



Sub. 08



*Constitution of Queensland and Other Legislation Amendment Bill  
2016 - Submission*

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Prepared - 8 July 2016

## Overview

The Queensland Greens support in principle the provisions of the *Constitution of Queensland and Other Legislation Amendment Bill 2016*, however, as we have stated in previous submissions, we remain considerably disappointed in the approach taken by the government on this issue.

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. In that regard, the Greens consider this bill to be a lost opportunity to bring the public in instead of locking them out. We are happy to hear that while more adventurous change was set aside this time, the Committee's report did leave open the option to make future changes to enhance the system.

As part of this submission we have made a suggestion to modify a few of the provisions of the bill to ensure executive government either consults through the committees system or find bipartisan support for their changes. We are also presenting a method for the trigger of a parliamentary inquiry that is not dependent on executive support, based around the petitions system.

While the Greens do not believe this bill should be opposed, we expect that unless it is amended in line with our suggestions, its passing will be unremarkable in the evolution of committees of parliament. Short of an unprecedented amount of goodwill from executive governments into the future, this bill will be largely forgotten, remembered only by those invested in the study of parliamentary democracy.

## Responses to the Objectives of the bill

1. Statutorily recognise the 'core matters' of the parliamentary committee system in the Constitution of Queensland 2001 (the Constitution)

The bill as proposed contains three key requirements in regards to committee work in parliaments which will be addressed in further detail below. However, as a whole we consider the idea of the recognition of the work of committees in the constitution as a sound idea.

The Government has appeared to take advice about the entrenchment of parliamentary committees from Mr Neil Lawrie, Clerk of Parliament, in his submission in the *Review of the parliamentary committee system* conducted by this committee earlier in 2016<sup>1</sup>. While it would have been good to have the committee system entrenched against changes by governments in the future (as we argued in previous submissions), the Clerk's professional opinion that entrenchment should only be offered as part of a referendum<sup>2</sup> is good advice which we will not argue against.

We will now continue with the more detailed parts of the legislation

- the Legislative Assembly must at the commencement of every session establish at least six portfolio committees which collectively cover all areas of government activity;

On the subject of the makeup of the committees in our previous submissions, we did indicate concerns about the entrenchment of committees tied to specific issues of state.

The proposed legislation deals with that weakness by specifying a minimum number of committees and that it must cover all areas of state. This seems a prudent response to our concerns, and we are satisfied with that approach. The number proposed (six) is less than that proposed in Recommendation 9 on the report into the fixed term amendment bill (which is now passed), which

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<sup>1</sup> Clerk of the Queensland Parliament, (2016). *Submission to Review of the parliamentary committee system*. Queensland Parliament. Retrieved from <http://www.parliament.qld.gov.au/documents/committees/CLA/2015/01-ReviewCommittees/submissions/14-Clerk.pdf>

<sup>2</sup> *ibid*, page 9

recommended seven<sup>3</sup>, and less than the current ten committees.

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 bi-partisan 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.

- 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

While we consider that setting a minimum review time to be pertinent, and that there should be an override for when legislation is genuinely urgent, once again the bar has been set in a way that advantages executive government to rush committees and in effect bypass their scrutiny.

We would like to draw the committee’s attention to Recommendation 9 of the fixed term legislation. The provision allowed for suggested a mechanism for a special majority to be used in the case of overriding the committee which we have included in text below<sup>4</sup>.

#### Recommendation 9

The Committee recommends that, should it proceed, the Constitution (Fixed Term Parliament) Amendment Bill 2015 should provide for the voters of Queensland’s approval:

- Every Legislative Assembly summoned after the approval of the Bill must establish at least seven portfolio committees the role of which will include the review of Bills (including Appropriation Bills) introduced into the

<sup>3</sup> Queensland Parliament,. (2016). *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*. Brisbane, Queensland: Queensland Parliament. Retrieved from <http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I4-Intro4yearterms/I4-rpt-016-9Nov2015.pdf>

<sup>4</sup> *ibid*, Page 11

#### Assembly

- A process for consideration of Budget Estimates must be maintained by the Legislative Assembly.
- 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 –
  - a **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
  - the resolution for the Bill not being referred to a committee is passed without division or dissent.
  - 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.

In light of the recent legislative changes introduced in the *Electoral (Improving Representation) and Other Legislation Amendment Bill 2016* use of parliamentary procedure to guillotine scrutiny of that bill, we urge the committee to strongly recommend adding this provision back into the legislation with some changes.

What we propose is the reintroduction of the special majority as outlined in Recommendation 9, with an additional requirement for amendments that have not been considered by committee. This is a suggested wording: -

- 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 –
  - a **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
  - the resolution for the Bill not being referred to a committee is passed without division or dissent.
  - 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.
- **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 -**
  - **be agreed to by a special majority of the Assembly as defined above; or**

- **be passed without division or dissent of the Assembly.**
- **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**

We believe this wording would have prevented the amendments to the *Electoral (Improving Representation) and Other Legislation Amendment Bill 2016* and many other emergency bills and amendments that have passed through parliament without committee scrutiny or bipartisan support.

- The annual Appropriation Bills must be subject to the budget estimates process.

The Queensland Greens support this measure with no further amendments, as it entrenches the status quo of budget estimates being examined by committee as is appropriate.

2. Provide that the Parliament's portfolio committees are able to initiate inquiries within their area of responsibility on their own motion.

The provision to give autonomy to committees to initiate their own inquiries is on the surface a sensible idea, allowing the committee some autonomy in actions to investigate their area of oversight. It's a very minor change; however, it is within keeping with the overall direction of the progression of the committee system in Queensland.

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.

This conclusion was raised by asking a single question: "In what circumstances would the committee start an inquiry that was not already under consideration by the executive?" In Queensland, a mix of majoritarian election systems, the provisions for as well as the composition of committees and traditionally strong party discipline in the dominant political parties suggest that for a committee to hear an inquiry, it would need support of the government committee members at a minimum. The reliance on party discipline will ensure that the committee will never investigate something that the government does not want to explore.

In that regard it will take an extremely large amount of goodwill from the executive to be even moderately useful, and if it does have that goodwill we just cannot envision a scenario where the investigation is not initiated by the government itself rather than the committee. With no practical way for independents, crossbenchers or opposition members to initiate such an inquiry (who in all but the most narrow circumstances would simply be better off submitting a private member's bill) we just cannot see how this measure would add any value in the political landscape of Queensland.

That isn't to say that allowing committees to run inquiry separate to the executive is in of itself a bad idea, it is just that no trigger exists to start such an inquiry, so no such inquiry will happen. This provision would work better in parliaments where the committee system was not dominated by members of the government or to be more specific in places where a proportionally

elected parliament has returned a mix of parties where a coalition have formed government.

If there is interest in having an independent trigger for such an inquiry, we suggest a “petition trigger” might be a way of approaching this. In our previous submission we suggested such a trigger, and the committee questioned the circumstances under which that trigger could be used. In this submission we will expand on that.

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 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.

Trigger	Rules	Petitioners Req (Q1 2016)	
		Unsupported	MP support
Local - Mapoon (Smallest LGA)	<ul style="list-style-type: none"> <li>5% of the total number of voters from the affected LGA/s or 50 voters whichever is higher</li> </ul>	<b>50</b> (4 from Mapoon)	<b>50</b> (2 from Mapoon)
Local - Brisbane (Largest LGA)	<ul style="list-style-type: none"> <li>Minimum of 2.5% of voters from the LGA/s support the petition</li> <li>Must be an issue specific to the area</li> <li>Has not been subject to a successful petition in this term of government</li> </ul>	<b>37,246</b> (18,623 from Brisbane)	<b>18,623</b> (9,312 from Brisbane)



State	<ul style="list-style-type: none"> <li>• 2.5% of the total number of voters statewide</li> <li>• Can be on any state parliament responsibility except taxation</li> <li>• Has not been subject to a successful petition in this term of government</li> </ul>	<b>76,675</b>	<b>38,338</b>
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On inspection of petitions lodged in the last 3 years, we estimate that very few if any of these petitions would be eligible to be reviewed by committee, but we also suspect with a goal to be reached, the campaigns behind these petitions may be more inclined . We also recommend that the organisers of a campaign be able to gain access to contact details of people supporting the petition, with an opt-out option for individuals. At no stage should the information from the electoral roll be handed over, but any information provided by the petitioner should be available to both verify the petitioner’s intent and keep them up to date with the progress of any supporting campaigns.

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.