

14 June 2016

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

By post and via Email: CLA@parliament.qld.gov.au

To the Honourable Members of the Committee

Inquiry: *Constitution of Queensland and Other Legislation Amendment Bill 2016*

Queensland Law Society (the Society) thanks you for, and takes the opportunity to, comment on the above Bill (the Bill).

S 26B Requirement for proposed legislation to be considered by committees

The Society advocates for the operation both of good laws and good legal practice, as well as for best mechanisms behind the drafting and consultation on legislation in order for the legal system to operate for all parties (and in particular our member solicitors).

Accordingly, the Society notes and endorses the Bill's s 26B(1) mandate (by use of the word 'must') that Bills be referred to a portfolio committee for examination as a necessary and safeguarding precondition to their being proposed for enactment.

Section 26B(3)(d) – urgent Bills

The above permits eschewing of the requirement that Bills are investigated by a portfolio committee in circumstances where the Bill is 'urgent'.

Chapter 24 of the Legislative Assembly of Queensland's *Standing Rules and Orders of the Legislative Assembly* (the Standing Rules) regulates the manner with which urgent Bills are to be dealt.

The Standing Rules 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.

Parliament of Queensland Act 2001

The Society commends the Bill's amendment of the above to empower portfolio committees to initiate inquiries on their own motion, as the Explanatory Notes to the Bill set out.

New Zealand Parliament, for example (another unicameral configuration) operates in a manner such that Parliamentary Committees propose amendments to the floor of the house. Uniquely to the New Zealand committee system, committee's recommended changes are drafted into the bill as reported back. The House automatically adopts unanimous changes.¹ This is to be contrasted with the landscape in Queensland where, on the Society's understanding, the subject of a Parliamentary Committee's recommendation is put forward to the floor at the discretion of the relevant Minister. The Society again expresses reservation in relation to this latter practice as its being anathema to the operation of the rule of law, and draws the attention of the Committee to established protocols in comparable jurisdictions.

Legislative Standards Act 1992 and Fundamental Legislative Principles

Fundamental Legislative Principles (FLPs) dictate that legislation (*inter alia*):

- has regard to the institution of Parliament – s 4(2)(b) *Legislative Standards Act 1992* (Qld) (LSA).
- is consistent with principles of natural justice - s 4(3)(b) LSA.

Legislation must accord with these and other principles in order to safeguard a *parliamentary democracy based on the rule of law* (s 4(1) LSA).

The parliamentary committee system is axiomatic to the democratic operation of parliament (and therefore the safeguarding of Queenslanders' rights and liberties to live under the rule of law). 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

¹ Marcus Ganley, 'Select Committees and Their Role in Keeping Parliament Relevant: Do New Zealand Select Committees Make a Difference?' Department of Political Studies, University of Western Australia 81 at 83, <http://www.parliament.qld.gov.au/aspg/documents/aspg_09.pdf> at 14 June 2016.

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.

We would be pleased to liaise with you further. Please contact Julia Connelly, Policy Solicitor, on [REDACTED] or at [REDACTED] to discuss any aspect of the Society's comments further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bill Potts', with a stylized flourish at the end.

Bill Potts
President