
Review of the Parliamentary Committee System

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Executive Summary

While the referral for the inquiry relates to strengthening the current parliamentary Committee system and whether the role of Committees should be entrenched, QRC's submission focuses only on the first matter – how the Committee system could be refined and improved to increase Parliamentary and executive government accountability.

The submission is based on the diverse experience of the QRC Secretariat and our members in making numerous submissions into many different committee inquiries since 2011. QRC regards the Committee inquiry process as valuable in improving the accountability of parliament and executive government by reviewing and scrutinising tabled legislation. However, the effective operation of the current Committee process also relies on the goodwill of the Government of the day as well as the commitment of the individual Committee members.

In QRC's experience, the two critical ingredients for a committee review that increases public accountability, are sufficient time and sufficient information. It is very difficult for the Committee process to increase accountability when the process is rushed or when key aspects of the legislation are yet to be developed.

A shortage of time diminishes the effectiveness of both the Committee itself as well as the Secretariat that serve the Committee. Too many inquiries concurrently, or a shortage of resources available to the Committee, can crowd out capacity and reduce the effectiveness of an inquiry. In this case, accountability is arguably compromised.

A shortage of information can occur because a Bill is tabled as an incomplete regulatory reform. Common examples include Bills without a clear transition mechanism or which empower regulations that have not yet been drafted. This makes it very difficult to comment on the ultimate impact of the Bill without making assumptions about that future regulation.

Another common deficiency of information is when Bills are tabled without a regulatory impact statement. This deficiency makes it very difficult for the public and those who will be affected by the Bill to understand the intentions of policy makers and assess whether the Bill achieves those intentions effectively.

In many cases, not just the regulation but also the manner in which it will be implemented is the critical issue for stakeholders. For example, the impact of a Bill which requires compliance and reporting will ultimately depend on the resources deployed to administer that regulatory framework. Differing views on a Bill are often based on different sets of assumptions about how and when the Bill will be ultimately administered.

QRC supports recommendation nine of the Finance and Administration Committee, report number 16, but suggests that the recommendation should also contemplate:

- Limits on the workload for an individual Committee in terms of the number of concurrent inquiries which can be managed;
- That the minimum timeframe of 'not less than 6 weeks' should be expressed in terms of business days, to reduce the impact of holiday periods, and further, should be extended to be 'not less than 40 business days';
- That a Bill should be accompanied by a complete regulatory impact statement;

- That an inquiry should commence with a public briefing from the Department at a time well in advance of public submissions being due; and
- That it be clarified that Parliament can refer a more general thematic inquiry to Committee without waiting for a Bill to be tabled.

Introduction

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Committee of the Legislative Assembly on the Review of the Parliamentary Committee System.

QRC is the peak representative organisation of the Queensland minerals and energy sector. The QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

As part of the QRC's strong focus on promoting a world-class regulatory environment, QRC regularly provides submissions to Parliamentary Committee inquiries and appears at public hearing. QRC has drawn on this experience to prepare a short submission suggesting ways in which the Parliamentary Committee system could be strengthened as a means of increasing accountability.

Queensland's Committee system

While Queensland's current Committee system has operated since May 2011, QRC notes that Committees have been used by the Queensland Parliament since the nineteenth century. The origins of the current Committee system date back to the Fitzgerald Report which in 1989 recommended that Queensland introduce '*a comprehensive system of Parliamentary Committees to enhance the ability of Parliament to monitor the efficiency of Government*'.

QRC's view is that a comprehensive system of parliamentary Committees provides greater accountability by making the policy and administrative functions of Government more open and accountable. Not only do Committees provide a public forum for investigating issues, but they also provide an opportunity for Members of Parliament to develop a specialised understanding of a portfolio of issues through their committee work.

There is enormous variation in the processes by which Governments develop policy and the manner in which those policies are given expression in legislation. A good Committee inquiry has the potential to provide an impartial review of both (a) the policy development process and also (b) the process of drafting legislation.

(a) Policy development

Frequently there are deficiencies in the consultation around the development of policies and the Committee process enables all stakeholders with an opportunity to express their view, as well as hear the views of other stakeholders. While valuable, this public review is no substitute for genuine consultation with relevant stakeholders while the policy is being developed.

QRC suggests that Committees need to be wary of Departments skimping on consultation or trying to downplay the need for consultation with stakeholders. Similarly, there is a risk for the Committee that stakeholders will try to re-prosecute arguments which have already been considered and disregarded in the consultation process. A good public consultation process reduces this risk for the Committee because it soon becomes clear which issues were given due consideration in the policy development process.

A good regulatory impact statement is an invaluable aid for the Committee in approaching the hearings to ensure they strike the right balance between hearing all the issues without encouraging the entire policy debate to be re-enacted for the Committee's benefit. The

regulatory impact statement is also an excellent platform for the Department to brief the Committee. QRC recommends that these public briefings should be scheduled well in advance of when public submissions are due because important questions of detail are often resolved in these briefings.

Public hearings can also be something of a two-edge sword for the Committee in terms of delivering greater accountability. NGOs or professional advisers may be tempted to grandstand in order to gain media attention for their cause or as a business development opportunity. By contrast, public companies can be quite restricted by governance requirements in what they are prepared to discuss about market sensitive matters (such as the impact of new regulations) in a public forum. QRC suggests that a good Committee process needs to consider the differing degrees of enthusiasm to appear at a hearing that different stakeholders will manifest. Many stakeholders will be content to let a detailed and comprehensive submission stand as a sufficient contribution to the inquiry without wanting an opportunity to appear. This reticence should not be miscued as a lack of interest in the inquiry.

(b) Drafting legislation

Drafting legislation is a specialist and complex area of legal expertise. Even for policy principles which are widely agreed by all stakeholders, giving those principles clear and unambiguous effect in legislation is a challenge. This drafting complexity compounds when the legislation amends or interacts with other Acts. The recent trend towards omnibus Bills which amend multiple Acts at once increases the difficulty for a stakeholder to determine whether they agree with the drafting and construction of the policy issue that interests them. These omnibus Bills also increase the risk that stakeholders will miss the relevant page or two of drafting that is of specific interest to them.

One of the consequences of the complexity of legislative drafting is that stakeholders frequently seek assurances from the Committee process that the precise letter of the law reflects *their* understanding of the policy intention. Often in Committee inquiries, those giving evidence will refer to the explanatory memorandum as an accessible means of interpreting how a clause will be applied. The difficulty with this approach is that if a Bill is commenced into an Act and is tested in Court, there is little weight given to the explanatory memorandum. As a result, stakeholders often request that either the Bill be amended or that the Minister clarifies the intended application of that clause as part of their second reading speech.

Often Committees are loath to recommend rewording specific clauses because of the politics of amendments being seen as conceding a mistake. Similarly, securing specific wording in a Minister's second reading speech requires goodwill from the Minister. QRC suggests that the Committee process could usefully incorporate a short formal round of technical redrafting of specific clauses that have been identified as needing refinement. It would of course require the resources of the Office of the Queensland Parliamentary Counsel to be made available to the Committee for this purpose.

A user's guide to an effective Committee review process

Based on the experience of QRC and QRC members in making many submissions into different committee inquiries since 2011, we have developed a list of questions which seek to characterise an effective Committee review process from the perspective of a stakeholder.

Effective policy consultation

Good policy benefits from a clear public consultation process. Critical questions that the Committee should ask to understand the quality of the development of the policy could include:

- Was there an early public articulation of the policy issue to be addressed?
- Were a range of policy alternatives considered?
- Have all stakeholders been involved in the development of the policy? How were stakeholders identified?
- Are all the details of the policy, including supporting regulations available to stakeholders? How long have they had this information?
- Has there been a cost benefit analysis of the policy?
- Is a regulatory impact statement (RIS) available?
- Does the RIS accurately capture the concerns of the stakeholders?

Clear administration

The administration of legislation is often just as important as the manner in which it is drafted. The Committee should seek evidence that the policy will be implemented effectively, as uncertainty can greatly increase the cost of policy changes. Key issues to consider include:

- What are the transitional provisions? Will existing rights be grandfathered?
- What are the administrative requirements, for example, does it need the support of a mapping or database system?
- How will reporting and compliance be managed?
- What resources (including any specialist expertise) are required to administer the policy?
- Has a budget for these administrative requirements been identified and allocated?
- How quickly will the administrative arrangements be in place and fully effective?

Sufficient time allowed

One of the most common complaints around the Committee process is the shortage of time. Bills can be complex to digest and particularly for membership based organisation or peak bodies it can take some time to brief members on the issues and develop an agreed collective position. Furthermore, often it is not until individual companies or individuals have seen a draft submission for their sector or industry that they identify a need to lodge a supplementary or additional submission. Short deadlines work against the slow percolation of ideas as stakeholders grapple with the subject of the Bill or inquiry.

Some key issues for the Committee to consider include:

- What is an appropriate time for developing the policy? Clearly complex, novel and contentious policies usually require a longer or more intensive consultation process.
- What will be the consequences of the policy – will these impacts be concentrated on a particular group of stakeholders? If so – this group may need more time, particularly if they don't have an existing collective voice.
- Is the policy likely to affect a particular region of Queensland – if so are regional hearings being scheduled?

- Is a field trip or site visit appropriate for this inquiry? If so – can a visit be scheduled at a time to maximise the attendance of the Committee?
- Has the inquiry timetable allowed sufficient time between a public briefing from the Department and submissions closing? Between submissions closing and the public hearings? Between the public hearings and the report being finalised and tabled?
- Does the Committee consider that the time available for the inquiry is sufficient? QRC suggests that there should be a specific mechanism for the Committee to make a case to the Legislative Assembly for an extension of time.

Finally, the role of Committee chair is a very important one, as the Chair can set the tone for a public hearing and is responsible for delivering the final report. While it is increasingly common for Committee chairs to be acknowledged at public events, QRC suggests that the workload and skills associated with successfully chairing a Committee should be explicitly recognised. It may also be worth looking at establishing a mechanism whereby Committee members and particularly chairs can be mentored and trained by experienced Members of Parliament.

This list is far from exhaustive, but may be of use for the Committee in considering how to improve the Parliamentary Committee process to deliver better accountability.

QRC's recommendations

QRC supports recommendation nine of the Finance and Administration Committee, report number 16, page 11 - but suggests that the recommendation should also contemplate the changes shown below in [blue](#):

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 Assembly. [In establishing these committees, the Assembly should have regard to each of the following issues unless agreed otherwise by a special majority:](#)
 - [No Committee should conduct more than five inquiries concurrently;](#)
 - [Each Bill should be accompanied by a completed regulatory impact statement \(RIS\); and](#)
 - [Each inquiry should be informed by a public briefing on the Bill from the responsible Department or agency. This briefing should be at least fifteen business days before submissions are due to the Committee.](#)
- A process for consideration of Budget Estimates must be maintained by the Legislative Assembly.
- [The Legislative Assembly can refer to any Committee a more general inquiry that relates to that Committee's portfolio responsibilities.](#)
- 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 [forty business days](#) ~~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 [40 business days](#) ~~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.

QRC would welcome the opportunity to answer any questions or to provide further evidence at a public hearing. The contact officer is QRC's Andrew Barger on [REDACTED]
[REDACTED] QRC has no concerns about having this submission published on the Committee's website.