



27 January 2016

Research Director
Committee of the Legislative Assembly
Parliament House
George Street
Brisbane Qld 4000

Dear Sir

Re Inquiry into strengthening of the Parliamentary Committee System

The CLA is currently reviewing recommendation 9 regarding entrenchment and recommendation 10 regarding a review of the parliamentary committee system, of the Finance and Administration Committee's (FAC) report *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*.

I note that in its inquiry the FAC recognised the historical rationale for why Queensland currently has maximum three year parliamentary terms and the nexus between this arrangement and its unicameral parliamentary status.¹

Further, the FAC recognised that given Queensland's unicameral status any increase in the length of the current parliamentary term would need to be accompanied by an increase in the strength of accountability mechanisms to scrutinise the decisions and actions of the executive "... to reinforce the role of parliament and democracy."²

In its report the FAC stated that the current portfolio-based parliamentary committee system "... largely performs the essential review and scrutiny roles that an Upper House would undertake."³ The FAC also stated that parliamentary committees scrutinise "... the Bills before the House and the government's budget expenditure in the same way that an Upper House acts as a house of review."⁴

However, the FAC also implicitly recognised that parliamentary committees do not have the same capacity, or mandate, as a democratically elected Upper House to review and check the actions and decisions of the executive otherwise it would not have needed to recommend that any increase in the length of the current parliamentary term should also be accompanied by an entrenchment of the accountability role of parliamentary committees. In particular, the FAC indicated that strengthening parliamentary committees under longer parliamentary terms was necessary to send "... a strong message to the voters about the protections that the Parliament is putting in place alongside the extension of four year terms in order to not only enhance but protect systems of accountability and scrutiny that have developed in the past quarter of a century."⁵

Under current arrangements there are significant differences between the review and scrutiny capacities of parliamentary committees and a democratically-elected Upper House (particularly one

¹ FAC Report No 16, 55th Parliament, November 2015, pp. 10, 53, 57

² Ibid, p. 57

³ Ibid, p. 10

⁴ Ibid, p. 11

⁵ Ibid, p. 58

that is elected on a different basis to the Government-controlled Lower House to avoid the Upper House simply being the echo of the Lower House).

For one, in a unicameral system the executive is able to have command of the numbers in the single House of Parliament and as a result can generally push through its legislative initiatives (including budgetary initiatives) despite any protestations/recommendations of a parliamentary committee. As stated by the Clerk of the Parliament:

*The Legislative Assembly and the parliamentary committee system is the only avenue for review of bills, finances and actions of the government. This is inherently problematic, because as the government of the day is formed from the majority party within the Assembly, and historically they have comfortable or large majorities in Queensland due to single member constituencies. Usually, the government has practically unfettered power to pass legislation and financial measures, despite objections from the Opposition, Cross Bench (if any) and the public generally. The only historical safeguard has been the fear of the public reaction at the next election.*⁶

It has been elsewhere noted that on many occasions in the past the reports and recommendations of Queensland parliamentary committees have not been taken seriously by Government or have been ignored.⁷

This situation may be contrasted with a bicameral system (provided both Houses of Parliament are elected on a different basis) where the executive needs to negotiate with and obtain the support of the Upper House in order for its legislation to pass.

Another point of significant difference is that members of committees may be removed on the strength of the executive-controlled Legislative Assembly, such as occurred in 2013 when the membership of the Parliamentary Crime and Misconduct Committee (PCMC) was removed from office.⁸ Such an occurrence has the potential to seriously affect the scrutiny function of committees. As the chairperson of the PCMC, the former member for Gladstone Liz Cunningham, reportedly observed,

*... the move called into question the independence of the committee system. 'I think that's the core issue here that a committee that has progressed a matter contrary to the way the government may have liked it to have progressed has been dismissed and I think in the community's mind the question could be how independent will committees be allowed to be.'*⁹

As well, the Clerk of the Parliament has noted,

*... The ability for governments to remove their members from committees, act as a powerful incentive to 'toe the party line' on committees. (For example, government appointed members of the Parliamentary Crime and Misconduct Committee were removed in 2013.)*¹⁰

Notwithstanding the 2011 reforms, parliamentary committees can only make recommendations to the (executive-dominated) Legislative Assembly (*Parliament of Queensland Act 2001*, s. 92(3)) with the final decision about whether or not recommendations are accepted being taken effectively by

⁶ FAC Report No 16, 55th Parliament, November 2015, p. 54

⁷ See Ransley 2008, "Illusions of Reform: Queensland's Legislative Assembly since Fitzgerald", *Restraining Elective Dictatorship – The Upper House Solution?*, Aroney, Prasser & Nethercote Editors, UWA Press, pp. 255-257

⁸ Queensland Parliamentary Hansard, 21 November 2013, pp. 4263-4273

⁹ <<http://www.couriermail.com.au/news/queensland/newman-government-axes-pcmc-critical-of-cmc-boss-ken-levy-supporting-bikie-laws/story-fnihsrf2-1226765680229>>

¹⁰ FAC Report No 16, 55th Parliament, November 2015, p. 54

the Government of the day. Furthermore, due to committee decision-making being along majoritarian lines (*Parliament of Queensland Act 2001*, ss. 91, 91A, 91B, 91C), the views of government committee members will inevitably prevail over those of non-government members. While the Parliament's *Standing Rules and Orders of the Legislative Assembly* allow for committee members to give dissenting reports and statements of reservation to committee reports,¹¹ the Government of the day generally only responds to a report's recommendations as endorsed by the majority members of the committee. On the other hand, an Upper House would have the ability to amend or reject a Bill (with some exceptions) from the executive-controlled Lower House.

Thus an Upper House (provided it is democratically elected on a different basis to the executive-dominated Lower House) would have a greater potential to act as a check and balance on the actions and decisions of the Government of the day compared to parliamentary committees in this regard. As Aroney has noted,

*Within a unicameral Parliament — no matter how it is elected — the existence and effectiveness of parliamentary committees and various extra-parliamentary mechanisms will ultimately depend upon the continued support of a majority in the one chamber, the same majority that has ipso facto given its support to the government. By contrast, the existence of a second chamber — especially when proportionally-elected — makes it much more difficult and unlikely for a ruling coalition (the government) to control the entire Parliament; and it is the existence of a second chamber that lies beyond the control of the government which provides a final bulwark against the disestablishment of both parliamentary and extraparliamentary mechanisms by which the government is made accountable.*¹²

However, it is unlikely that a democratically-elected Upper House will ever be instituted in Queensland.¹³ Therefore, if the length of the parliamentary term of the executive-controlled Legislative Assembly were ever to be increased it is necessary for the parliamentary committees to be strengthened in order to “safeguard and reinforce the role of Parliament and democracy.”¹⁴

There are at least two areas where the role of parliamentary committees may be strengthened.

First, committees need to have more “teeth”. As noted above committees can only really make recommendations which can be either accepted or rejected by the executive-controlled Legislative Assembly. In some other unicameral Parliaments such as Scotland and New Zealand, committees can consider petitions, initiate their own inquiries and propose legislation.¹⁵ In New Zealand, a committee's unanimous support for changes to a Bill is automatically adopted by the House.¹⁶ Consideration could be given by the CLA to Queensland's parliamentary committees being similarly strengthened. As to any Bill which may be declared urgent in accordance with the FAC's proposed formula,¹⁷ the relevant committee could be empowered to review the efficacy of the legislation after a suitable post-enactment period and make proposals for any necessary amendments.¹⁸ As well, Queensland's portfolio committees could be enabled to call for public submissions on appropriation

¹¹ Queensland Legislative Assembly, *Standing Rules and Orders of the Legislative Assembly*, p. 50

¹² Aroney, N. 2008, *Four Reasons for an Upper House*, source: <<http://www5.austlii.edu.au/au/journals/AdellawRw/2008/7.pdf>>

¹³ Note FAC Report No 16, 55th Parliament, November 2015, p. 53

¹⁴ *Ibid*, p. 57

¹⁵ Ganley, M., Select Committees and their Role in Keeping Parliament Relevant: Do New Zealand committees make a difference?, source: <http://www.parliament.qld.gov.au/aspg/documents/aspg_09.pdf>;

The Scottish Parliament, *The role of committees*, source: <<http://www.scottish.parliament.uk/visitandlearn/Education/18643.aspx>>

¹⁶ Ganley, p. 83;

Concannon, G. Committees in a unicameral parliament: impact of a majority government on the ACT Legislative Assembly committee system, p. 59, source: <http://www.aspg.org.au/journal/2013autumn_28_1/Committees%20in%20a%20unicameral%20parliament.pdf>

¹⁷ FAC Report No 16, 55th Parliament, November 2015, p. 11

¹⁸ A suggestion proposed by Westcott, M., *Scrutiny of Legislation in Queensland: An examination of the Queensland Parliament's lawmaking in the first six months of the 53rd Parliament*, p. 20

bills, particularly where such Bills adversely affect the rights and conditions of individuals and groups, as part of their scrutiny function. If, as one Queensland Parliament publication has stated, the “public” may consider “*Appropriation Bills and accompanying Budget documents in detail and formulate their responses*”,¹⁹ then it would only seem reasonable for the public to be invited to provide formal submissions on such legislation and for any submissions to receive due consideration.

Second, committees need to be seen to be independent of the executive. Committees should not be just an echo of the Government of the day. The current requirement for majoritarian decision-making by committees is not conducive to bipartisanship and could work against the Committees’ scrutiny role. As Aroney and Prasser have observed,

*... despite the legal requirement that the statutory committees of the Parliament are bipartisan in composition, the governing party has a casting vote through the chair of each committee, and as a consequence, the Executive Government routinely controls the agenda of and the reports issued by the committees.*²⁰

Consequently, committee decision-making needs to be bipartisan as far as possible. Similarly, to enhance the committees’ check and balance function, a mechanism is needed to ensure that as far as possible committee chairs are non-government members. As observed by Aroney and Prasser:

*Fundamental to the capacity of Parliament to act as a check and balance upon the Executive Government is the extent to which Parliament and its committees consist of personnel who are distinct from and independent of the Executive.*²¹

A provision could be entrenched which ensures that only Members of Parliament who are not members of the executive may be appointed to committees. To prevent committee members from being removed by the executive-dominated Legislative Assembly, a special majority of the Parliament could be required similar to the FAC’s proposed formula for declaring urgent Bills.

While the FAC’s recommendation for strengthening the parliamentary committee system was in the context of proposing a referendum to seek an increase to the length of the parliamentary term for the Legislative Assembly,²² it is suggested that strengthening the committee system needs to occur regardless if any such referendum succeeds or fails. Given that Queensland’s unicameral parliamentary status is unlikely to change in the foreseeable future this means that the Parliament, and the people of Queensland, need to have highly effective accountability mechanisms in place to check and balance executive action. As identified by the 1989 Fitzgerald Report:

The operation of the party system in an unicameral assembly, the continuing growth in the scale and extent of Government activity, and the increasing complexities of policy making affect the ability of Parliament to review the Government’s legislative activity or public administration.

I trust the above comments and suggestions assist the CLA in its deliberations regarding this issue.

Yours sincerely

Don Willis

¹⁹ The Queensland Parliament and the Financial Process, Fact Sheet 3.11, source: <https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Tertiary%20Factsheet_3.11_QldParliamentaryAndFinancialProcess.pdf>

²⁰ Aroney, N. & Prasser, S., 2009, *Submission to Queensland Government Integrity and Accountability Green Paper*, p. 6

²¹ *Ibid*, p. 5

²² FAC Report No 16, 55th Parliament, November 2015, pp. 57-58