



AUSTRALIAN SENATE

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25 August 1998

Mr Gary Fenlon MLA
 Chair
 Legal, Constitutional and Administrative
 Review Committee
 Legislative Assembly of Queensland
 Parliament House
 George Street
 BRISBANE QLD 4000

Dear Mr Fenlon

CONSOLIDATION OF THE QUEENSLAND CONSTITUTION

Thank you for the invitation, contained in your letter of 10 August 1998, to comment on the drafts of the Constitution of Queensland Act 1998 and the Parliament of Queensland Bill 1998.

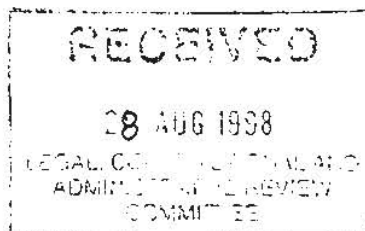
I hope that the following comments will be of some interest to the committee.

CONSTITUTION OF QUEENSLAND ACT 1998

Section 6 Powers, privileges and immunities of Legislative Assembly

(1) The prescription of the powers, privileges and immunities of the Assembly "to the extent that they are not inconsistent with this Act or another Act" is likely to cause difficulties and inconsistencies of interpretation, because it may often be difficult to determine whether a provision in another act is inconsistent with the powers, privileges and immunities provided by this section. It should be provided that a provision in another act is inconsistent with the powers, privileges and immunities only if the other act expressly so indicates. This would avoid the sort of dispute which arose at the federal level some years ago, in which government legal advisers initially claimed that statutory secrecy provisions in various statutes prohibiting the disclosure of certain information prevented the Senate or its committees exercising the power to require the production of information.

(2) I agree with the EARC that the linkage with the powers, privileges and immunities of the British House of Commons *for the time being* is likely to cause serious difficulties of interpretation. In 1996 the British Parliament, moved by a particular case, hastily passed an amendment of the Defamation Act to allow the waiver of parliamentary privilege in certain circumstances. It is by no means clear whether this law now applies in Queensland.



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PARLIAMENT OF QUEENSLAND BILL 1998

Section 11 Standing rules and orders may be made

Subsection (3) would appear to prevent the Assembly adopting a standing rule or order which is to come into effect at a future time.

Section 28 Member required to attend without summons

This provision would seem to violate the long-established parliamentary principle that a member may be compelled to attend and give evidence, whether before the House itself or a committee, only by the House, and not by a committee.

Section 30 Obligation to attend

Section 31 Obligation to be sworn or to respond

These provisions allow the Assembly, but presumably not a committee, to excuse a person from attending and giving evidence. There would often be circumstances in which it would be desirable for a committee to have the power to excuse a person.

Section 36 Inadmissibility of evidence, documents and information

This provision would be unduly restrictive in that it goes beyond the limitation which the existing law of parliamentary privilege imposes on the use of parliamentary proceedings in evidence before other tribunals. The existing law of parliamentary privilege does not make evidence of parliamentary proceedings inadmissible, but limits the use of such evidence so as to prevent anything in the nature of impeaching or questioning the parliamentary proceedings. There are many possible uses of evidence of parliamentary proceedings which do not involve impeaching or questioning those proceedings. This proposed blanket inadmissibility rule would prevent any use of parliamentary evidence before the courts and would be regarded as an interference with the normal rights of litigants.

Section 50 Tabled, unprinted documents may be read etc

Section 51 Publication of fair report of tabled document

These provisions virtually allow the publication of documents which are tabled but not ordered to be printed by the Assembly. The distinction between a document ordered to be printed and one tabled but not ordered to be printed would be a source of potential confusion. There would undoubtedly be a difference in content between the immunity conferred by section 51 and the immunity provided by the ordinary law of parliamentary privilege in respect of a document ordered to be printed, but it may take difficult litigation to discover exactly what the difference is. It was for this reason that the Senate many years ago adopted a rule that all documents tabled in the Senate are ordered to be published.

Section 53 No liability for publishing under authority of Assembly or committee

This provision also contains the promise of confusion by providing an immunity which is different in content from the immunity provided by the general law of parliamentary privilege (one difference, for example, is that under this provision a person does not incur any civil or

criminal liability for publishing a document, but under the law of parliamentary privilege the immunity is wider and extends to any use of the parliamentary proceedings against a person). The presence of two different immunities in the same statute would cause difficulties in future litigation. At the federal level the old Parliamentary Papers Act passed in 1908 also provides an immunity different in content from that codified by the *Parliamentary Privileges Act 1987*, but because the 1987 Act is the later statute it would be held to supersede the earlier enactment, thereby overcoming the problem of the inconsistencies of the provisions. It is the presence of the two different provisions in the same statute which would create the problem.

Section 57 Qualification to be a candidate and be elected a member

Subsection (2) would appear not to disqualify a person convicted of an offence against a law of a territory, as distinct from a law of a state or of the Commonwealth.

I would be pleased to provide the committee with any clarification of these points or any other information the committee thinks appropriate.

I wish the committee well in its task.

Yours sincerely



(Harry Evans)