



29 January 2016

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

Dear Sir/Madam

### **PARLIAMENTARY COMMITTEE SYSTEM REVIEW**

The Anti-Discrimination Commission welcomes the opportunity to make a submission to the Committee of the Legislative Assembly on its review of the parliamentary committee system.

This review was recommended by the Finance and Administration Committee in its inquiry into the introduction of four year terms for the Queensland Parliament and consideration of private member Bills to implement fixed four year terms. The Finance and Administration Committee was concerned that Queensland has the best and most appropriate committee system in place to accompany the extension of parliamentary terms.

The terms of reference include examining means to strengthen the parliamentary committee system, and considering the implications and means of entrenching the system and alternative accountability mechanisms.

This submission is focussed on the role of committees in the scrutiny of legislation.

### **Strengthening the parliamentary committee system**

The parliamentary committee system is one of a range of mechanisms for regulating the power of unicameral parliaments and the executives that follow from them. A comprehensive committee system contributes to a legislature that operates well by reviewing legislation and initiating investigations to check on the passage of new laws and review existing laws and government practices.

In Queensland the abolition of the upper house in 1922 was not accompanied by any corresponding reform of the lower house or constitution. The current accountability mechanisms in Queensland have evolved over time. Most were implemented following the 1989 report of the Fitzgerald inquiry into corruption, and have been reviewed and developed since then. The

STATEWIDE  
telephone 1300 130 670  
teletypewriter 1300 130 680  
[www.adcq.qld.gov.au](http://www.adcq.qld.gov.au)  
[info@adcq.qld.gov.au](mailto:info@adcq.qld.gov.au)

BRISBANE  
level 17 53 Albert Street  
Brisbane Q 4000  
City East Post Shop  
PO Box 15565  
City East Q 4002  
FAX 07 3247 0960

CAIRNS  
McLeod Chambers  
78 Spence St  
PO Box 4699  
Cairns Q 4870  
FAX 07 4039 8609

TOWNSVILLE  
PO Box 1566  
Townsville Q 4810  
FAX 07 4799 7021

ROCKHAMPTON  
level 1 James Larcombe Place  
209 Bolsover St  
PO Box 1390  
Rockhampton Q 4700  
FAX 07 4938 4459

parliamentary committee system has become an integral component of accountability for Queensland's unicameral parliament.

The most recent review of the committee system was conducted by a select committee appointed by the Queensland Parliament in 2010, and resulted in the introduction in 2011 of the current portfolio committee system. The Explanatory Notes for the Bill that introduced the changes state that the policy objectives were:

to reform and modernise the Queensland parliamentary committee system to strengthen and support the role of the Legislative Assembly in scrutinising legislation and executive government.

Portfolio committees are established by standing rules and orders, and each department is required to be covered by a portfolio area.<sup>1</sup> The role of portfolio committees is set out in sections 92 and 93 of the *Parliament of Queensland Act 2001*, and includes considering legislation and proposed legislation. Previously legislation introduced into parliament was considered by one committee, the Scrutiny of Legislation Committee.

The current process and legislative framework for scrutiny of legislation is as follows:

1. Bills and proposed subordinate legislation are drafted by the Office of the Queensland Parliamentary Counsel (OPQC).<sup>2</sup>
2. OPQC must provide advice to Ministers and government entities on alternative ways of achieving policy objectives and on the application of the fundamental legislative principles.<sup>3</sup>
3. When introducing a Bill in the Legislative Assembly the member must circulate an explanatory note for the Bill to members.<sup>4</sup>
4. An explanatory note for a Bill must include a brief assessment of consistency with the fundamental legislative principles, and the reasons for any inconsistency.<sup>5</sup>
5. After the first reading of the Bill (the explanatory speech), it is referred to a portfolio committee for report back to Parliament by a specified date, unless the Bill is declared urgent.<sup>6</sup>
6. The portfolio committee is responsible for examining Bills in its portfolio area to consider the policy to be given effect by the legislation and the application of the fundamental legislative principles to the legislation.<sup>7</sup>
7. The portfolio committee determines whether to recommend the Bill be passed, may recommend amendments to the Bill, and considers the

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88.

<sup>2</sup> *Legislative Standards Act 1992*, section 7.

<sup>3</sup> *Legislative Standards Act 1992*, section 7.

<sup>4</sup> *Legislative Standards Act 1992*, section 22.

<sup>5</sup> *Legislative Standards Act 1992*, section 23(f).

<sup>6</sup> Standing Rules and Orders of the Legislative Assembly, Chapter 23, section 131 (Standing rules and orders for the conduct of proceedings in the Assembly are made under section 11 of the *Parliament of Queensland Act 2001*).

<sup>7</sup> *Parliament of Queensland Act 2001*, section 93.

application of the fundamental legislative principles and compliance regarding explanatory notes.<sup>8</sup>

8. The portfolio committee is required to report to the House within the time fixed for report. The Bill is set for its second reading stage regardless of whether the committee has reported in the relevant timeframe.<sup>9</sup>

One of the important tasks of a committee reviewing legislation is to examine and report on its consistency with the fundamental legislative principles.

The fundamental legislative principles are described in the *Legislative Standards Act 1992* as 'the principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and to the institution of Parliament. The Act includes examples of whether legislation has sufficient regard to rights and liberties of individuals and examples of whether a Bill and subordinate legislation has sufficient regard to the institution of Parliament.

It is submitted that consideration of how the current parliamentary system could be strengthened to increase accountability necessitates consideration of the efficacy of the meaning of fundamental legislative principles and the processes for considering Bills and subordinate legislation.

A review of the meaning of the fundamental legislative principles was commenced by the Scrutiny of Legislation Committee in November 2010, and was continued by the Finance and Administration Committee in October 2011. Unfortunately the review lapsed when Parliament was dissolved in February 2012, before the review was finalised. The Committee does however have the benefit of valuable information in the submissions made to the two previous committees, and in the report of the Scrutiny of Legislation Committee made before it was dissolved.<sup>10</sup> For example, a submission by a portfolio committee gave examples of issues relating to scrutinising legislation, and noted that the former Scrutiny of Legislation Committee, with its specific purpose of scrutinising legislation in respect of the rights and liberties of individuals and the institution, had developed considerable expertise in the area.<sup>11</sup> Submissions also recommended including, or consider including, sufficient regard to the separation of powers as an explicit fundamental legislative principle.

The Commission considers that accountability in the scrutiny of legislation would be strengthened by making some changes to the process, and by incorporating human rights more overtly into the meaning of fundamental legislative principles. The Commission recommends a process similar to the federal model for scrutiny of legislation, namely:

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<sup>8</sup> Standing Rules and Orders of the Legislative Assembly, Chapter 23, section 132.

<sup>9</sup> Standing Rules and Orders of the Legislative Assembly, Chapter 23, section 136.

<sup>10</sup> Report No. 47, *Our Principles: Review of the Meaning of 'Fundamental Legislative Principles'*, June 2011.

<sup>11</sup> Submission of the Industry, Education, Training and Industrial Relations Committee to the Finance and Administration Committee, 16 February 2012.

- a statement of compatibility with human rights to be prepared and presented to the House for each Bill; and
- there be a specialist bipartisan committee on human rights to examine Bills and Acts for compatibility with human rights, and to report to Parliament.

The role of the portfolio committees to examine other aspects of legislation, as well as the other roles, would continue.

As part of this process, the definition of fundamental legislative principles should be changed to refer to 'human rights' instead of 'rights and liberties of individuals', and to specify also the separation of powers.

'Human rights' should be defined in the legislation in an inclusive way, with examples and further explanation detained in a guidance note. The Commission recommends adopting the definition of 'human rights' that was suggested by Reverent Professor the Hon. Michael Tate AO to the federal consultation on a Bill of Rights, namely:

The personal rights and liberties recognised or expressed under the Constitutions of Queensland and Australia, in statutes of the parliaments of Queensland and Australia, or in treaties ratified by the government of Australia.

The Commission recommends the following measures to increase accountability in the scrutiny of legislation:

1. In the *Legislative Standards Act 1992*, include as an express objective that Queensland legislation is consistent with the promotion and protection of human rights;
2. Replace the expression 'rights and liberties of individuals' with 'human rights';
3. Add to the definition of fundamental legislative principles 'the separation of powers';
4. Define 'human rights' in an inclusive way (as suggested above);
5. Develop and implement a guidance note to assist in identifying human rights issues;
6. Replace the requirement for explanatory notes to include a 'brief assessment of consistency' with a requirement of a 'statement of compatibility' with fundamental legislative principles for all Bills and amendments;
7. Establish under the *Parliament of Queensland Act 2001* a separate specialist bipartisan committee (a Human Rights Committee) with roles to include the examination of all Bills and subordinate legislation for compatibility with fundamental legislative principles.
8. Amend the *Parliament of Queensland Act 2001* to require the Member promoting a Bill to respond to any recommendations or concerns raised by the specialist human rights committee.

## Entrenchment and other accountability mechanisms

In its inquiry inquire into the introduction of four year terms for the Queensland Parliament, the Finance and Administration Committee recommended (Recommendation 9) 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.
- 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.

The Commission supports proposed changes to limit the declaring Bills urgent and thus bypassing the committee system.

The Finance and Administration Committee said that being conscious of the historical reasons for entrenchment of three year terms in 1934 and its link to the entrenchment of the abolition of the Upper House, it considered the committee system, as an important accountability mechanism, should be included in the provisions to be entrenched as part of any extension of the term of parliament.

Entrenchment as proposed in recommendation 9 (set out above) may confine parliament to the current portfolio committee system. The current system is relatively new, and should not necessarily bind future parliaments.

The Commission supports entrenchment of a committee system, provided it does not unduly restrict flexibility in the structure of committee systems into the future. An aspect that should be entrenched in the establishment and maintenance of a specialist human rights committee to examine legislation and report on human rights issues, as outlined above.

An alternative or further measure to strengthen the committee system and accountability is a Human Rights Act. A common feature of human rights Acts and constitutional charters is that they provide for proposed legislation to be



reviewed, before debate in Parliament, for compliance or otherwise with human rights, and for a report to be provided to Parliament.

The Commission supports a Human Rights Act for Queensland, and will be making a submission to the current inquiry before the Legal and Community Safety Committee recommending a Human Rights Act that includes the characteristics of providing for:

- each Bill table in parliament to be accompanied by a Statement of Compatibility setting out whether and how the Bill is compatible with or infringes on human rights; and
- all legislation to be considered by a specialist parliamentary committee for the purpose of reporting to parliament on whether the legislation is compatible with human rights.

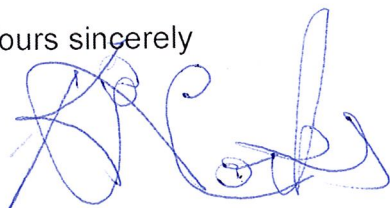
In the interim, accountability in the scrutiny of legislation can be strengthened through amendments to the *Parliament of Queensland Act 2001* and the *Scrutiny of Legislation Act 1992*, as outlined above.

### **Conclusion**

The Commission endorses a robust parliamentary committee system responsible for the scrutiny of legislation and examining and reporting on human rights issues. Accountability can be strengthened by making changes to the legislation and processes requiring statements of compatibility with human rights and justification for any infringement of human rights.

The Commission supports entrenchment of the parliamentary committee system in a way that enables some flexibility but ensures examination and reporting of human rights issues by a specialist bipartisan committee. The system can be further strengthened by a Human Rights Act for Queensland.

Yours sincerely



**KEVIN COCKS AM**  
**Anti-Discrimination Commissioner Queensland**