds to bemoan a lack of direct political control as the Committees remain directly subordinate and answerable to the Legislative Assembly.⁹
- 2.6. Autonomy and independence¹⁰ are fundamental to the Committee culture in that a greater breadth of views and perspectives are heard in the policy and law-making process, which is also conducive to bipartisanship¹¹ as it encourages consensus building. This also goes towards channeling 'into the parliamentary processes the opinions and needs of the community they represent.'¹²

3. The Functions And Benefits of the Parliamentary Committee System

- 3.1. This section outlines the functions and benefits with regards to the internal and external dimensions of the Parliamentary Committee System.

Recommendations:

- That the Bill provide greater recognition to the role of the Parliamentary Committee system, for example, with an objects section for the Chapter.
- That the Bill provide greater recognition to the functions of the Parliamentary Committee System or make reference to the *Standing Rules* or Chapter 5 of the *Parliament of Queensland Act 2001* (Qld) to clarify their interaction.
- That the Bill be accompanied by the appropriate budgetary measures to support the work of the Parliamentary Committee System.
- That the Bill be accompanied by the appropriate administrative measures to support the work of the Parliamentary Committee System.

- 3.2. 'A strong, active and comprehensive committee system is an asset to any

⁹ Teresa McMichael, 'How far can they go: committee powers outside of inquiries' (2012) 27(2) *Australasian Parliamentary Review* 43, 47; Ken Coghill, 'Queensland's parliamentary committees: dead, on life support, or lively?' 27(2) *Australasian Parliamentary Review* 99, 101.

¹⁰ Robyn Webber, 'Increasing Public Participation in the Work of Parliamentary Committees' 16(2) *Australasian Parliamentary Review* 110, 116.

¹¹ Wayne Goss, 'Parliamentary Committees in Queensland' (2001) 16(2) *Australasian Parliamentary Review* 73, 78-79.

¹² Robyn Webber, 'Increasing Public Participation in the Work of Parliamentary Committees' 16(2) *Australasian Parliamentary Review* 110, 111.

functioning parliamentary democracy.¹³ The benefits of a Parliamentary Committee System are widely recognised for strengthening accountability and as an anti-corruption, integrity,¹⁴ and Executive review mechanism.¹⁵ Parliamentary Committees have also been described as ‘an effective mechanism for focusing public debate on issues,’¹⁶ which is critical to the legislative process. They also ‘offer efficiency’¹⁷ as committees allow parliament to ‘simultaneously work on many different tasks.’¹⁸

- 3.3. The essential function of Parliamentary Committees’ is to ‘undertake inquiries’¹⁹ on referred Bills or of their own motion, which involves receiving submissions, conducting public hearings, and publishing documents, such as reviews, reports, and recommendations. The Committee identifies 7 functions in their *Review*.²⁰
- 3.3.1. Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly* (‘*Standing Rules*’) provide a table outlining the current areas of responsibility of Parliamentary Committees.
- 3.3.2. The *Parliament of Queensland Act 2001* (Qld) in section 93 provides 3 components of the Parliamentary Committee role in examining a Bill: policy, fundamental legislative principles,²¹ and the lawfulness of subordinate legislation.
- 3.3.3. Halligan, Miller and Power provide the following useful figure summarizing the role of Parliamentary Committees in the policy process.

¹³ Suman Ojha, ‘The effectiveness of parliamentary committees in Queensland: 1996–2001’ (2012) 27(2) *Australasian Parliamentary Review* 71, 71, citing Queensland Government, Everyone’s Parliament, *Parliamentary Committees*, Fact Sheet 14.

¹⁴ Suman Ojha, ‘The effectiveness of parliamentary committees in Queensland: 1996–2001’ (2012) 27(2) *Australasian Parliamentary Review* 71, 72.

¹⁵ Roger Macknay, ‘Oversight as it intersects with Parliament’ (2013) 28(2) *Australasian Parliamentary Review* 56, 57.

¹⁶ Daryl Williams, ‘Establishing an Australian parliamentary Treaties Committee’ (1995) 6 *Public Law Review* 275, 281.

¹⁷ Shane Martin, ‘The Committee System’ chapter for MacCarthaigh, Muir and Maurice Manning, *The Houses of the Oireachtas* (Institute of Public Administration, 2010) 2.

¹⁸ *Ibid.*

¹⁹ Teresa McMichael, ‘How far can they go: committee powers outside of inquiries’ (2012) 27(2) *Australasian Parliamentary Review* 43, 43.

²⁰ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 4.

²¹ *Legislative Standards Act 1992* (Qld) s 4: (1) rule of law and (2)(a) rights and liberties of individuals and (b) institution of Parliament, with reference to specific examples in (3)-(5).

Policy stage	Contribution	Roles
Agenda-setting	Committee inquiries and reviews can influence the government policy agenda	Review Strategic investigation
Developing policy	No formalised role, but possible on behalf of executive Exposure draft bills	Review Strategic investigation Legislative appraisal
Decision making	No direct role	
Implementation of legislation	Examine bills, recommend amendments Delegated legislation	Legislative appraisal Scrutiny
Evaluation of policy implementation	Committees review performance of public agencies and administration of policy	Review Scrutiny
Consultation	Major role for committees at several stages	Public communication

Figure 1 Role of Parliamentary Committees in the Policy Process²²

3.4. Notwithstanding the above, the proper functioning of the Committee system relies upon internal administration and external resourcing.

3.4.1. Concerns have been raised on Committee ‘control over its own budget, agenda, timetable, personnel.’²³ As heard in the Public Hearing of the Committee’s Review: ‘the committee system is far more than just the structure and the hierarchy. It is around how well is it resourced, how well is it respected and is it given sufficient time to really roll up its sleeves and do the job properly?’²⁴

4. The Meaning of ‘Core Matters’

4.1. This section considers the matters identified as core matters requiring statutory protection.

Recommendations:

- That the Bill incorporates the relevant core matters for the operational aspects of the Parliamentary Committee System to be recognised.

²² Halligan, Miller, and Power, ‘Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles’ (Melbourne University Press, Melbourne, 2007), cited in Lyndel Bates ‘Parliamentary Committees are Important in Developing Policy: Evidence from a Queensland Case Study’ (2012) 25(2) *Australasian Parliamentary Review* 14, 15.

²³ Ken Coghill, ‘Queensland’s parliamentary committees: dead, on life support, or lively?’ 27(2) *Australasian Parliamentary Review* 99, 106.

²⁴ Committee of the Legislative Assembly, *Public Hearing—Review of the Parliamentary Committee System* (9 February 2016) 5 (Mr Barger).

4.2. The aspects of the Parliamentary Committee system deemed ‘core matters’ for the purposes of constitutional recognition were identified in the ‘Review of the Parliamentary Committee System’²⁵ as:

- The setting of a minimum of 6 committees ‘at the commencement of every session,’²⁶
- Assigning areas of responsibility to ‘collectively cover all areas of government activity,’²⁷
- The referral to a committee for a minimum review period of 6 weeks for every Bill,²⁸ and
- Provision for annual Appropriation Bills to be ‘accompanied by the estimates of expenditure’ when referred ‘for examination in a public hearing.’²⁹

5. The Purpose of Constitutional Recognition

5.1. This section examines the central purposes of constitutional recognition of the Parliamentary Committee system.

Recommendations:

- That the symbolic and practical purposes of the Bill be set out to the House.

5.2. The proposed constitutional recognition of Parliamentary Committees is limited to the 10 existing committees³⁰ by section 179 of the Bill.

5.3. The phrase ‘constitutional recognition’ here is used to describe how the Bill will be added to the Queensland *Constitution* to recognise its significance to the functioning of the State. However, there is no ‘double entrenchment’³¹ of the Bill’s provisions; only a limited number of the provisions of the Queensland *Constitution* are entrenched through the referendum process.³² It instead remains

²⁵ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) ix.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ As listed in Part 3.1.2. above.

³¹ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 43-44.

³² *Constitution of Queensland Act 2001* (Qld) Attachment 1-2; *Constitution of Queensland Act 1867* (Qld) ss 1, 2, 2A, 11A, 11B, 16 and 53.

within the category of ‘single entrenchment’³³ and may therefore be introduced, and altered in the future if so desired, by ordinary legislative amendment.

- 5.4. The Bill proposes no amendment to the existing text of the Queensland *Constitution*. Rather, it proposes to insert a new Part 5 in Chapter 2 of sections 26A, 26B, and 26C ‘to recognise the basic principles and structure of the parliamentary committee system in the *Constitution*.’³⁴
- 5.5. The key purposes of constitutional recognition specified by the Second Reading Speech for the Bill, as contemplated by the Committee,³⁵ are to: first, ‘emphasise their importance;’³⁶ second, ‘place a psychological political impediment to its alteration without just cause;’³⁷ and, third, ‘provide more certainty around the continued existence of the parliament’s powers, through the committee system, to scrutinize government activity.’³⁸
- 5.6. Further to the above, legislating the Parliamentary Committee System servers a symbolic purpose in declaring the institution in law.

6. Recognising The Importance of the Parliamentary Committee System

- 6.1. This section reviews the first reason advanced for the Bill that it provides a means to recognise the importance of Parliamentary Committees.

Recommendations:

- That the Bill achieves the intended purpose of recognising the importance of the Parliamentary Committees.
- Notwithstanding the above, that the House be provided with a synopsis of the Committee’s ‘Review of the Parliamentary Committee System,’ to further explain the importance of the Bill and project of constitutional recognition.

- 6.2. Section 26B(1) of the Bill enshrines current Parliamentary practice in referring a Bill to a portfolio or other committee for examination prior to moving to pass it in Parliament. It also supplements, and codifies to some extent, existing rules

³³ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 43-44.

³⁴ Explanatory Notes, *Constitution of Queensland and Other Legislation Amendment Bill 2016*, 3.

³⁵ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) 52.

³⁶ Queensland, *Parliamentary Debates*, Legislative Assembly, 21 April 2016, 1334 (Annastacia Palaszczuk, Premier).

³⁷ Committee of the Legislative Assembly, *Review of the Parliamentary Committee System*, Report No 17 (February 2016) ix, cited in Queensland, *Parliamentary Debates*, Legislative Assembly, 21 April 2016, 1334 (Annastacia Palaszczuk, Premier).

³⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 21 April 2016, 1334 (Annastacia Palaszczuk, Premier).

governing the interaction between the House and its Committees' in Part 5, Chapter 23 of the *Standing Rules*.

- 6.3. Section 26B(2) provides that a minimum of 6 week period of referral is required, which ensures that the Committee has the practical opportunity to examine and respond to the Bill. Such codification of convention is significant in recognising and mandating the Committee as an essential review step in the legislative process and accountability process.
- 6.4. Again, flexibility is afforded for urgent Bills in section 26B(3), providing that a Bill so declared by the Parliament may be referred for less than 6 weeks. An 'urgent bill', in the absence of a Schedule 1 definition, is understood under section 137 of the *Standing Rules* as any bill so declared by the House by way of motion from a Minister or Leader of the House. Thus, the Committee system would in no way pose an impediment to any timely or emergent Bills for the government of the day.
- 6.5. The annual appropriation bills are afforded additional scrutiny under section 26C(1) as they are exempted from the section 26B(3) expedited process. Section 26C(2) also requires that such Bills be referred to the Committee with tabled explanation of the subject and relevant estimates.

7. Deterring Abolition of the Parliamentary Committee System

- 7.1. This section considers the second reason advanced for the Bill that it acts as a psychological deterrent to any abolition of the Parliamentary Committee System.

Recommendations:

- That the Bill achieves the intended purpose of deterring abolition of the Parliamentary Committee System.

- 7.2. There are two dimensions to psychological deterrence: the public and parliamentarians.
 - 7.2.1. The majority of the public understand the significance of the state *Constitution* and regard politicians seeking to alter it with suspicion.
 - 7.2.2. Likewise, parliamentarians have a robust comprehension of and respect for the state *Constitution* as the governing framework for Queensland. This respect entails significant loyalty to the rule of law and related notions of accountability and efficiency, which are central to the Parliamentary Committee system. These values form a psychological impediment to interfering with the *Constitution* without due reason, protecting the Parliamentary Committee System from being severely undermined or abolished.

8. Certainty of the Continuation of the Parliamentary Committee System

8.1. This section considers the third reason advanced for the Bill that it confers certainty as to the continuation of the Parliamentary Committee System.

Recommendations:

- That the Bill achieves the intended purpose of providing certainty of the continuation of the Committee System.

8.2. Section 26A(1) of the Bill provides that, even in the event of some rationalization of the existing 10 Committees, there must be a minimum of 6 constituted at the beginning of every session. Section 26A(3) clarifies that this does not affect Parliament's power to establish Committees or confer functions and powers upon them. This provides certainty of the continuation of a minimum number of Committees to remain an effective functioning component of the Parliamentary system, while affording the flexibility to vary their name, number, and portfolio areas of responsibility as required to meet future needs and accommodate change and developments.

8.3. Section 26A(2) of the Bill also requires that the Committees collectively cover all portfolio areas to correspond with areas of government activity. This is sound in ensuring that no aspect of government activity is immune from Committee review.

9. The Potential For Committee Bypassing

9.1. This section contemplates a potential disadvantage with the Bill in providing a technical means by which to bypass the Parliamentary Committee System.

Recommendations:

- That s 26B(3)(d) be removed from the Bill to protect against the potential abuse of process in raising a motion to prevent referral of a Bill to the Parliamentary Committee for review.

9.2. The central potential issue with the current form of proposed constitutional recognition of the Parliamentary Committee system is the potential for the Committee System to be unscrupulously avoided.

9.3. 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 *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 26B(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.

- 9.4. There is some evidence that this theoretical issue has translated to a practical problem for some Parliaments. Limited empirical analysis found that in the first six months of the sitting of the 53rd Parliament of 2009, 29.7% of Bills passed were declared as Urgent by motion and thereby avoided Committee review.³⁹ However, the apparent use of the urgency motion has waned steadily in the last 5 years as Committee's have become an accepted and integral component of Parliamentary culture. In 2011, around 72% of Bills introduced were referred to committees,⁴⁰ and by 2015 approximately 96% of Bills introduced were referred to Committees. This may be attributed to both changing legislative practices, with more voluminous legislation, complex underlying policy, and human rights scrutiny requiring more parliamentary minds to review Bills, and to changing attitudes to the Committee System as a useful efficiency and quality control mechanism to law-making, rather than an obstacle.

10. Conclusion as to Support For the Bill

- 10.1. This section concludes the submission and reaffirms support for the Bill with respectfully noted concerns.
- 10.2. The Executive Recommendations stated in the cover letter are reiterated below:

Recommendations:

- Recommend the Bill to the House in its current form, with the exception of section 26B(3)(D), which should be removed.
- Provide for the Committee of the Legislative Assembly to review the Bill on an annual basis to monitor its implementation and minimise or avoid any unintended or undesirable consequences.

³⁹ Mary Westcott, 'Scrutiny of Legislation in Queensland: An examination of the Queensland Parliament's lawmaking in the first six months of the 53rd Parliament' (unpublished) available at: [http://www.anzacatt.org.au/parliament/general/anzacatt/anzacatt.nsf/0/CC6675AF0FE9FB46CA25782200831C73/\\$file/Mary%20Westcott-Scrutiny%20of%20Legislation%20in%20Queensland.doc](http://www.anzacatt.org.au/parliament/general/anzacatt/anzacatt.nsf/0/CC6675AF0FE9FB46CA25782200831C73/$file/Mary%20Westcott-Scrutiny%20of%20Legislation%20in%20Queensland.doc); Queensland, Legislative Assembly, *Work of the House: Current Statistics*, 13 October 2009.

⁴⁰ Queensland, Legislative Assembly, *Statistics 2011*, 31 December 2011.

- Provide the necessary and appropriate supporting measures to administer and fund the Parliamentary Committee System.

10.3. Given the unicameral nature of the Queensland Parliament, a robust and effective Committee System is crucial in providing legislative oversight.⁴¹

1.1. This Bill is supported both in its purposes and drafted method of achieving them. The minor reservation with the potential for bypassing the Committee review process with section 26B(3)(d) is respectfully reiterated.

⁴¹ Lyndel Bates 'Parliamentary Committees are Important in Developing Policy: Evidence from a Queensland Case Study' (2012) 25(2) *Australasian Parliamentary Review* 14, 16, citing Alvey 'Parliament's accountability to the people, the role of committees: A Queensland view' (2008) 23(1) *Australasian Parliamentary Review* 62.