



## Queensland Parliamentary Service

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Hon Peter Wellington MP  
 Chair  
 Committee of the Legislative Assembly  
 Parliament House  
 George Street  
 BRISBANE QLD 4000

Dear Mr Speaker

### **Inquiry into strengthening and possibly entrenching the Queensland Parliamentary Committee System**

I have previously made submissions to the Finance and Administration Committee (FAC) in relation to its inquiry into four year terms, and I refer the Committee of the Legislative Assembly (CLA) to the points made in those submissions that are relevant to the CLA's current inquiry, available on the FAC's website:

<http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I4-Intro4yearterms/submissions/043.pdf>

<http://www.parliament.qld.gov.au/documents/committees/FAC/2015/I4-Intro4yearterms/I4-cor-9Nov2015.pdf>

In summary, in my submissions to the FAC:

- I conditionally supported four year fixed terms for the Queensland Parliament. I noted that I was a reluctant convert to four year terms. My slow conversion was based upon over two decades of observation that three year terms are insufficient to allow governments to develop policies, plan and implement them without the distraction of the election cycle. My reticence to date has been for one reason – lack of effective, entrenched accountability mechanisms. In particular, the absence of an Upper House means that the Queensland Parliament has had no 'House of Review' since 1922.
- I noted that the introduction of the estimates committee process in 1996 and, most significantly, the introduction of the portfolio committee system in 2011 have gone a long way to assisting the Legislative Assembly scrutinise bills and finances. The portfolio committee system (post 2011) in some way performs the review functions often seen in other jurisdictions with Upper Houses. If the portfolio committee system is used correctly, it enables legislation to be properly scrutinised, allows external review and formal consultation with stakeholders.

- However, I also cautioned the FAC that these enhanced accountability mechanisms are not a complete panacea to an Upper House for a number of reasons, including:
  - The portfolio committees are not entrenched. The portfolio committee system can be disposed of by way of a simple Act of Parliament (amending the *Parliament of Queensland Act 2001*) without the need for a referendum, or effectively neutered by amendments to Standing Orders which limit the matters referred to those committees. (It must be emphasised that from 1922 to 1988 governments of both persuasions saw fit to govern without a high degree of parliamentary oversight and there was virtually no committee system in Queensland.)
  - Processes such as the estimates process are established by Standing Orders and can be abolished, set aside or amended by simple resolution of the House. (For example, the system was modified in 2014 by resolution against the will of the Opposition and cross-bench.)
  - Existing provisions within Standing Orders allow a government of the day with a simple majority to declare a bill 'urgent' and thus bypass whichever requirement for time, review or debate is in force at the time, including portfolio committee review. Alternatively, committee review can be so truncated in time as to be less than effective. I referenced data and research indicating the use of urgent bill or truncating procedures for political or housekeeping reasons rather than true urgency requirements.

The Legislative Assembly has now passed a bill seeking fixed four year terms. The people of Queensland will decide in March by referendum whether to approve the bill, thus enabling the bill's presentation for Assent.

The focus now must be to ensure that the Queensland Parliament has the most effective parliamentary committee system possible in a unicameral parliament so as to provide the people of Queensland the most appropriate accountability safeguards.

I commence my submission to the CLA's review by reflecting upon the effectiveness of the current portfolio committee system and then identifying impediments to its effectiveness and areas for improvement.

**Effectiveness of the current committee system**

I consider that there have been five distinct eras in the Parliament of Queensland's history:

<i>Time</i>	<i>Period</i>	<i>Characteristics</i>
1860-1901	Colonial period	<p>Government formed by support of ministerialists (members of parliament who supported a government in office but were not in formal party and not bound by tight party discipline)</p> <p>Structure (bi-cameral), practice and procedure of the Houses and conventions of Westminster strictly adhered to</p> <p>Extensive use of parliamentary committees, legislation regularly reviewed by committees</p> <p>The electoral system for the election of members of the Legislative Assembly was for much of this time comprised of multi-member districts</p> <p>Franchise limited by property until 1872 and males over 21 until 1905</p>

1901-1922	The era of conflict	<p>Growth of the party system and party discipline</p> <p>Single member constituencies and one vote one value with 20% weighting variance</p> <p>Extensive use of parliamentary committees, legislation regularly reviewed by committees</p> <p>Conflict between elected Legislative Assembly and non-elected appointed Legislative Council. Council rejection of Assembly reform legislation. Abolition of Council engineered in 1922</p>
1922-1988	The era of executive dominance	<p>Entrenchment of unicameralism and three year terms</p> <p>Long-term governments from both sides of the political spectrum.</p> <p>Dominance of the executive over parliament. Dominance of the Ministry over the backbench</p> <p>Zonal system introduced whereby electorates allocated to zones with different quotas (later colloquially known as a 'Gerrymander'). Demographic shifts benefit both sides of politics at different periods</p> <p>Apart from internal matters (dining room, library etc.), almost no use of parliamentary committees</p> <p>Reform viewed with animosity and suspicion by the executive</p>
1988-2011	The era of reform	<p>In 1988 the first Public Accounts Committee established, later the Public Works Committee established</p> <p>In 1988 the Parliamentary Service and Parliamentary Service Commission established, administration separated from government control</p> <p>Following the Fitzgerald Report (1989) and reviews of the Electoral and Administrative Review Commission (EARC) a large number of administrative and parliamentary reforms.</p> <p>In 1995 the <i>Parliamentary Committees Act 1995</i> new committee structure. Committees, however, based on limited functional areas.</p> <p>In 1994 the first estimates committee processes for the Annual Appropriation Bills</p> <p>Significant procedural reform, largely sparked by minority government in the mid-1990s (1996-1999):</p> <ul style="list-style-type: none"> <li>-Reform of Question Time</li> <li>-Time set aside for Private Members' Bills</li> <li>-Time set aside for Private Members' motions/statements</li> <li>-E-petitions</li> <li>-Regional sittings (2002, 2005, 2007 and 2009)</li> </ul>

		<p>-Government responses to committee reports and petitions -Requirements for government to table documents increase</p> <p>The creation of the Ethics Committee in 1995 leads to the <i>Code of Ethical Standards</i> (1998) and a more active Ethics regime</p> <p>New modern Standing Orders adopted in 2004</p> <p>Despite reforms, work of the Assembly is pre-occupied by government legislation and the work of committees is essentially unrelated to the work of the Assembly. Only a very small percentage of bills considered by committees (less than 4%) failing all international benchmarks.</p>
2011 - ?	The modern era	<p>Committee System Review Committee (CSRC) report leads to the <i>Parliament of Queensland (Reform and Modernisation) Amendment Bill 2011</i> which establishes the Portfolio Committee System and significant reform to the business in the Assembly.</p> <p>The portfolio committees are now operating as a substitute for a second Chamber.</p>

The general expectations of the 2011 reforms were:

- A better informed Parliament and individual members and more relevant and informed debate on bills in the Assembly
- Improved engagement with community/stakeholders in a “formal” process allowing a more transparent and engaging decision making (including legislative) process for Queenslanders
- A more vigorous legislative process by the Parliament where bills are scrutinised and tested
- Better legislative outcomes overall (i.e. quality amendments to bills, fewer amending bills etc.)
- That the work of committees would be relevant to the core business of the Assembly.

I would argue that the current portfolio based committee system, introduced in 2011 following the Committee System Review Committee (CSRC) report and the Parliament of Queensland (Reform and Modernisation) Amendment Bill 2011, has been a success.

There is no doubt that debate on bills is now more informed, relevant and (ironically) shorter than the lengthy and largely irrelevant second reading debates of the past. I have no empirical evidence to support this view, but make the claim based on my own observations and the observations of my colleagues.

Hard data provides some evidence of other outcomes. Statistics of portfolio committee activity from August 2011 to December 2015 (detailed below) reveal that not only is there an increase in activity (meetings, hearings, reports etc.), but that committee recommendations in relation to bills and other inquiries are being responded to very positively by the government and the Assembly.

Stakeholder engagement is also very high – coming from a very low base with virtually no formal consultation on legislation prior to 2011. These outcomes in turn suggest a more vigorous legislative process and augur well for better legislative outcomes.

**Portfolio Committee Statistics - August 2011 to December 2015**

Bills examined from August 2011 to December 2015:

Bills examined and debated 215	Legislative amendments recommended 369	Legislative amendments accepted 209	Percentage accepted 56.6%
	Other recommendations 295	Accepted recommendations 250	Percentage accepted 84.7%

The average duration of completed committee inquiries from August 2011 to September 2015:

Total completed inquiries 218 <sup>1</sup>	Government Bills	Private Members Bills	Other Inquiries
	Average duration 9.2 weeks	Average duration 16.8 weeks	Average duration 26.4 weeks

The table below outlines the number of 'Other Inquiry' reports tabled in the House for the 54<sup>th</sup> and 55<sup>th</sup> Parliaments<sup>2</sup>:

Total completed inquiries 12	Legislative amendments recommended 80	Legislative amendments accepted 48	Percentage accepted 60%
	Other recommendations 278	Accepted recommendations 222	Percentage accepted 79.9%

**Engagement with the community and stakeholders in a formal process**

Between August 2011 and 31 December 2015 there were 901 public briefings, public hearings and private hearings of committees.

**Attendance at hearings**

During the 54<sup>th</sup> and 55<sup>th</sup> Parliaments<sup>3</sup>, a total of 4,170 people appeared at portfolio committee hearings:

- 2,164 public servants
- 925 representatives of peak organisations
- 626 members of other groups
- 455 individual members of the public.<sup>4</sup>

<sup>1</sup> Total number of inquiries reported on by portfolio committees. Note – a number of inquiries reported on more than one bill and Government responses were not received to certain inquiries during the Parliaments.

<sup>2</sup> To 31 December 2015 note these stats were not collected in the 53<sup>rd</sup> Parliament.

<sup>3</sup> To 31 December 2015.

<sup>4</sup> Note: these statistics were not collected in the 53<sup>rd</sup> Parliament.



## Impediments to effectiveness

### *By-pass or truncation of time*

My earlier submissions to the FAC traversed the use of urgency procedures to by-pass committee scrutiny and/or reduce time that bills are before committee or the Assembly. As noted in my previous submissions to the FAC, analysis reveals that in most instances the use of urgency is not for a genuine reason of urgency, but are for political reasons (for example, the implementation of election promises), to clear the notice paper at the end of a session or propagate business at the beginning of a session.

Another related concern is the practice of bills not being explicitly declared urgent, but instead being referred to the relevant portfolio committee with an exceptionally short review period (for example, less than two weeks) or in an otherwise unreasonable review period given the nature of the bill. The end result is that the bills do not receive adequate scrutiny because the committees do not have time to conduct quality review. Quality engagement with stakeholders cannot be achieved within truncated review periods as stakeholders do not have sufficient time to absorb the impacts of the bill, canvass internal views and formulate submissions.

Since the introduction of the new portfolio committees in August 2011 up until 30 October 2015, there were 182 bills passed post-committee review, with 153 from the 54<sup>th</sup> Parliament and 29 from the current Parliament. However, of those 182 bills, seven bills were considered for less than two weeks and 14 were on the Notice Paper (awaiting finalisation by the Assembly) post committee review for longer than they were with the portfolio committee. In some instances bills were with committee less than half the time they then subsequently languished on the Notice Paper after review.

### **Committee referral and debate periods of time – August 2011 up until 30 October 2015**

	<b>BILL</b>	<b>DATE INTRODUCED</b>	<b>DATE PASSED</b>	<b>COMMITTEE (NO. DAYS)</b>	<b>NOTICE PAPER (NO. DAYS)</b>
Bills on Notice Paper Longer than Committee Consideration					
1	Health and Hospital Network and Other Legislation Amendment Bill 2012	17/05/2012	20/06/2012	15	19
2	Health Legislation (Health Practitioner Regulation National Law) Amendment Bill 2012	17/05/2012	20/06/2012	15	19
3	Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012	29/05/2012	31/07/2012	14	49
4	Criminal Law (False Evidence Before Parliament) Amendment Bill 2012	19/06/2012	2/08/2012	13	31
5	Criminal Law Amendment Bill 2012	20/06/2012	21/08/2012	16	46
6	Animal Care and Protection and Other Legislation Amendment Bill 2012	19/06/2012	12/09/2012	13	72
7	Queensland Art Gallery Amendment Bill 2012	17/05/2012	12/09/2012	22	96
8	Holidays and Other Legislation Amendment Bill 2012	21/08/2012	30/10/2012	16	54
9	Body Corporate and Community Management and Other Legislation Amendment Bill 2012	14/09/2012	19/03/2013	69	117

10	Succession to the Crown Bill 2013	13/02/2013	2/05/2013	14	64
11	Directors' Liability Reform Amendment Bill 2012	28/11/2012	16/10/2013	107	215
12	Police Powers and Responsibilities and Other Legislation Amendment Bill 2013	12/09/2013	11/02/2014	60	92
13	Forestry and Another Act Amendment Bill 2014	20/03/2014	7/08/2014	67	73
14	Work Health and Safety and Other Legislation Amendment Bill 2015	7/05/2015	14/10/2015	60	100
Bills with Committee less than Two Weeks					
1	South-East Queensland Water (Distribution and Retail Restructuring) Amendment Bill 2012	19/06/2012	10/07/2012	13	8
2	Electricity (Early Termination) Amendment Bill 2012*	10/07/2012	12/07/2012	2	0
3	Penalties and Sentences and Other Legislation Amendment Bill 2012	11/07/2012	1/08/2012	12	9
4	Heavy Vehicle National Law Bill 2012	31/07/2012	23/08/2012	13	10
5	Public Service and Other Legislation Bill 2012	31/07/2012	23/08/2012	13	10
6	Queensland Rail Transit Authority Bill 2013	16/04/2013	30/04/2013	10	4
7	Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013*	19/11/2013	21/11/2013	2	0

\* These bills were also declared urgent

### Roles and responsibilities of each portfolio committee

The roles and responsibilities of each portfolio committee include:

- consideration of bills (including 'technical scrutiny', that is assessment of bills according to the fundamental legislative principles, but also review of policy and assessment as to whether the bill effectively achieves the policy etc.)
- actioning inquiries referred by the House to each portfolio committee
- public works within their area of responsibility
- public accounts (and review of Auditor-General reports) within their area of responsibility
- oversight of certain statutory bodies/offices.

It is clear that the focus and priority of the portfolio committees have been on:

- bills
- references by the House to each portfolio committee.

Public accounts issues, reviews of Auditor-General reports and oversight of statutory bodies have been occurring, but such reviews occur within a lower priority than bills and references. Public works inquiries have been occurring less frequently.

While it is a clear intention that each individual committee will undertake public works and public accounts inquiries, the reality is that these functions are rarely undertaken by committees and if they are

contemplated or commenced, they become an inevitable victim to workloads and time shortages arising from an increased legislative load.

The Committee System Review Committee (CSRC) Report<sup>5</sup> recommended that the Standing Orders be amended to provide that:

- a committee can on its own initiative consider any petition received by the House, the subject-matter of which falls within the jurisdiction of the committee; or
- a minister (being the minister responsible for the administration of the matter which is the subject of the petition) can refer a petition to the relevant committee for consideration, but such referral shall not operate so as to require the committee to consider any petition.

These recommendations were never adopted, but I note that other jurisdictions in recent times have a referral mechanism for petitions that reach a certain threshold of signatures.

The CSRC also recommended that all portfolio committees have the ability to report on all aspects of government activities, including investigating and reporting on events, incidents and operational matters (self-referral power). This recommendation was also never adopted.

Whilst I would generally support self-referral powers as contemplated by the CSRC, I am also pragmatic enough to realise that given their workloads the ability of the committees to undertake such inquiries will be limited by the legislation and references received.

### **Unexpected outcomes since 2011**

I believe that the workload upon the portfolio committees system since 2011 has been higher than anyone involved in its design anticipated. The workload between the portfolio committees has also not been balanced, with some portfolio committees having a workload far exceeding their peers for extended periods. (I note there has been some variability between years and parliaments as to which committees have had this excessive workload. For example, in the 54<sup>th</sup> Parliament it was the Legal Affairs, Police, corrective Services and Emergency Services Committee and in the 55<sup>th</sup> Parliament it has been the Finance and Administration Committee.)

There are a number of factors that have contributed to both the unexpected workload and the unevenness of workload:

- An unexpected number of significant references from the Assembly. Whilst it must be viewed as a positive that the government has seen it as appropriate to move in the Assembly referrals to the portfolio committees, the resource implications and impact on the committee's other roles have not always been adequately considered.
- Unreasonable truncated timetables for some bills or inquiries have resulted in committees having to conduct inquiries in an unreasonably short period of time and disrupting its overall agenda. Indeed, it is difficult for a portfolio committee to set sensible inquiry timetables.
- A 'system failure' in not ensuring that work which could be referred to less busy committees is instead referred to committees that already have a full agenda.

### **Areas for improvement**

From the above, it is apparent that the impediments to the effectiveness of the committee system and areas in need of improvement include:

- setting sensible timeframes for inquiries, especially bills inquiries
- resourcing.

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<sup>5</sup> <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2010/5310T3777.pdf>



## **Solutions**

### ***Timeframes***

Many of the issues can be solved by addressing the issue of time. I submit that the period of time in which bills are scheduled for committee review needs to be set at 12 weeks unless declared urgent and the requirements for the declaration of bills as urgent needs to be statutorily controlled.

I emphasise that in my view a 12 week statutory review period is both reasonable and achievable. The single largest impediment to adopting a 12 week statutory review period is cultural change. The many years of executive dominance of the Parliament has led governments and, perhaps more significantly, the public service to expect that the Legislative Assembly will pass government bills in short order. The absence of an Upper House in Queensland has led to the development of this culture. All other State governments and public services have needed to accept the fact that their Upper House will slow the legislative process and subject their proposals to review.

A statutory review period for portfolio committee examination will force a cultural change by making it clear that the Legislative Assembly is no longer a rubber stamp but a genuine place of review.

### ***Resources***

It is clear that at times the resources of the Committee Office in supporting the portfolio committees have been stretched. The Parliamentary Service is currently undertaking an internal review of the Committee Office to assess the needs of the office and will report to the Speaker by the end of February 2016.

However, I stress that the resources provided to each portfolio committee cannot entirely alleviate the burden on the members of each committee.

## **Entrenchment**

In accordance with my letter to the FAC on 9 November 2015, given the legal uncertainties and the policy position previously taken, constitutional entrenchment should not be undertaken without a referendum achieving that end.

Given the decision to move forward to a referendum on fixed four year terms without addressing committee entrenchment and the costs of referendums, it appears that the only sensible course of action is to enhance the current provisions relating to portfolio committees contained in the *Parliament of Queensland Act 2001* by providing that:

- There will be a minimum number of portfolio committees established each parliament
- Every bill introduced into the Legislative Assembly must be referred to and reviewed by a portfolio committee, unless a special majority of the Assembly agrees to the bill not being referred to a portfolio committee
- A special majority to be defined as at least 65% of the members of the Assembly (currently 58 members), including members of the official opposition.

These provisions could be statutorily entrenched in a similar way to provisions in Chapter 7 of the *Constitution of Queensland Act 2001*. Section 78 of that Act, for example, provides:

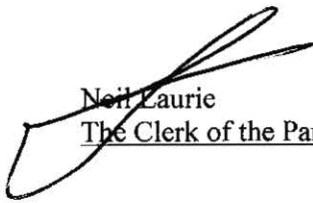
**78 Procedure for bill ending system of local government**

- (1) *This section applies for a bill for an Act ending the system of local government in Queensland.*
- (2) *The bill may be presented for assent only if a proposal that the system of local government should end has been approved by a majority vote of the electors voting on the proposal.*
- (3) *The bill has no effect as an Act if assented to after presentation in contravention of subsection (2).*
- (4) *The vote about the proposal must be taken on a day that is more than 1 month but less than 6 months before the bill is introduced in the Legislative Assembly.*
- (5) *The vote must be taken in the way prescribed by an Act.*
- (6) *An elector may bring a proceeding in the Supreme Court for a declaration, injunction or other remedy to enforce this section either before or after the bill is presented for assent.*

The effect of the above would be to ensure that governments with comfortable or large majorities could not simply declare bills urgent by using provisions in Standing Orders, or by simply suspending Standing Orders – there would need to be bipartisan support. There would need in turn to be justifiable reasons of urgency.

Of course the solution would not prevent the repeal of the statutory requirement by a simple Act as it would not be constitutionally entrenched. However, any government seeking to remove the provision would have to justify its actions or face political odium in removing the provision.

Yours sincerely



Neil Laurie  
The Clerk of the Parliament