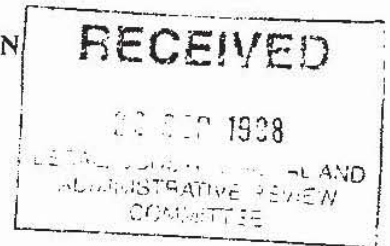


Submission NO 24
Spec 3-4.

SUBMISSION TO THE
LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE
ON THE
CONSOLIDATION OF THE QUEENSLAND CONSTITUTION
BY THE CLERK OF THE PARLIAMENT -- R D DOYLE



At the outset, I would like to compliment the work of the former LCARC in producing the draft consolidated Constitution Bill 1998 and the draft Parliament of Queensland Bill 1998. I would also like to congratulate the current committee for resolving to continue with this inquiry. In my opinion it is long passed due that a proper and thorough consolidation, such as that proposed by the last committee, be implemented. Such a consolidation can only but assist members, public officials and the public generally.

I have the following comments to make about the draft Bills produced by the last committee:

- Clause 55 of the Parliament of Queensland Bill is effectively a restatement of s.12 of the *Parliamentary Papers Act 1992* and provides that the part applies to evidence and documents published after 2 July 1992, the date the *Parliamentary Papers Act* was given assent. Section 12 was obviously inserted in order to ensure that that Act had no retrospective effect and in this respect is in accordance with the common law principles of statutory interpretation. Unfortunately, from time to time the Parliamentary Service encounters practical difficulties with documents tabled prior to 2 July 1992, a situation exacerbated in respect of any document tabled prior to 1978 (the year s.40A was inserted into the Constitution Act 1867).

The Parliamentary Service is sometimes requested to supply copies of material tabled prior to July 1992 or 1978. For example, we have been requested to supply photocopies of reports by commissions of inquiry from the 1950s. The difficulty is that we are unable to make photocopies of these documents because it is uncertain that it would be held that a photocopy of those documents is privileged. We are certainly able to allow people to view those documents and take notes from the documents, but a copy as such may not be privileged.

The Parliamentary Service has had one request concerning a Royal Commission report dating back to the 1960s from another jurisdiction. We were unable to provide a copy of this report. Therefore, the interstate body interested in that report had to fly an officer up to review the material and take their own notes etc from the report. I'm sure that the committee would agree that this is a ludicrous position.

I would, therefore, suggest a provision in the proposed Parliament of Queensland Bill that provides that any document tabled prior to 2 July 1992 can be photocopied and that any copies distributed are privileged. I do not believe that such a provision would have any practical adverse effects on any person. Such a provision would simply allow largely historical documents of the Parliament to be readily copied and distributed without fear of legal reprisal.

- There have been instances where officers of the Parliamentary Service, particularly those officers who work in the Table Office, have been served with subpoenas to produce documents to courts or other inquiries. I believe that it is totally inappropriate that relatively junior officers be personally served with such coercive documents. I note that Standing Order 327 provides that the custody of all journals, records and tabled documents vest in the Clerk of the Parliament and places an obligation on the Clerk to not allow such documents to be removed from the Parliament without the resolution of the Assembly. The Speaker is able to give his permission to release such documents if the Parliament is prorogued or the Assembly is adjourned for any period not exceeding seven days.

The problem as I see it is that a Parliamentary Officer served with a coercive document, such as a subpoena, requiring the production of documents of the Assembly runs the risk of being in contempt of either the court or tribunal that has issued the subpoena or the Assembly. The risk of such a conflict arising has increased with the committee system of the Assembly growing and becoming more active and the ever increasing number of tribunals and commissioners, most with coercive powers of some nature.

There are some particular problems with documents of a committee, because those documents vest in the committee until they are presented to the Assembly. However, in reality the Research Director of the committee usually has actual possession of the documents and the Research Director is in effect the delegate of the Clerk.

I believe that the issue is best resolved by providing within a statute, preferably the Parliament of Queensland Bill, that:

- ◇ the custody of all journals, records, all tabled documents and documents of a committee shall be in the custody of the Clerk;
 - ◇ any coercive instrument (including subpoenas, summonses and notices to produce), requiring access to or the production of a proceeding in Parliament shall be addressed to the Clerk;
 - ◇ any coercive instrument requiring access to or the production of a proceeding in Parliament not addressed to the Clerk of the Parliament is of no effect;
 - ◇ the Clerk is not required to allow access to, or produce, any document until such time as the Assembly, has by resolution granted leave;
 - ◇ if the Assembly is dissolved, prorogued or adjourned for any period exceeding seven days, the Speaker may consent to such documents being released;
 - ◇ where the documents sought are documents of a committee of the Assembly which have not been presented to the Assembly, the Clerk is not required to allow access to, or produce any document until such time as the relevant committee of the Assembly or the Assembly itself, has by resolution granted leave.
- I would prefer if the word "privilege" is removed from the title in part 4 and that it simply state "Tabling of Reports Outside Sittings". I am concerned that by using the term "privileged tabling" that someone in the future might take the view that there are tablings which are privileged and tablings that are not privileged.

- In cl.17 of the Parliamentary Committees Bill the terminology used is that the Assembly must immediately on sitting after every election proceed to elect a member to be chairperson of committees. The terminology used in the Standing Orders is not "elected" but "appointed". I believe the Bill should be changed to reflect the position in the Standing Orders. Furthermore, the word "immediately" is not required or desirable. In practice the Chairman of Committees is appointed on the third day of the new Parliament.
- Clause 49(4) of the Parliament of Queensland Bill provides the definition of parliamentary document as including "(c) notices of questions and answers to questions on notice". I appreciate that the section is simply reflecting the terminology used in s.6(3) of the *Parliamentary Papers Act*. I would, however, prefer that the common terminology was used, that is: "questions on notice and answers to questions on notice".
- Clause 101(1) of the Parliament of Queensland Bill provides that as soon as practical after the end of each financial year, the chairperson of each committee which has met and conducted business throughout the year table in the Assembly a report about the committee's activities during the year. I appreciate that this is a restatement of s.33 of the *Parliamentary Committees Act*. However, I suggest that the wording "as soon as practicable" be changed to "within 4 months and 14 days after the end of the financial year".

Most annual reports by departments etc are required to be tabled within 4 months and 14 days. There is a useful discussion of the categories of annual reports found in the Public Accounts Committee report No. 33 *The Standard of Preparation and Timeliness of Departmental Statements* at 30-32. I suggest that it is an opportune time to change the reporting requirements of committees to the standard time of 4 months and 14 days.

- I notice that cl.49(2)(a) of the Parliament of Queensland Bill differs from s.6(2)(a) of the *Parliamentary Papers Act 1992* by deleting the phrase 'the purposes of'. I query whether the deletion of this phrase is intentional or whether it has come about as a variation in drafting style. I submit it is preferable to have the phrase in the clause.
- The Parliament of Queensland Bill in Part 3 largely reproduces the *Parliamentary Papers Act*. In particular, the Bill continues the distinction between tabled, unprinted documents (PQB & cl.50 PPA s.7) and documents authorised to be printed. I submit that there is a good argument to dispose of the distinction between these two classes of documents. The distinction between these two classes of documents is fraught with some difficulty.

For example, a report by a committee is a proceeding in Parliament and thus covered by Art 9 of the Bill of Rights (see PQB cl.9(4)(g) & PPA s.3(4)(g)). After the report is tabled it would also be a proceeding in Parliament (PQB cl.9(4)(d) & PPA s.3(4)(d)). If the committee (PQB cl.47(2)) & PPA s.4(3)) authorises publication of the report, there is no doubt that printed (or published) copies are privileged. However, if a report is tabled and not ordered to be printed and has not been authorised for publication by the committee, it is arguable that only the actual report that has been tabled and any copies of the actual tabled report (PQB cl.50 & PPA s.7) are privileged

and that copies made before its tabling are not privileged. Since a decision of the former Printing Committee in the early 1990s committee reports have rarely been ordered to be printed by the House. All of this begs the question: why should there be a distinction at all?

If the committee is not inclined to remove the distinction, I would submit that a provision be inserted in the Act which provides that to remove any doubt, certain classes of documents are deemed to be printed when they are tabled (or deemed tabled) in the Assembly. These could include:

- (a) committee reports
- (b) Bills and explanatory notes to Bills;
- (c) Annual reports or statements required or permitted to be tabled under the *Financial Administration and Audit Act* or any other Act.

- I note that the Bill proposed by the former committee uses the terminology “chairperson”, whereas the Standing Orders still refer to “chairman”. I have no preference for chairperson or chairman – it is a matter for the Assembly. However, it is obviously better if there is consistency between the Bill and the Standing Orders.
- I note that there is some inconsistency in capitalisation in the Bills. For example, Speaker is in uppercase, but the Clerk of the Parliament and the Clerk is in lower case. I appreciate that Parliamentary Counsel has unilaterally decided upon using lower case for some offices (Parliamentary Counsel not being one). However, I humbly submit that in the context of the Parliament of Queensland Bill the Clerk of the Parliament warrants an upper case.
- Generally, I note the following minor typographical matters.
 - ◊ The Parliament of Queensland Bill 1998 Explanatory Notes, cl.39, p.10 should read “provides that the Speaker on the Assembly’s resolution may issue a warrant for the apprehension and imprisonment of a person fined for contempt if the fine is not paid as required by the Assembly”.
 - ◊ The Parliament of Queensland Bill 1998 Explanatory Notes, cl.14, p.5 end of last sentence should read “provide that the longest continually serving member of the House, not being a Minister, shall preside over the election of the Speaker.”
 - ◊ “Clerk” in the Explanatory Notes is in lower case.

Robert Doyle
The Clerk of the Parliament