

LEGISLATIVE ASSEMBLY OF

*Queensland*

*Legal, Constitutional and Administrative Review Committee*

Report No. 13, April 1999

**Consolidation of the Queensland Constitution:  
Final Report**

*Including the committee's final draft:*

*Constitution of Queensland Bill 1999*

*Parliament of Queensland Bill 1999*

Report on

LEGISLATIVE ASSEMBLY OF QUEENSLAND

LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

**Consolidation of the Queensland Constitution**

**April 1999**

**Report No. 13**

## LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

<b>REPORTS</b>		<b>DATE TABLED</b>
1.	Annual report 1995-96	8 August 1996
2.	Report on matters pertaining to the Electoral Commission of Queensland	8 August 1996
3.	Review of the Referendums Bill 1996	14 November 1996
4.	Truth in political advertising	3 December 1996
5.	Report on the Electoral Amendment Bill 1996	20 March 1997
6.	Report on the study tour relating to the preservation and enhancement of individuals' rights and freedoms and to privacy (31 March 1997—14 April 1997)	1 October 1997
7.	Annual report 1996-97	30 October 1997
8.	The Criminal Law (Sex Offenders Reporting) Bill 1997	25 February 1998
9.	Privacy in Queensland	9 April 1998
10.	Consolidation of the Queensland Constitution - Interim report	19 May 1998
11.	Annual report 1997-98	26 August 1998
12.	The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?	18 November 1998
<b>ISSUES PAPERS</b>		<b>DATE TABLED</b>
1.	Truth in political advertising	11 July 1996
2.	Privacy in Queensland	4 June 1997
3.	The preservation and enhancement of individuals' rights and freedoms: Should Queensland adopt a bill of rights?	1 October 1997
<b>INFORMATION PAPERS</b>		<b>DATE TABLED</b>
1.	Upper Houses	27 November 1997

Copies of this report and other LCARC publications are available on the Internet via Queensland Parliament's home page at <http://www.parliament.qld.gov.au>.

The committee's contact details are:

Legal, Constitutional and Administrative Review Committee  
Parliament House  
George Street, Brisbane, Qld, 4000.

Tel: (07) 3406 7307  
Fax: (07) 3406 7070  
Email: [lcarc@parliament.qld.gov.au](mailto:lcarc@parliament.qld.gov.au)

## LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

### 48<sup>TH</sup> PARLIAMENT

#### SECOND SESSION

CHAIR:	Mrs Judy Gamin MLA, Member for Burleigh
DEPUTY CHAIR:	Mr Darryl Briskey MLA, Member for Cleveland
MEMBERS:	Mr Frank Carroll MLA, Member for Mansfield
	Mr Ken McElligott MLA, Member for Thuringowa
	Hon Glen Milliner MLA, Member for Ferny Grove
	Miss Fiona Simpson MLA, Member for Maroochydhore
RESEARCH DIRECTOR:	Ms Kerryn Newton
SENIOR RESEARCH OFFICER:	Mr David Thannhauser
EXECUTIVE ASSISTANT:	Ms Tania Jackman

### 49<sup>TH</sup> PARLIAMENT

CHAIR:	Mr Gary Fenlon MLA, Member for Greenslopes
DEPUTY CHAIR:	Mrs Judy Gamin MLA, Member for Burleigh
MEMBERS:	Mr Denver Beanland MLA, Member for Indooroopilly
	Ms Desley Boyle MLA, Member for Cairns
	Dr Peter Prenzler MLA, Member for Lockyer*
	Mr Geoff Wilson MLA, Member for Ferny Grove
RESEARCH DIRECTOR:	Ms Kerryn Newton
PRINCIPAL RESEARCH OFFICER:	Mr David Thannhauser
EXECUTIVE ASSISTANT:	Ms Tania Jackman

\* The Legislative Assembly appointed Dr Prenzler to the committee on 11 November 1998 to replace Mr Charles Rappolt whose resignation from Parliament was received by the Speaker of the Legislative Assembly on 4 November 1998.

## **CHAIRMAN'S FOREWORD**

This report finalises an inquiry into the consolidation of the Queensland Constitution undertaken by our predecessor, the LCARC of the second session of the 48<sup>th</sup> Parliament. The consolidation process itself was initiated by the former Electoral and Administrative Review Commission (EARC) in 1993.

In May 1998, our predecessor committee released a consultation draft Constitution of Queensland Act 1998 (Reprint) and Parliament of Queensland Bill 1998 as part of its interim report. Public submissions on these draft Bills remained open for four months.

Soon after our appointment as the LCARC of the 49<sup>th</sup> Parliament, we resolved to continue this important inquiry. We believe that Queensland's Constitution should be accessible to all citizens. By this, we mean that the people of Queensland should be able to readily locate, read and understand the laws that make up the State's Constitution. Accordingly, we have completed the process of bringing together and modernising the State's constitutional provisions. These provisions are currently scattered throughout numerous Acts and, in some cases, are difficult to interpret.

We believe that we have drafted a more accessible constitution via our final Constitution of Queensland Bill 1999 which contains fundamental provisions relating to the Parliament, the Governor, Ministers, Executive Council, the Courts, parliamentary control of revenue and local government. Our adjunct Parliament of Queensland Bill 1999 likewise creates greater clarity as it consolidates the law relating to the Parliament, its procedures and powers, its members and committees.

Essentially, we endorse the former LCARC's Bills. However, we have made amendments to the Bills implementing suggestions made in public submissions that we considered appropriate. We have also changed the approach taken in the Bills to dealing with the entrenched provisions found in existing constitutional legislation.

We recommend in this report that the Premier, as the Minister responsible for constitutional legislation, bring before the Parliament two Bills based on our Constitution and Parliament Bills. We also recommend that the Premier ensure that the final consolidated Constitution Act is readily available to the public so that Queenslanders can better access the fundamental laws relating to the governance of the State.

Our draft legislation for a consolidated Constitution is all the more timely in light of the upcoming federal referendum on Australia becoming a republic. It will no doubt assist Queenslanders as they consider what constitutional requirements there should be at State level if Australians agree to a republic at federal level.

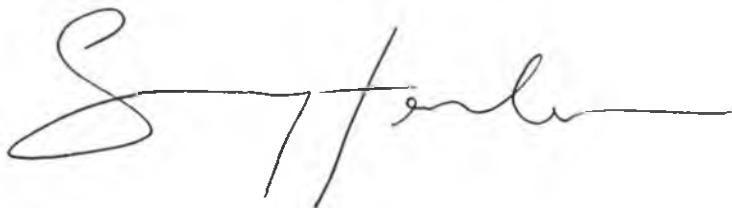
These draft Bills will provide a sound foundation upon which Queensland's place in an Australian federation of the future may evolve as well as one which engenders connection to our past.

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On behalf of the committee, I thank Parliamentary Counsel, Mr Peter Drew, and his dedicated officers, particularly Ms Theresa Johnson and Mr Steven Berg, for their assistance in preparing our draft legislation. I also thank Gerard Carney, Associate Professor of Law, Bond University, for his timely, expert advice and the committee's staff, Ms Kerryn Newton, Research Director, Mr David Thannhauser, Principal Research Officer and Ms Tania Jackman, Executive Assistant for their assistance throughout this inquiry.

I especially thank those people who submitted invaluable comments on the Bills for their time and effort which, in many cases, was evidently considerable.

Finally, I thank the members of both the former and current committees who through their hard work and co-operation have enabled the draft legislation in this final report to eventuate.

A handwritten signature in cursive script, appearing to read 'Gary Fenlon', written in black ink.

Gary Fenlon MLA  
Chair

22 April 1999

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# **PART I**

## **FINAL REPORT**

# **PART II**

## **CONSTITUTION OF QUEENSLAND BILL 1999**

**CONSTITUTION OF QUEENSLAND BILL 1999 (FINAL DRAFT)**

**NOTES TO THE BILL**

**TABLE COMPARING CLAUSES OF THE CONSOLIDATED CONSTITUTION WITH  
EXISTING PROVISIONS**

# **PART III**

## **PARLIAMENT OF QUEENSLAND BILL 1999**

**PARLIAMENT OF QUEENSLAND BILL 1999 (FINAL DRAFT)**

**NOTES TO THE BILL**

# PART I

## FINAL REPORT

### CONTENTS

	PAGE
<b>1. INTRODUCTION .....</b>	<b>1</b>
1.1 THE GENESIS OF THE CONSOLIDATION EXERCISE .....	1
1.2 THE FORMER COMMITTEE'S WORK .....	2
1.3 THE CURRENT COMMITTEE'S WORK .....	3
<b>2. ISSUES RAISED IN PUBLIC SUBMISSIONS .....</b>	<b>6</b>
2.1 THE NATURE OF SUBMISSIONS RECEIVED .....	6
2.2 'EXPERT' SUBMISSIONS .....	6
2.3 DEALING WITH THE ENTRENCHED PROVISIONS .....	7
2.3.1 <i>EARC's 'relocation' approach</i> .....	9
2.3.2 <i>The committee's earlier position reflected in the consultation draft Constitution Bill</i> .....	10
2.3.3 <i>Submissions responding to the consultation draft version and further advice</i> .....	11
2.3.4 <i>Conclusion: The committee's final position (in the attached Constitution Bill)</i> .....	14
2.4 ISSUES RAISED IN 'FORM' SUBMISSIONS .....	15
<b>3. OTHER MATTERS IMPACTING ON THE CONSOLIDATION EXERCISE.....</b>	<b>17</b>
3.1 MATTERS RAISED BY THE MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE .....	17
3.1.1 <i>The Members' Ethics and Parliamentary Privileges Committee's Report no 26</i> .....	17
3.1.2 <i>The MEPPC's supplementary submission</i> .....	18
3.2 THE PARLIAMENTARY MEMBERS (OFFICE OF PROFIT) AMENDMENT BILL 1999.....	21
<b>4. CONCLUSION AND RECOMMENDATIONS.....</b>	<b>23</b>
4.1 THE COMMITTEE'S RECOMMENDATIONS .....	23
4.2 POSTSCRIPT: WIDER STATE CONSTITUTIONAL MATTERS.....	24
<b>APPENDIX A SUBMISSIONS RECEIVED .....</b>	<b>27</b>



## 1. INTRODUCTION

### 1.1 THE GENESIS OF THE CONSOLIDATION EXERCISE

The *Parliamentary Committees Act 1995* (Qld) establishes the Legal, Constitutional and Administrative Review Committee ('the committee' or 'LCARC') and provides that one of the committee's areas of responsibility is 'constitutional reform'.<sup>1</sup> This report represents the finalisation of an inquiry to consolidate Queensland's Constitution that was undertaken by this committee's predecessor, the LCARC of the second session of the 48<sup>th</sup> Parliament. The former committee reached the stage of releasing a consultation draft Constitution of Queensland Bill and Parliament of Queensland Bill as part of its May 1998 *Consolidation of the Queensland Constitution: Interim Report*, report no 10 ('the interim report').

The impetus for the former committee's inquiry was a recognition that, unlike the Commonwealth Constitution, the Queensland Constitution is not contained in one single document. Citizens wanting to ascertain Queensland's Constitution must sift through an array of Acts and laws. Moreover, many of the State's constitutional provisions are written in archaic language. Accordingly, on 2 May 1996 the former committee resolved that, in discharging its responsibilities in relation to constitutional reform, it would commence an inquiry into consolidating Queensland's Constitution. In particular, the former committee resolved that:

- the terms of reference for its inquiry be to inquire into and report to the Legislative Assembly as to how all Acts and laws relating to the Queensland Constitution might be consolidated, as far as possible, into one Act; and
- the committee's inquiry not extend to recommending any major changes of substance to the current Constitution.

As this resolution indicates, the former committee envisaged that its consolidation exercise would be one of *form* rather than *substance*. **The aim of the exercise was to consolidate existing constitutional legislative provisions and modernise the language of the provisions rather than to change the meaning of the Constitution.** Nevertheless, the committee realised that:

- the consolidation process itself would present some issues of a substantial nature that would require resolution; and
- the result of the exercise—a consolidated Constitution—would facilitate *future* consideration of any proposals for wider State constitutional reform.

The LCARC is not the first body to attempt a consolidation of Queensland's Constitution. The consolidation process was actually initiated by the former Electoral and Administrative Review Commission (EARC). EARC reported on its inquiry in its August 1993 *Report on Consolidation and Review of the Queensland Constitution* (EARC's 'consolidation report').<sup>2</sup> EARC's oversight committee, the Parliamentary Committee for Electoral and Administrative

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<sup>1</sup> *Parliamentary Committees Act 1995*, ss 9 and 11.

<sup>2</sup> EARC, *Report on Consolidation and Review of the Queensland Constitution*, Government Printer, Brisbane, August 1993.

Review (PCEAR), subsequently commented on aspects of EARC's work in its 1994 report on the issue.<sup>3</sup>

However, the former LCARC was not convinced that EARC had completed the exercise to the stage where definitive consolidatory legislation could be introduced into the Legislative Assembly. Hence, the former committee sought to complete this complex task.

## **1.2 THE FORMER COMMITTEE'S WORK**

Whilst drawing on the work of EARC and the PCEAR, the former committee essentially had to consider the consolidation exercise afresh so as to be fully confident in the final draft legislation that it would present to the Legislative Assembly.

In summary, the former committee's approach involved:

- identifying which existing statutory provisions and laws were of sufficient constitutional significance to be worthy of inclusion in a consolidated Constitution;
- considering how to best bring those relevant provisions together and how to best modernise or otherwise redraft them, if necessary;
- instructing the Office of Queensland Parliamentary Counsel ('OQPC') to draft appropriate consolidatory legislation; and
- engaging Mr Gerard Carney, Associate Professor of Law at Bond University and Barrister-at-Law, to review the committee's draft legislation.

The groundwork involved in the consolidation exercise was evidently time-consuming. A number of technical difficulties were caused by complex and, by today's standards, poorly drafted provisions. The former committee found that some provisions were superfluous and others no longer of any legal significance and apt for repeal.

In drawing together the various constitutional provisions it became apparent that a number of provisions conflicted. This required the former committee to make some changes that were of 'substance' rather than simply of 'form'.<sup>4</sup>

It also became apparent that the goal of making the State's constitutional arrangements more accessible and easier to understand would be better served by two rather than one primary statute. Hence, the former committee ultimately produced:

- a consultation draft Constitution of Queensland Act 1998 in reprint form ('the Constitution Bill') dealing with the Legislative Assembly, Ministers, the Governor, the Supreme Court and District Court, and local government; and
- a consultation draft Parliament of Queensland Bill ('the Parliament Bill') setting out the powers, rights and immunities of the Legislative Assembly, its members and committees.

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<sup>3</sup> PCEAR, *Report on Consolidation and Review of the Queensland Constitution*, Government Printer, Brisbane, November 1994.

<sup>4</sup> Changes of 'substance' were highlighted in the notes to the resultant consultation draft Bills. These notes formed part of the former committee's May 1998 interim report.

The former committee presented its consultation draft Bills (together with notes to the Bills) in its interim report which it tabled on 19 May 1998, the same day as the 48<sup>th</sup> Parliament was dissolved for the 1998 State election. In addition, the committee posted on its Internet website a detailed table comparing the clauses of its Constitution Bill with the existing provisions upon which those clauses were based.

The former committee's interim report invited public submissions on its draft Bills. The committee hoped to stimulate wide public input in the consolidation exercise. It set a deadline for submissions of some four months (until 25 September 1998) and distributed 450 copies of the interim report to persons and organisations which the committee believed might be interested in commenting on the draft Bills. A further 100 copies were mailed out in response to subsequent inquiries from members of the public.

The former committee's work, and the earlier EARC and PEARC reports on the consolidation of the Queensland Constitution, are discussed more fully in the interim report.

### 1.3 THE CURRENT COMMITTEE'S WORK

The LCARC of the 49<sup>th</sup> Parliament was appointed on 30 July 1998. Soon after its appointment, the current committee resolved to complete the inquiry into the consolidation of the Queensland Constitution.

The current committee agrees with the former committee that it is important to bring together Queensland's disparate constitutional laws and modernise them in one easy-to-read document. In this committee's view, the benefits of the consolidation exercise are twofold.

Firstly, the exercise will make Queensland's Constitution more accessible to Queenslanders by allowing them to more readily identify and understand the rules and principles that apply to the governance of the State.

Secondly, a consolidated Constitution will provide a sound foundation for any future State constitutional reform. This is particularly important in light of the federal referendum for a republic scheduled for November 1999. Queenslanders will need to consider the implications of that referendum, if successful, for Queensland's constitutional arrangements.

**Like the former committee, the current committee considered that the consolidation exercise should be about consolidating and modernising constitutional *legislation*. The committee did not envisage that it should give legislative effect to constitutional conventions. For example, in restating s 3(1) of the *Officials in Parliament Act 1896*, cl 38(1) of the committee's Constitution of Queensland Bill 1999 states that the Governor may appoint *a person* to be a Minister of the State. Long-held constitutional convention dictates that, as a matter of course, the Governor appoints a *Member* of the Legislative Assembly to be a Minister of the State. Likewise, a convention exists that a Governor is appointed for a term of five years. However, the committee's Constitution Bill does not stipulate the length of a Governor's appointment.**

Also, like the former committee, the current committee was of the view that:

- the consolidation exercise was not an appropriate vehicle for wholesale constitutional reform, though the consolidation process had presented some substantial issues that had to be and were addressed;

- given the nature of the exercise, the committee would not be suggesting to Parliament that additional constitutional provisions be entrenched;<sup>5</sup> and
- should any further entrenchment of the Constitution be considered in the future, the contents of the committee's consolidated Constitution be revisited.

The current committee advertised that it was completing the consolidation inquiry in *The Courier-Mail* on 12 August 1998 and reiterated that submissions on the consultation draft Bills would remain open until 25 September 1998.

The committee received a total of 58 submissions responding to the proposed legislation. A list of the persons and organisations who made (non-confidential) submissions, which the committee tabled in November 1998, is attached as **appendix A**.

Once submissions had closed, the committee again engaged Mr Carney to advise on certain legal aspects of adopting those suggestions made in submissions that the committee considered desirable.

The committee also felt it appropriate to consider two further matters which arose subsequent to the tabling of the interim report.

Firstly, the committee considered issues raised and recommendations made by the Members' Ethics and Parliamentary Privileges Committee (MEPPC) of the Queensland Parliament in its then recently-published *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members*<sup>6</sup> (tabled 8 January 1999). This report, in effect, constituted the MEPPC's submission to the committee's consolidation inquiry. The MEPPC later provided the committee with a supplementary submission dated 10 March 1999.

Secondly, the committee considered the highly pertinent Parliamentary Members (Office of Profit) Amendment Bill 1999 which was introduced into the Assembly on 24 March 1999.

The manner in which this committee has dealt with the MEPPC's recommendations/submissions and the provisions of the Parliamentary Members (Office of Profit) Amendment Bill 1999 is discussed in chapter 3 of this report.

After considering public submissions, the MEPPC's recommendations, Mr Carney's advice and the Parliamentary Members (Office of Profit) Amendment Bill, the committee forwarded further drafting instructions to Parliamentary Counsel to prepare finalised draft versions of the Bills. The committee's final draft Constitution of Queensland Bill 1999 is presented in part II of this report, together with:

- updated notes to the Bill; and
- a table comparing the clauses of the Bill with the existing provisions upon which they are based. (This table is an update of the earlier version that the committee had posted on its Internet website with the release of its interim report.)

The committee's final draft Parliament of Queensland Bill 1999 is presented in part III of this report, together with updated notes to the Bill.

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<sup>5</sup> Refer to section 2.3 of this report for a discussion of entrenchment.

<sup>6</sup> MEPPC, report no 26, Government Printer, Brisbane, January 1999.

The remaining chapters of part I of this report provide important background information on the development of the Bills.

Chapters 2 and 3 explain briefly the committee's approach to amending the Bills in light of issues raised in public submissions and in response to the MEPPC's recommendations/submissions.

Many of the amendments to the consultation drafts of the Constitution Bill and Parliament Bill are minor. For example, some amendments merely clarify or add to the readability of the existing law. Other amendments are substantive. The substantive amendments are noted in the updated notes to the Bills.

One significant substantive issue which the committee has revisited since the release of the interim report concerns how the Bills deal with those provisions of the Queensland Constitution which are currently entrenched. Chapter 2 explains what entrenchment is and— together with the notes to the Constitution Bill—explains how the committee has dealt with the entrenched and entrenching provisions in its consolidation exercise.

In chapter 4 the committee makes recommendations regarding its inquiry and canvasses issues of constitutional reform brought to its attention but which it has not addressed as part of this inquiry.

## 2. ISSUES RAISED IN PUBLIC SUBMISSIONS

### 2.1 THE NATURE OF SUBMISSIONS RECEIVED

Submissions received by the committee in relation to the consultation draft Constitution Bill and Parliament Bill roughly fell into three (albeit overlapping) categories, namely:

1. submissions from: (a) persons with extensive expertise in parliamentary procedure and constitutional law (such as the Clerk of the Queensland Parliament, the Clerk of the Senate and constitutional lawyers); and (b) officers of bodies which have a direct interest in the State's constitutional arrangements (such as State Government departments and agencies and the Local Government Association);
2. submissions concerning the validity or effectiveness of the consultation draft Bills in dealing with existing entrenched provisions; and
3. numerous submissions (many in the form of slight deviations to a pro forma letter) alleging that the Bills attempted to:
  - reduce the status and powers of the Governor and the Queen (by, for example, replacing references to 'the Queen/Her Majesty' with references to 'the Sovereign');
  - remove important existing safeguards to the rights of Queenslanders (by, for example, deleting the preamble to the *Constitution Act 1867*); and
  - contravene the requirements of s 53 of the *Constitution Act 1867* (which entrenches certain sections of that Act).

The committee considered all submissions<sup>7</sup> and whether any concerns or suggested amendments contained in them were worthy of putting into effect by changing the consultation draft versions of the Constitutional Bill and/or Parliament Bill.

How the committee dealt with the issues raised in the above three categories of submissions is discussed in general terms in the rest of this chapter. Specific changes to the drafting of the committee's finalised Bills responding to suggestions made in submissions are noted in dialogue boxes and/or the text of the respective notes to the Bills.

### 2.2 'EXPERT' SUBMISSIONS

Submissions in this first category related to both the form and substance of the consultation draft Bills. The committee has implemented most of the suggestions contained in these

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<sup>7</sup> Some submitters requested that their submission remain confidential. The committee resolved not to authorise the publication of these submissions. The committee also resolved to edit certain sections of a few submissions which it otherwise tabled. Whilst the committee makes no specific reference in this report to the persons who made confidential submissions, the committee has given their submissions full consideration.

submissions that related to matters of form (such as any drafting errors or inadvertent changes brought about by transcribing and redrafting the original provisions).

Various submissions in this category also suggested that the consolidation exercise presented a timely opportunity to effect certain changes of substance which might be considered as going beyond the strict consolidation of existing provisions but were, it was suggested, prudent to clarify certain aspects of existing law. The committee has, in several cases, agreed that it would be remiss not to take the opportunity to clarify particular areas of the law as suggested, even where such additions or alterations might be considered substantial amendments to the Bills.

However, the committee has resisted other calls in the submissions for substantive additions or alterations to the Bills where the committee considered that such amendments would have gone beyond mere clarification of existing law. Some of the suggestions considered by the committee to be beyond the scope of the current consolidation exercise nevertheless raise issues which the committee believes are worthy of further inquiry, possibly by this committee, at a later time.<sup>8</sup>

One submission that the committee has not implemented and which the committee wishes to specifically address is that from the Travelsafe Committee of the Queensland Parliament. Travelsafe's terms of reference are to monitor, investigate and report on issues affecting road safety, the safety of passenger transport services and measures for the enhancement of public transport and reducing dependence on private motor vehicles. Travelsafe is a *select* committee of the Queensland Parliament. The resolution establishing Travelsafe and providing it with its terms of reference is passed with each new Parliament. This is to be contrasted with the position of *statutory* committees (like this committee, which is established under the *Parliamentary Committees Act 1995*). Statutory committees continue despite the prorogation or dissolution of Parliament, albeit usually with new membership when Parliament recommences.<sup>9</sup>

Travelsafe submitted that it was timely for it be granted status as a statutory committee. Travelsafe submitted that '*the establishment of Travelsafe Committees as select committees has hindered their operations in several ways*'. Particular concerns noted by Travelsafe included, the lack of a permanent secretariat, uncertainty as to whether the committee would be re-established with each new Parliament and, if re-established, what the committee's terms of reference would be. Travelsafe also submitted that previous Travelsafe Committees had lobbied Government/Parliament for statutory status.

This committee appreciates Travelsafe's concerns. However, the committee believes that the matter is one for the Parliament. If the Parliament wishes to change the status of the Travelsafe Committee, it could do so when the consolidated Parliament Bill comes before it.

## 2.3 DEALING WITH THE ENTRENCHED PROVISIONS

The committee received a number of submissions concerning the validity and appropriateness of how the consultation draft Bills dealt with existing entrenched provisions. While the

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<sup>8</sup> In chapter 4 the committee discusses some of the State constitutional topics that might be worthy of further inquiry.

<sup>9</sup> The LCARC proposes that the provisions of the *Parliamentary Committees Act* be re-enacted as chapter 6 of its omnibus Parliament of Queensland Bill 1999.

committee briefly described its approach to entrenchment in the notes to its consultation draft Constitution of Queensland Act 1998 (Reprint), it is prudent to discuss here the challenges presented to the consolidation exercise by existing entrenched provisions. This is especially so now that the committee has decided to alter the approach to dealing with the entrenched provisions that was reflected in the consultation draft version of the Constitution Bill.

Entrenched provisions are laws enacted by Parliament that may not be repealed or amended, or the effect of which may not be altered, by Parliament unless it follows a special, additional procedure, such as approval by the majority of electors at referendum or approval by a two-thirds majority in the Parliament. The entrenchment of a law reflects Parliament's intention to protect a law that it considers to be of special significance, by inhibiting a successor Parliament's ability to amend the law through the normal law-making procedure.

The entrenchment of a law usually occurs by a substantive provision (the 'entrenched provision') being subjected to another provision (the 'entrenching provision') which states that the substantive provision may not be repealed or affected without observance of the special additional procedure. To truly entrench a law, the entrenching provision must also subject itself to a/the same special procedural requirement before it can be amended (that is, the entrenching provision entrenches itself). When this occurs, the substantive provision is said to be 'doubly entrenched'.

In Queensland, there are currently entrenched constitutional provisions contained in the:

- (a) *Constitution Act 1867* (CA); namely, ss 1, 2, 2A, 11A, 11B and s 53 (which are entrenched by s 53 of that Act);<sup>10</sup>
- (b) *Constitution Act Amendment Act 1890* (CAAA 1890), s 2 [which is entrenched by s 4 of the *Constitution Act Amendment Act 1934* (CAAA 1934)]; and
- (c) CAAA 1934, ss 3 (which entrenches itself) and 4 (which also entrenches itself).

The actual terms of the entrenchment of the provisions listed in (a), (b) and (c) differ (discussed further below), although all the entrenching provisions listed: (i) are doubly entrenched; and (ii) specify that the additional special procedure to be followed is that of obtaining the approval of a majority of electors at a referendum before a Bill can, for example, repeal the entrenched laws.

From the start of the consolidation exercise, the committee has proceeded (and continues to proceed) on the *assumption* that each of the entrenched provisions are validly entrenched. There exists, however, a difference of opinion as to whether all of the provisions listed above are validly protected by their purported entrenchment.<sup>11</sup> There also exists a difference of opinion about what any particular entrenchment means (in terms of the specific limitations that it sets on a future Parliament that wants to make changes to the entrenched law). The law is not clear on these matters.

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<sup>10</sup> Note that until recently CA s 14 was listed in CA s 53 as one of the provisions entrenched by CA s 53. Since the committee's interim report was published, s 146 of the *Public Service Act 1996* has commenced. Section 146 amended CA s 14 and also deleted the reference to s 14 in CA s 53.

<sup>11</sup> For example, there is an argument that, at least since 1934, s 53 CA 1867 may not be effective whatsoever as an entrenching provision. (Mr Pyke addresses this argument in his submission no 52 dated 29 September 1998. See also EARC's consolidation report, pp 34-36 and 66-74.) Given that this debate is unresolved and, in the absence of a Supreme Court decision as to the validity of s 53, both this committee and the former committee have proceeded on the basis that s 53 is effective as an entrenching provision.



The committee's aim in this exercise was to produce a modern Constitution Act that consolidates existing State constitutional provisions to the greatest extent possible and that is also readable by using modern drafting. The entrenched provisions (assuming they are validly entrenched) are impediments to both aspects of this aim. Firstly, the entrenched provisions exist in different Acts and, without a referendum, cannot be simply transferred between Acts to be brought together. Secondly, without a referendum the entrenchment of these provisions, depending on the terms of their entrenchment, presents at least some bars as to how they can be redrafted in modern drafting style.

Like EARC before it, the committee is not prepared to recommend at this stage the holding of a referendum merely to facilitate the bringing together and modernisation of *existing* laws that happen to be entrenched. (The committee in this report does not propose *any* changes to the effect of the entrenched laws.) Instead, as mentioned before, the committee wished to proceed with the consolidation and modernisation of the Constitution within those confines set by the entrenching provisions.

Since the start of this exercise, the committee has been aware of various broad approaches (and variations within those approaches) that it could take to effect a Constitution that was consolidated and modernised as much as possible but nevertheless incomplete in light of the existing constitutional provisions that are entrenched. These approaches are outlined in the following discussion.

To help explain both the committee's (final) approach to dealing with the entrenched provisions and the submissions that it received concerning the issue, it is instructive to outline the process of how the committee came to its (final) position on how to most appropriately deal with the entrenched provisions in its consolidation exercise.

In summary, the committee:

- (1) considered but rejected EARC's approach;
- (2) came to a position on the matter in its consultation draft version of its consolidated Constitution;
- (3) further considered the matter in light of public submissions responding to its consultation draft Constitution Bill and further advice that it received; and
- (4) accordingly, adopted the position reflected in the attached final draft Constitution Bill.

These steps are now discussed more fully.

### **2.3.1 EARC's 'relocation' approach**

EARC's approach to consolidating the (entrenched provisions of the) Queensland Constitution was to:

- (i) create a new Constitution Act 1993 (Reprint);
- (ii) 'relocate' the entrenched provisions of the CA 1867, CAAA 1890 and CAAA 1934 into the body of that Act [with their *entrenching* provisions—CA 1867, s 53; CAAA 1934, ss 3 and 4—into a schedule of that Act] with notations that the provisions were entrenched and 'relocated';

- (iii) modernise some of the (relocated) entrenched CA provisions in a very limited manner (that is, by replacing references to the 'colony' of Queensland with references to the 'State' and by changing 'his' to 'the Governor's');
- (iv) renumber all sections in accordance with the *Reprints Act* 1992;<sup>12</sup> and
- (v) repeal the CA 1867, the CAAA 1890 and the CAAA 1934.

EARC's approach appears to have proceeded on the basis that the text of *all* entrenched provisions should not be amended (except for the minor amendments noted above) but that they nevertheless could be 'relocated' from the original Acts to the new consolidated Constitution Act.<sup>13</sup>

In terms of outcome, EARC's approach neatly brought the Acts together. There would have been one Constitution Act 1993, with the CA 1867 and its 1890 and 1934 amending Acts purportedly repealed. In terms of modernisation, EARC's consolidated Constitution would have contained (except for the minor amendments above) the entrenched provisions as currently worded; that is, out of place with the modern drafting style of the remainder of the new Constitution Act.

However, this committee has reservations about EARC's approach.<sup>14</sup> The committee is of the opinion that Parliament cannot simply 'relocate' entrenched provisions across Acts because, technically, such a relocation would involve repeal and re-enactment, repeal being prevented by the entrenching provisions.

### 2.3.2 The committee's earlier position reflected in the consultation draft Constitution Bill

The approach (now changed) taken by the former committee in the consultation draft version of its Constitution Bill was to:

- (i) make minimal stylistic amendments to the entrenched provisions of the CA 1867 (ss 1, 2, 2A, 11A, 11B, 14,<sup>15</sup> and 53) and to the CAAA 1890 (s 2) that were intended to delete anachronistic references and modernise the provisions but keep their legal effect exactly the same. (The entrenched CA provisions would have been renumbered in the resultant Act.);<sup>16</sup>
- (ii) using the CA 1867 as a shell, substitute all other provisions in the *Constitution Act 1867* with consolidated and modernised provisions, renumber the provisions and rename the Act the *Constitution of Queensland Act 1998* (Reprint);<sup>17</sup>
- (iii) leave s 2 of the CAAA 1890 as modernised in that Act; and

<sup>12</sup> See EARC's discussion and recommendation on this point in EARC, consolidation report, pp 66-73, particularly, para 6.44.

<sup>13</sup> As to how this was effected, see schedule 2 (Relocations) to EARC's Queensland Constitution Bill 1993 [appendix B of EARC's consolidation report].

<sup>14</sup> The committee's reservations about the validity of EARC's approach seems to have been shared by a number of submitters to EARC: For example, see EARC, consolidation report, p 69 (Mr John Pyke) and p 72 (Professor Lumb).

<sup>15</sup> Section 14 of the *Constitution Act 1867* was at that stage (before the commencement of s 146 of the *Public Service Act 1996*) referred to in s 53 of that Act.

<sup>16</sup> This was done via the committee's Constitution Amendment Bill (No 1), and see cl 73 (Stylistic amendments and renumbering) of the consultation draft Constitution Act (Reprint).

<sup>17</sup> This was done via the Constitution Amendment Bill (No 2).

- (iv) make no changes whatsoever to the entrenched provisions of the CAAA 1934 (ss 3 and 4) and leave them in that Act.

The approach taken in the committee's consultation draft version of the Constitution Bill proceeded on the basis that: the text of ss 3 and 4 of the CAAA 1934 could not be amended; but that the text of s 2 of the CAAA 1890 and the text of ss 1, 2, 2A, 11A, 11B, 14 and 53 of the CA 1867 could be changed stylistically so long as the effect of the provisions remained exactly the same. The committee's approach was based on its view that the requirements of the provisions entrenching ss 3 and 4 of the CAAA 1934 are different from the requirements of the provisions entrenching the other entrenched provisions (of the 1867 and 1890 Acts). The distinction is explained in the quote from the committee's consultant, Mr Gerard Carney, later in this section.

The approach taken in the consultation draft Constitution Bill recognised that the entrenched provisions could not be simply 'relocated' between Acts. The approach meant that the existing CA 1867 was used as a shell in which to insert all other (non-entrenched) consolidated and modernised constitutional provisions (around the entrenched provisions of that Act). CAAA 1890, s 2 and CAAA 1934, ss 3 and 4 were accordingly not 'relocated' to the consolidated Constitution.<sup>18</sup> The result would have been a modernised consolidated Constitution (including the entrenched CA 1867 provisions modernised to the extent possible), but the 1890 and 1934 Acts would have co-existed.

The committee continues to be of the opinion that its consultation draft version of the consolidated Constitution would, in terms of its handling of the entrenched provisions, have likely been considered by the Supreme Court as legally valid and effective. However, in light of submissions that it received on the matter and further advice that it has sought, the committee—out of an abundance of caution—has altered its approach to consolidating and modernising the entrenched provisions, though with a similar result. The committee sees other advantages in its new approach, as explained below.

The committee's new approach is reflected in its finalised draft Constitution Bill attached to this report. This new approach is discussed in the following section.

### 2.3.3 Submissions responding to the consultation draft version and further advice

From the outset of this exercise and in accordance with advice it has received, this committee and its predecessor have been aware that there are (at least) two ways in which s 53 of the CA 1867 might be interpreted. As made clear by its having made the stylistic amendments to the entrenched provisions of the CA 1867 in its consultation draft Constitution Bill, this committee had favoured what might be called a 'less rigid' interpretation of s 53.

Section 53(1) provides that:

*A bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of the Act namely—*

*sections 1, 2, 2A, 11A, 11B; and<sup>19</sup>*

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<sup>18</sup> Although, for completeness of reference, the text of those provisions was recognised in footnotes (not operative provisions) to the consolidated Act.

<sup>19</sup> See footnote 10 referring to the *Public Service Act 1996* amendment.

*this section 53*

*shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.*

Whether s 53—without a successful referendum—prohibits the technical, stylistic amendments to the entrenched sections of the CA 1867 that were proposed in the committee's consultation draft Constitution Bill depends on whether a Bill making those changes [that is, the former Constitution Amendment Bill (No 1)] would be held to 'expressly or impliedly in any way affect' those sections. The former committee thought not. It took the view that those entrenched provisions could be technically amended provided their legal effect remained *exactly* the same. This view was predicated on the basis that for a Bill to 'affect' any of the sections entrenched by s 53 it would need to alter the legal operation of the sections. The former committee considered that its stylistic changes did not do so.<sup>20</sup>

However, a number of submissions to the committee favoured a strict interpretation to s 53 and objected to the approach to entrenchment taken in the committee's consultation draft Constitution Bill since the committee had not recommended that the proposed legislation be approved at referendum.

In particular, Mr John Pyke, QUT Lecturer in Constitutional Law, argued that s 53 does not permit *any* stylistic changes (that is, either to the text or to the section numbers) to the entrenched provisions.<sup>21</sup> Mr Pyke referred to a number of judicial instances where "affect" had been interpreted widely. (Although, the committee notes that those authorities involve different statutory contexts quite unrelated to restrictions on the exercise of legislative power by a manner and form provision such as s 53.)

This committee sought further advice from Mr Carney on this issue. Mr Carney advised as follows:

*My further research on this issue has been unable to reveal any direct authority to support either interpretation of s 53. I maintain the view, however, that it is reasonably arguable that s 53 would be interpreted to permit these stylistic changes. In fact, I consider this interpretation to be the one intended by Parliament for several reasons. First, the clear objective of Parliament in s 53 was to preserve the office of Governor and the Westminster parliamentary system provided for by ss 1, 2, 2A, 11A, 11B and 14. In other words, its primary concern was with the substantive law. [Emphasis in original]*

*Legislative entrenchment can generally take one of two forms, either: (i) the section is protected from amendment or repeal (this covers both the substance and form of the law); or (ii) the legal effect of the section (ie the substance of the law) is protected. Both techniques have been used in Queensland. The first is seen in ss 3(6) and 4(6) of the Constitution Act Amendment Act 1934 (Qld) which adopt a fairly*

<sup>20</sup> This view on the technical amendment of the CA 1867 entrenched provisions accords with advice provided by the former Crown Solicitor, Mr KM O'Shea, to EARC that 'For an Act to "affect" any of the ... sections it would have to change its meaning in some way'. [See the Crown Solicitor's advice, published as appendix F of EARC's consolidation report.] The Crown Solicitor accordingly advised that, for example, he 'did not think there is any problem in substituting the word "State" for "colony" in [ss 1, 2 and 14 of the Constitution Act 1867]'.  
<sup>21</sup> Mr Pyke, submission no 52 dated 29 September 1998 and submission no 55 dated 11 October 1998.

common formula by protecting all the provisions in ss 3 and 4 from "repeal or amendment" without referendum approval.

The second technique is found in other subsections of those same sections. Section 3(1) prevents the re-introduction of an upper house without referendum approval and thereby protects the substantive effect of the Constitution Act Amendment Act 1922 (Qld). Similarly, s 4(1) prevents any change to the three year term of Parliament without referendum approval contrary to s 2 of the Constitution Act Amendment Act 1890 (Qld). None of these provisions prevents technical amendments; they only protect their substantive legal effect. A further example of the protection of substantive law only is found in s 53 itself in protecting against "the abolition of or alteration in the office of Governor".

The issue here is simply which of these two techniques did Parliament intend to adopt in s 53 by using the expression "in any way affects"? I would argue, despite the addition of "in any way", that the word "affects" indicates a concern only with the substance of the law. Had s 53 applied to a Bill which "amends or repeals" those sections, Parliament would have indicated an intention to protect both the substance and the form of those sections. To the same effect is the expression used in s 128 of the Commonwealth Constitution: "This Constitution shall not be altered except in the following manner..." (emphasis added). An "alteration" is a wider expression than "affect" if one is considering whether both substance and form of legislation is protected. In adopting the expression "in any way affects", it can be reasonably argued that Parliament intended something different.

However, Mr Carney went on to conclude (as he had earlier) that, given the lack of direct authority on the issue and that alternative interpretations are possible, it would nevertheless be prudent for the committee to adopt the strictest interpretation of s 53 to avoid the possibility of any challenge to the constitutional validity of the consolidation.

The safest approach, according to Mr Carney, was to leave the entrenched sections in the *Constitution Act 1867* unchanged in every respect, including the numbering of the sections. The modernised consolidated Constitution would exist separately from the existing *Constitution Act 1867* but could contain provisions identical in effect to the entrenched provisions of the 1867 Act. These parallel provisions could be expressed with all the stylistic changes that the committee had proposed in its consultation draft, leaving the original provisions intact in the CA 1867. Mr Carney also suggested that such an approach include the insertion of a clause in the Bill which deems, in the event that any act performed under a new provision is invalid, that it was performed under the corresponding original provision.

In his submission, Mr Pyke similarly recommended absolute caution; to make no amendment to the (original) text or numbering of any of the protected sections without approval at referendum. To avoid any suggestion of invalidity, Mr Pyke suggested the following (which accorded with Mr Carney's preferred option):

*Leave s 53 and the protected sections alone, but re-state the protected sections (apart, I would suggest, from s 53 itself) in the consolidating Act, so that most constitutional provisions can be read in the one Act. Each of the restated sections should then have a footnote explaining that it is a restatement of a section of the 1867 Act, and that s 53 prevents the "underlying" section being amended without a referendum. The 3-year-term provision of the 1890 Act could also be restated this way.*<sup>22</sup>

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<sup>22</sup> Mr Pyke, submission no 52 dated 29 September 1998.

In an additional submission to the committee, Mr Pyke suggested that the re-stated provisions should be accompanied in the new Constitution Act by:

- a section somewhat like your suggested s 73 [of the consultation draft Constitution Bill] declaring that it is not Parliament's intention to amend any of the entrenched sections, and that Parliament accepts that if any one of them is inconsistent with the original section then the original one prevails; and
- a footnote to each "restatement" section explaining that it is a restatement of a section of an Act that cannot be amended without referendum - and that in the unlikely chance that the restatement was not accurate, that the original version would represent the true law.<sup>23</sup>

Mr Pyke noted that a Bill, if approved by referendum, could be passed at a later time to repeal the original entrenched sections and replace the three entrenching sections with a new one in the 1999 Act. The later Bill could be left until after the November 1999 federal referendum on the republic. Should that referendum be successful, then substantial changes to the entrenched provisions would be necessary anyway and all of the issues relating to the entrenched sections, the Queen and the Governor could be put to the people's vote at the one time. Regardless of whether the people voted yes or no to a republic, Queensland could vote to have its entrenched constitutional provisions consolidated into one readable and valid Act.

#### 2.3.4 Conclusion: The committee's final position (in the attached Constitution Bill)

The committee is most concerned that its proposed legislation conforms with the requirements of existing entrenching provisions. Naturally, the committee wishes to avoid the situation where its legislation, once passed, would be open to constitutional challenge.

Due to considerations such as those raised by Mr Carney and Mr Pyke (highlighted above), the committee has changed to some extent its approach to the barriers to consolidation presented by the entrenched provisions. The approach that the committee now takes in its finalised draft Constitution Bill is to:

- (i) create a new Constitution of Queensland Bill 1999;
- (ii) make no amendments whatsoever to the entrenched provisions of the CA 1867 (ss 1, 2, 2A, 11A, 11B and 53) and keep those provisions in that Act, and as currently numbered;<sup>24</sup>
- (iii) leave s 2 of the CAAA 1890, as modernised in the schedule to the Bill, in that Act;
- (iv) restate CA 1867 ss 1, 2, 2A, 11A and 11B and CAAA 1890 s 2 in the Bill in modernised style [see cl 3A (Status of particular provisions) which provides that the restatements are not intended to change the law stated in the original provisions];<sup>25</sup> and

<sup>23</sup> Mr Pyke, supplementary submission no 55 dated 11 October 1998, p 1.

<sup>24</sup> The schedule to the Bill omits the other provisions of the CA 1867.

<sup>25</sup> In this regard, also note the *Acts Interpretation Act 1954*, s 14C (Changes of drafting practice not to affect meaning) which provides:

*14C. If—*

- (a) a provision of an Act expresses an idea in particular words; and
- (b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—
  - (i) the use of a clearer or simpler style; or
  - (ii) the use of gender-neutral language;

*the ideas must not be taken to be different merely because different words are used.*

- (v) make no changes whatsoever to the entrenched provisions of the CAAA 1934 (ss 3 and 4) and leave them in that Act.

Compared with the approach to consolidating the entrenched provisions in the consultation draft legislation, the committee's final approach is not as 'neat' a consolidation in that the 1867 Act would continue to exist as a separate statute (along with the 1890 and 1934 Acts). However, aside from the legal issues noted above, the committee considers that its new approach has an additional advantage. By 'restating' the original entrenched provisions in modern drafting style the committee has an opportunity to suggest, and the community has the opportunity to see, what the entrenched provisions might look like if there was a future proposal to modernise the original provisions.<sup>26</sup>

The outcome of the committee's consolidation exercise brings together Queensland's constitutional provisions *as far as possible*. The Constitution Amendment Acts of 1890 and 1934 and the original Constitution Act of 1867 will remain as separate statutes, co-existing with the proposed (consolidated) Constitution Act of 1999.<sup>27</sup> This is a consequence of the committee's opinion that those Acts cannot be repealed without a referendum because of the entrenched provisions contained within them.

It is a *future* matter for the people of Queensland at referendum to decide whether full consolidation (repeal of the 1867, 1890 and 1934 Acts and relocation of the entrenched provisions within them to the consolidated Constitution) should take place. The committee is not of the view that a separate referendum should be called for the mere consolidation of these Acts. However, the committee does believe that it is desirable that the issue of consolidation be added, if appropriate, to the next State referendum question. Such an opportunity might arise, for example:

- should any State referendum be held for Queensland to become a republic (in light of the November 1999 federal referendum on a federal republic); or
- should any future consideration about wider State constitutional reform result in a proposal that required a referendum to effect.

## 2.4 ISSUES RAISED IN 'FORM' SUBMISSIONS

A number of issues concerning the consultation draft Bills were raised by a number of submitters whose submissions consisted of a pro forma letter to the committee (and slight variations of that letter). The pro forma letter, and the variations to it, variously:

- endorsed the constitutional status quo and suggested that the changes that the committee was proposing were either unwarranted or illegal in light of the *Constitution Act 1867*, s 53 (Certain measures to be supported by referendum);
- imputed that the committee had expedient or republican motives for suggesting the changes; and

<sup>26</sup> The committee had considered the (also cautious) option of making no changes to the wording of the entrenched CA 1867 provisions while still using the 1867 Act as a shell in which to insert all the other provisions. However, the provisions would have appeared obviously outdated, s 2 of the CAAA would still have had to have been 'restated' in the 1867 Act and the question as to the validity of merely renumbering the entrenched CA provisions (see the next section of the report) would have remained.

<sup>27</sup> Though, for ease of reference, the text of the substantive provisions of the 1867, 1890 and 1934 Acts is reproduced in attachments 1-3 to the Bill.

- objected particularly to the replacement of references to ‘His/Her Majesty’ or ‘the Queen/King’ with references to ‘the Sovereign’ in those clauses of the consultation draft Constitution Bill that modernised entrenched provisions, and suggested that ‘Sovereign’ could (or was intended to) mean the President of a (future) republic.

The committee and its predecessor have engaged in a consolidation exercise. They have not engaged in an exercise to republicanise the Constitution. Uniformity in referring to the Sovereign was necessary. Otherwise, different clauses—with origins in different eras—would have stood side by side in the Bill referring alternatively to the ‘Queen’/‘Her Majesty’ and the ‘King’/‘His Majesty’.

The committee considers that any suggestion that ‘Sovereign’ means ‘President’ would be rather stretched in light of the common understanding of the word ‘Sovereign’. The committee also notes that the *Acts Interpretation Act 1954*, s 36 already defines ‘Parliament’ as ‘the Sovereign and the Legislative Assembly’, and that s 52(a) of that Act provides:

*“References to the Crown etc.”*

52. In every Act—

- (a) reference to the Sovereign reigning at the time of the passing of such Act, or to ‘Her Majesty’, ‘His Majesty’, ‘the Queen’, ‘the King’, or ‘the Crown’, shall be construed as references to the Sovereign for the time being, and, where necessary, shall include the heirs and successors of such Queen or King...

Nevertheless, the committee has inserted cl 5 into the Constitution Bill to provide that—along the lines of AIA, s 52—a reference to the Sovereign in the Bill is a reference to the Queen or King, including the Queen’s or King’s successors, as the case may be. In any event, the committee’s new approach to consolidating the entrenched provisions means that the original CA 1867 entrenched provisions will continue to refer to ‘Her Majesty’ in the 1867 Act.

In addition, the pro forma letter also contained an objection to the deletion of the preamble to the *Constitution Act 1867* and suggested that the deletion would alter the Office of Governor and substantially reduce Queenslanders’ rights and freedoms. The committee reiterates its opinion, based on legal advice, that the preamble of the *Constitution Act 1867* is of historical significance only and its removal does not alter the constitutional arrangements of the State.<sup>28</sup>

The pro forma letter also contained an objection to the fact that, by not including in its Bills all articles of the *Bill of Rights 1688* (Imp) except art 9, the committee was ensuring only the rights of parliamentary privilege and removing various citizens’ rights. (The committee has subsequently added art 4 of the *Bill of Rights 1688* to the Constitution Bill as cl 58A.) The incorporation of art 9 (and art 4) of the *Bill of Rights 1688* would not mean that the other provisions of the *Bill of Rights* would no longer have effect in Queensland. The draft Bills are not intended to abrogate any rights enjoyed by Queensland citizens. Indeed, the express adoption of part of art 4 in the Constitution Bill in declaring that Parliament must authorise any imposition of taxation by the government indicates Parliament’s intention to affirm the rights of the citizen.

<sup>28</sup> The committee does note that a new preamble could be introduced for the Constitution of Queensland Act 1999. A new preamble might hold a certain community significance. The committee has not attempted to draft a preamble to the Constitution Act in this report as it is a matter outside its terms of reference and a task which, the committee believes, should be conducted in conjunction with extensive community consultation.



### 3. OTHER MATTERS IMPACTING ON THE CONSOLIDATION EXERCISE

#### 3.1 MATTERS RAISED BY THE MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

##### 3.1.1 The Members' Ethics and Parliamentary Privileges Committee's Report no 26

On 8 January 1999, the Members' Ethics and Parliamentary Privileges Committee, as part of its review of parliamentary privilege in Queensland, tabled its *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members*. The report, in effect, constitutes the MEPPC's submission to the committee's inquiry.

In the report, the MEPPC states that it supports the LCARC approach to consolidation and recommends that LCARC's proposed legislation—whereby matters relating to the Queensland Parliament are contained in a separate statute—be adopted.<sup>29</sup> Nevertheless, in line with its review of the law pertaining to parliamentary privilege, the MEPPC recommends some specific amendments to the legislation being consolidated by LCARC.

Whilst the MEPPC's recommendations largely require substantive changes to the Constitution Bill and Parliament Bill, this committee believes that it is appropriate and sensible to take the opportunity to incorporate in its draft legislation appropriate MEPPC suggestions and has done so with respect to most of the MEPPC's recommendations.

Recommendations made by the MEPPC in its report that LCARC has implemented in its proposed consolidated legislation are:

- amending s 40A of the *Constitution Act 1867* to provide that the powers, rights and immunities of the Queensland Legislative Assembly, its members and committees are those that applied in the House of Commons as at the date of Australian federation; namely, 1 January 1901;<sup>30</sup>
- amending s 40A of the *Constitution Act 1867* by removing the phrase 'not inconsistent with this Act or any other Act';<sup>31</sup>
- amending the definition of 'proceedings in the Assembly' in the Parliament Bill by adding a further provision relating to documents brought into existence for purposes other than for the purposes of business in the House and which later become parliamentary proceedings;<sup>32</sup>

<sup>29</sup> Ibid, pp 12-13 and 22-23. At p 23, the MEPPC specifically endorses the committee's work in consolidating the provisions dealing with the disqualification and qualification of members, noting that such an approach would assist members in respect of their obligations as members.

<sup>30</sup> Ibid, p 8. The LCARC consequently amended the Constitution of Queensland Bill 1999, cl 9. The former LCARC had foreshadowed—in a footnote to its Constitution Bill—that any substantial redrafting of s 40A would be more appropriately considered in the then continuing MEPPC review of parliamentary privilege. This committee consequently amended the Constitution of Queensland Bill 1999, cl 9.

<sup>31</sup> Ibid, p 20. This committee consequently further amended the Constitution of Queensland Bill 1999, cl 9.

<sup>32</sup> Ibid, p 19. This committee consequently amended the Parliament of Queensland Bill 1999, cl 9(3).

- replacing the wording of clause 36(1) of the former Parliament Bill with the wording in s 26(9) of the *Parliamentary Committees Act 1995*,<sup>33</sup> and
- inserting a general definition of contempt in the Parliament of Queensland Bill.<sup>34</sup>

The notes to the Constitution Bill and Parliament Bill indicate where this committee has implemented the MEPPC recommendations. The MEPPC also proposes in its report that, as a general rule, a more appropriate term to describe 'parliamentary privilege' is 'powers, rights and immunities of Parliament, its committees and members'.<sup>35</sup> Accordingly, the committee has adopted this terminology in finalising its Bills.

In its report, the MEPPC makes one recommendation that LCARC has considered but not implemented. This recommendation is for the enactment of a new law to provide that there is a legal presumption that legislation is not inconsistent with the powers, rights and immunities of the Legislative Assembly conferred by s 40A (cl 9 of LCARC's Constitution Bill) unless the intention to do so is clearly expressed in the legislation.<sup>36</sup> This committee considered the following presumption in relation to parliamentary privilege and whether it should be inserted in the committee's Constitution Bill or Parliament Bill.

*An Act enacted after the commencement of this section derogates from or abolishes powers, rights [including privileges] and immunities of the Legislative Assembly and its members and committees only so far as the Act expressly provides.*

The committee believes that such a provision would be more appropriately placed in the *Acts Interpretation Act 1954*, rather than in the Constitution Bill or the Parliament Bill. A similar presumption already exists in relation to native title in the *Acts Interpretation Act*, s 13A (Acts not to affect native title except by express provision). The *Acts Interpretation Act* is a primary reference source for those drafting and interpreting legislation.

Given the wider impact that implementing such a statutory presumption would have, the committee believes that this is a matter which would be more appropriately considered as part of the Premier's response to the MEPPC report.<sup>37</sup> Should the Premier wish to enact such a statutory presumption in the *Acts Interpretation Act*, the Premier may wish to do so via Schedule 2 (General amendments) to the Constitution Bill.

### 3.1.2 The MEPPC's supplementary submission

Subsequent to the handing down of its January 1999 report, the MEPPC furnished this committee with a supplementary submission dated 10 March 1999.<sup>38</sup> In its detailed supplementary submission, the MEPPC outlines its specific concerns regarding the current provisions which deal with the Assembly's power to deal with contempt of Parliament. The

<sup>33</sup> Ibid, p 22. This committee consequently amended the Parliament of Queensland Bill 1999, cl 36(1).

<sup>34</sup> Ibid, pp 15-16. This committee consequently amended the Parliament of Queensland Bill 1999, cl 37.

<sup>35</sup> Ibid, p 4.

<sup>36</sup> Ibid, p 20. The MEPPC did not stipulate in its recommendation which Act should contain such a provision.

<sup>37</sup> As required under the *Parliamentary Committees Act 1995*, s 24 (Ministerial response to committee reports).

<sup>38</sup> The submission followed a meeting on 4 March 1999 between the MEPPC and the Chair and Deputy Chair of LCARC. At that meeting, which was convened at the MEPPC's request, the MEPPC outlined its concerns regarding the contempt provisions. In response, the Chair of LCARC invited the MEPPC to make a formal submission to LCARC detailing the MEPPC's specific concerns and making suggested recommendations.

practical problems posed by the current provisions had been highlighted to the MEPPC by then recent events before it.<sup>39</sup>

The MEPPC submission, which the committee has tabled with this report, presents a compelling case for this committee to make certain amendments to the Parliament Bill.

In summary, the MEPPC is concerned about uncertainty surrounding the current law regarding contempt, particularly the interrelationship of s 40A and ss 45-52 of the *Constitution Act 1867*. Section 45 empowers the Legislative Assembly to deal with a number of contempts (as enumerated in the section) summarily by way of fine and, in default, by imprisonment. Sections 46-50 give the Speaker the power to issue a warrant for the arrest of a person adjudged guilty of contempt, and provide for other incidental search and arrest powers. Section 52 provides that the Assembly can direct the Attorney-General to prosecute in the Supreme Court of Queensland any other contempt punishable by law. These sections were initially contained in the *Parliamentary Privilege Act 1861* I-XIV but, in 1867, were transferred in identical form to the *Constitution Act*.

Section 40A, which was inserted in the *Constitution Act* in 1978, provides that the Queensland Legislative Assembly has the same powers, privileges and immunities of the House of Commons unless otherwise provided for in Queensland legislation. The House of Commons has wide powers to deal with contempt including a power to imprison persons found guilty of contempt but it apparently has no power to fine, a situation which the Commons Select Committee on Parliamentary Privilege in 1967, and again in 1977, recommended be rectified by the introduction of legislation to enable the House of Commons to impose fines.<sup>40</sup>

The MEPPC points out in its submission that there are a number of possible interpretations as to the combined effect of the above provisions, including:<sup>41</sup>

- that the Assembly may punish summarily by way of fine and, in default, imprisonment those contempts enumerated in s 45 and also has the same power as the House of Commons to punish other acts or omissions not included in s 45 which it finds has interfered with its privileges or functions;
- that s 45 exhaustively defines the power of the Assembly to punish for contempt and that its power to deal with all other contempts may only be dealt with pursuant to s 52; and
- that s 45 intends to define exhaustively the circumstances in which the Assembly may fine and imprison persons held in contempt. But the Assembly, at least since the enactment in 1978 of s 40A, possesses the power to respond in non-punitive ways to any conduct adjudged by it as contempt (that is, by way of reprimand and admonishment and, in the case of members, additionally expulsion and suspension).

This committee has largely repeated, in modern drafting style, s 40A and ss 45-52 of the *Constitution Act 1867* in its consultation draft legislation. Section 40A appeared as clause 6 of the Constitution of Queensland Bill and ss 45-52 as clauses 37-44 of the Parliament of Queensland Bill. However, in clause 37—which reproduced s 45 of the *Constitution Act*—the

<sup>39</sup> The MEPPC subsequently reported on the matter: MEPPC, *Report on a matter of Privilege—Matter arising from Public Accounts Committee Report no 43*, MEPPC report no 29, MEPPC, Brisbane, March 1999.

<sup>40</sup> MEPPC submission dated 10 March 1999, p 5.

<sup>41</sup> *Ibid*, p 4.

committee inserted an additional (new) subclause (2) which made it clear that the power of the Assembly to declare a contempt was not limited to the matters set out in clause 37(1).

Mr Pyke, who appears to take a narrow interpretation of the combined effect of the provisions along the lines of the second interpretation above, submitted to the committee that clause 37(2) was in fact extending the Assembly's power and thus went far beyond a consolidation.<sup>42</sup> The committee's consultant, Mr Carney, who interpreted the current contempt provisions in accordance with the third interpretation noted above, also thought that clause 37(2) went beyond a consolidation. However, as the MEPPC points out, there is no definitive authority on point and cites the view of other Counsel who take a more expansive approach to the interrelationship of the relevant Queensland provisions.

Given the uncertainty surrounding the current law, the MEPPC lists in its submission a number of suggestions as to how the problems posed by the current provisions could be resolved, in order of desirability.<sup>43</sup>

This committee agrees with the MEPPC that the contempt provisions must be clear in their expression and application. No doubt the current confusion poses practical problems for the MEPPC when dealing with possible contempts.<sup>44</sup> The Legislative Assembly must be able to effectively protect its processes when necessary. Citizens must also be able to refer to the relevant law and establish with some certainty as to what conduct constitutes a contempt and how the Assembly may deal with a contempt once committed.

The committee's general approach to its inquiry has been that, whilst it is a consolidation exercise, the committee would be remiss not to take the opportunity to clarify particular areas of the law despite the fact that such consequent amendments might be considered substantial in nature. Clearly, there is confusion as to the meaning of the current contempt provisions and, in accordance with its general approach, the committee believes it is appropriate to take the opportunity to remove this confusion.

In light of the submission made by the MEPPC, this committee has amended its Parliament Bill to implement the MEPPC's most preferred solution to overcoming the current uncertainty in this area.<sup>45</sup> The committee has taken this approach in the knowledge that, as part of any contempt investigation, the MEPPC is required to ensure that the relevant standing rules and orders and procedural fairness requirements are complied with.

In particular, the manner of dealing with a contempt is spelt out in Chapter XXI of the *Standing Rules and Orders of the Legislative Assembly*. Those orders provide, amongst other things, that a person accused of a contempt must be informed of the nature of the charge and be given an opportunity to be heard in his or her defence personally or by Counsel. The Standing Orders also make provision for the levying of fines (currently not to exceed \$1,000) and the arrest and detention of offenders, and set out a scale of fees (additional to any fine imposed) to be paid by offenders for their upkeep during detention.

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<sup>42</sup> Supplementary submission dated 11 October 1999, pp 6-7.

<sup>43</sup> MEPPC, *op cit*, pp 6-8.

<sup>44</sup> When a contempt is alleged by a member, the Speaker determines whether there is a *prima facie* case. If the Speaker believes a *prima facie* case exists he or she will refer the matter to the MEPPC. (A member may dissent to the Speaker's ruling in which case the question is put to the House.) The MEPPC investigates the matter and reports its findings to the Assembly. The Assembly considers these findings and determines whether the conduct constitutes a contempt and, if so, how it should punish such conduct.

<sup>45</sup> That is, option 1 on p 6 of the MEPPC submission.

There are also procedural fairness safeguards in:

- the Sessional Orders regarding procedures for witnesses appearing before parliamentary committees;
- section 26 of the *Parliamentary Committees Act* which provides persons called before statutory committees with privilege against self-incrimination;<sup>46</sup> and
- certain sections in the *Constitution Act* which provide that a person may object to answering a question or producing a document or other thing in certain circumstances (namely, where the answer, document or thing is of a private nature and does not affect the subject of inquiry)<sup>47</sup>.

The committee explains the specific amendments made to the Parliament Bill as a result of implementing the MEPPC's most preferred solution in the notes to the Bill.

### **3.2 THE PARLIAMENTARY MEMBERS (OFFICE OF PROFIT) AMENDMENT BILL 1999**

On 24 March 1999, the Premier introduced into the Assembly the Parliamentary Members (Office of Profit) Amendment Bill 1999 (the 'Parliamentary Members Bill'). The explanatory notes to the Bill state that the objectives of the Bill are to:

- allow a member of the Assembly to hold an office or place of profit under the Crown or any position on a Crown instrumentality or a body representing the Crown provided the member receives no fee or reward other than reasonable expenses;
- allow a member of the Assembly to transact any business or perform any duty or service for the Crown or a Crown instrumentality or a body representing the Crown provided the member receives no fee or reward other than reasonable expenses; and
- maintain the underlying principles behind the existing legislation of ensuring that there are adequate safeguards against a conflict of interest between a member's duty to hold the government of the day accountable and potential pecuniary benefit received in relation to the performance of additional duties on behalf of the State.

The impetus for the Bill is a concern that the effect of the current relevant provisions of the *Legislative Assembly Act 1867* (Qld) and the *Officials in Parliament Act 1896* (Qld) is that, by accepting an appointment to, or in performing a service for a government board, committee, council or other body, members run the risk of their election becoming null and void or losing their seat by parliamentary resolution.

The Bill seeks to achieve its objectives by amending current provisions of the *Legislative Assembly Act* and the *Officials in Parliament Act* which the committee has already consolidated into its Parliament Bill. The Parliamentary Members Bill therefore directly relates to the committee's draft Parliament Bill.

As was evident from the committee's consultation draft version of its Parliament Bill, the committee has long recognised that the current provisions regarding members holding certain

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<sup>46</sup> This protection is transposed to the Parliament of Queensland Bill 1999, cl 32.

<sup>47</sup> This protection is transposed to the Parliament of Queensland Bill 1999, cl 32.

offices, transacting certain business and performing certain services or duties require clarification.

Therefore, in its consultation draft Parliament Bill the committee brought together, and redrafted in modern drafting style, the relevant provisions of the *Legislative Assembly Act* and the *Officials in Parliament Act*. As part of this process, the committee replaced the concept of 'office of profit under the Crown' with 'paid public appointment'. Those provisions clearly maintained the third objective of the Parliamentary Members Bill. The consultation draft Bill also excluded from the term 'reward' an amount paid or payable for out-of-pocket expenses reasonably incurred. However, given that the committee's aim was primarily to consolidate existing provisions, the committee did not amend the current provisions to the extent proposed by the Bill now before the Assembly.

This being said, the committee agrees with the objectives of the Parliamentary Members Bill and believes that, as the Bill is currently before the Assembly, it is appropriate to incorporate such of its provisions as are applicable, in the committee's draft Parliament Bill. The notes to the Parliament Bill explain how the committee has effected this decision.

## 4. CONCLUSION AND RECOMMENDATIONS

### 4.1 THE COMMITTEE'S RECOMMENDATIONS

The result of the committee's inquiry into the consolidation of the Queensland Constitution appears in Parts II and III of this report as the final versions of the committee's draft Constitution of Queensland Bill 1999 and Parliament of Queensland Bill 1999. Parts II and III also include notes to the Bills outlining: what the clauses of the Bills provide for; where they have come from; and issues of substance that the committee has had to consider in consolidating and modernising existing constitutional provisions.

The proposed legislation is the result of an extensive consolidation exercise in which, in effect, four different entities have participated: EARC, the PCEAR, the LCARC of the second session of the 48<sup>th</sup> Parliament and the current LCARC.

Passage of the committee's legislation would mean the creation of a single, modernised, easy-to-read Act of Parliament outlining the State's constitutional arrangements, and an adjunct omnibus Bill relating to Parliament, its members and committees.

The committee, in chapter 2 of this report, has offered its view on the desirability of later achieving *complete* consolidation of the Queensland Constitution; that is, the relocation of the entrenched provisions of the *Constitution Act 1867*, the *Constitution Act Amendment Act 1890* and the *Constitution Act Amendment Act 1934* into the (1999) consolidated Constitution in modernised form. Complete consolidation requires referendum approval. The committee has suggested that such a proposal, about an issue essentially technical in nature, be added to any future question requiring amendment of the State Constitution that is put to the people in a State referendum.

Despite this, the committee believes that its proposed legislation represents an apt and timely consolidation of existing provisions relating to the State's Constitution.

#### Recommendation 1

**The aim of the committee's consolidation exercise has been to consolidate and modernise, to the extent possible, existing constitutional legislative provisions rather than to extensively reform Queensland's Constitution. In this regard, the committee recommends that the Premier—as the Minister responsible for Queensland's constitutional legislation—introduce Bills based on the committee's attached draft Constitution of Queensland Bill 1999 and its draft Parliament of Queensland Bill 1999 into the Parliament for Parliament's adoption.**

One of the primary goals of this inquiry is educating Queensland citizens about the State Constitution. The committee's proposed legislation will, in itself, make the Queensland Constitution easier to access and easier to understand. Nonetheless, citizen education would be facilitated by complementary information and education about—and wide distribution of—the consolidated Constitution if and when it is passed by the Parliament. Citizens without legal training or with limited knowledge about government might find the Constitution contains unfamiliar terms and concepts.

In its report on individuals' rights and freedoms in Queensland,<sup>48</sup> this committee stressed its belief in the importance of providing Queenslanders with education about civics, citizens' rights and responsibilities and the workings of democratic institutions in Queensland.<sup>49</sup>

In relation to State constitutional matters, the committee believes that, if and when passed, the Constitution of Queensland Bill 1999 should be accompanied by a document that annotates the Constitution to explain its clauses and their significance, relevant terms and concepts, the interrelationship of certain provisions and how the State Constitution relates with other laws, particularly the *Commonwealth Constitution*.

The committee believes that the consolidated Constitution should be distributed widely throughout the State and that it otherwise be made easily accessible (for example, by linking it to State Government websites on the Internet).

The committee also believes that the consolidated Constitution should be the subject of further and enhanced education in schools and awareness-raising strategies throughout the community. No doubt, some courses on law and government at secondary and tertiary level already refer to the Queensland Constitution. The Constitution in consolidated form, along with the explanatory material that the committee suggests should be prepared, would enhance those courses and provide a valuable resource for additional education.

## Recommendation 2

**The committee recommends that steps be undertaken to improve Queensland citizens' awareness and understanding of the State Constitution. In particular, the committee recommends that if, and when, a consolidated Queensland Constitution is passed by the Parliament, the Premier, as the Minister responsible for Queensland's constitutional legislation:**

- **prepare an explanatory booklet to contain or accompany the Constitution;**
- **distribute the Constitution and accompanying explanatory booklet widely throughout the State and ensure that the Constitution is otherwise easy to access; and**
- **liaise with the Minister for Education to develop strategies and programs to enhance Queensland citizens' awareness and understanding of the State's constitutional arrangements, both in schools and in the community generally.**

## 4.2 POSTSCRIPT: WIDER STATE CONSTITUTIONAL MATTERS

A final issue which the committee wishes to address in this report concerns wider State constitutional matters that are potentially worthy of review.

In its interim report, the committee noted that EARC had raised in its *Report on the consolidation and review of the Queensland Constitution* a number of issues that went

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<sup>48</sup> Queensland. Legislative Assembly. Legal, Constitutional and Administrative Review Committee, *The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?*, Report no 12, Government Printer, Brisbane, November 1998.

<sup>49</sup> *Ibid.*, pp 63-64.



beyond strict consolidation.<sup>50</sup> The PCEAR subsequently considered and commented on a number of those issues.<sup>51</sup> Various submissions to this committee in relation to the present inquiry also suggested areas of State constitutional law that should be reviewed. Federal proposals, like changing the preamble to the *Commonwealth Constitution*,<sup>52</sup> invite reconsideration of similar issues at State level. A successful federal referendum on the republic issue will necessitate reform of Queensland's constitutional arrangements.

Many EARC recommendations pertaining to specific State constitutional matters—contained in various reports—have either not been implemented or have not been considered by Government. In its report on the Queensland Constitution, EARC's recommendations related to matters such as the following. (The following recommendations were either endorsed or not considered by the PCEAR. The first two recommendations concern EARC's proposed mechanism and general goal of constitutional reform.)

*The Commission recommends that ... the Parliamentary Electoral and Administrative Review Committee (or its successor in a restructured parliamentary committee system) conduct a more extensive review, either by itself or by commissioning some other independent body, with a view to the convening of a Constitutional Convention to draft a new Constitution for the State.*<sup>53</sup>

*... the aim of this process be the production, within five years, of a Constitution which is, subject to the Constitution of the Commonwealth of Australia, the supreme law of Queensland and capable of amendment only with the approval of the majority of the voters at a referendum.*<sup>54</sup>

*... the Parliamentary Legal and Constitutional Committee review the constitutional conventions concerning membership of the Executive Council.*<sup>55</sup>

*... the proposed Parliamentary Legal and Constitutional Committee review the status of local government in the Constitution.*<sup>56</sup>

*... the matter of selection of judges and other matters concerning the judiciary should be referred to the proposed Parliamentary Legal and Constitutional Committee.*<sup>57</sup>

*... in the drafting of an entrenched Constitution, the proposed Constitutional Convention should consider whether there should be some constitutional rules defining the scope of executive power, specifying that the executive must exercise its power according to law, and guaranteeing the availability of remedies against abuses of power or wrong decisions by the executive.*<sup>58</sup>

<sup>50</sup> Interim report, part I, p 6.

<sup>51</sup> EARC's recommendations about wider State constitutional matters, together with relevant recommendations made by PCEAR in its consolidation report, appeared as appendix A to part I of this committee's interim report.

<sup>52</sup> As noted in footnote 28 the committee's Constitution of Queensland Bill 1999 contains no preamble.

<sup>53</sup> EARC, consolidation report, para 4.90. The PCEAR recommended that '*any future process, or other matters involving the drafting of a new Queensland Constitution, should be considered by the proposed Legal and Constitutional Committee*': PCEAR, consolidation report, p 32.

<sup>54</sup> EARC, op cit, para 4.91. The PCEAR recommended that whether and how a future Queensland Constitution should be entrenched should be referred to the then proposed Legal and Constitutional Committee: PCEAR, op cit, p 35.

<sup>55</sup> EARC, op cit, para 6.194.

<sup>56</sup> Ibid, para 6.241.

<sup>57</sup> Ibid, para 7.81.

<sup>58</sup> Ibid, para 8.57. Endorsed by the PCEAR: PCEAR, op cit, p 37.

... the proposed Legal and Constitutional Committee further review the matter of the independence of the Speaker.<sup>59</sup>

... the proposed Constitutional Convention should consider what matters concerning the conduct of the Parliament should be included within the Constitution.<sup>60</sup>

... the proposed Constitutional Convention in drafting a final constitution for Queensland consults further with Aboriginal People and Torres Strait Islanders.<sup>61</sup>

Matters of wider constitutional reform were also suggested in various submissions that this committee received on the consolidation exercise. Specific suggestions in submissions to the committee (which the committee considered but did not implement on the grounds that they went beyond the scope of the current consolidation exercise) included entrenching the status of local government in the Constitution and entrenching an independent judiciary in the Constitution. A number of submissions also recommended that various civil and political rights be expressed in the Constitution.<sup>62</sup>

Like its predecessor, this committee has not considered the implementation of wider State constitutional issues such as these as part of finalising the consolidation exercise. As discussed, the focus of this inquiry has been on consolidation rather than on reform.

However, as already mentioned, legislation bringing together and modernising existing provisions relating to various constitutional topics will obviously facilitate any future consideration of these wider issues.

This committee—given its statutory responsibility in relation to constitutional reform—will continue to monitor and assess whether to inquire into wider constitutional matters. Pertinent to the committee's deliberations in this regard will be the State Government's response to the committee's consolidation exercise and constitutional issues generally leading up to, and following, the November 1999 federal referendum on a republic.

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<sup>59</sup> EARC, op cit, para 8.62. Endorsed by the PCEAR: PCEAR, op cit, p 25.

<sup>60</sup> EARC, op cit, para 8.80. Endorsed by the PCEAR: PCEAR, op cit, p 37.

<sup>61</sup> EARC, op cit, para 8.144. The PCEAR recommended that *'the proposed Legal and Constitutional Committee consider the issue of specific constitutional recognition of Aborigines and Torres Strait Islander people'*: PCEAR, op cit, p 41.

<sup>62</sup> The constitutional enhancement of rights was considered by the committee in its report no 12, *'The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?'*, November 1998. In that report the committee rejected a constitutional bill of rights for Queensland.

## APPENDIX A SUBMISSIONS RECEIVED

SUBMISSION No	SUBMISSION FROM:
1	Queensland Audit Office
2	Confidential
3	Parliamentary Public Works Committee
4	John Hugo
5	Mr Harry Evans (Clerk of the Senate)
6	Mr Jay Nauss
7	Mr George Wakelin
8	Messrs R C McCorkell and R E Cooper
9	Mr Ralph McFadyen
10	Mr Graeme Ellingsen
11	Mrs J Carson
12	Mr George Williamson
13	Mrs Patricia Daly
14	Mr Ian Currie
15	Mr G and Mrs M Hoal
16	Department of Environment
17	Mrs Judy Ellingsen
18	Mrs E Roberts
19	Cooloola Ratepayers and Residents Association
20	Mr Rodney Mills
21	Mr G and Mrs L Smith
22	Mr Norman Riek
23	Mr Ian McLeod
24	Clerk of the Parliament (Mr R D Doyle)
25	Mr John Wakely
26	Mr Darryl Venz
27	Mr Ron Owen
28	Mrs Kathleen Stewart
29	Mrs Helen Haining
30	Mrs Michelle Higgs

SUBMISSION No	SUBMISSION FROM:
31	Mr Allan McChalmers
32	Ms Christine Higgs
33	Mr Frank Lightfoot
34	D Stanbridge
35	L Cupitt
36	Mrs E M Godwin
37	Mr G R Godwin
38	R B Nichol
39	W Drew
40	Leslie Hawkins
41	H J Turner
42	Ms Jannette Corbet
43	Mr Greg Corbet
44	Confidential
45	Rev Stuart Hall
46	Department of Public Works
47	Mr Geoff Pickering
48	Queensland Council for Civil Liberties
49	Mrs S Nash
50	Mr/s K L Stokes
51	Department of Main Roads
52	John Pyke, QUT
53	Confidential
54	Rona Joyner
55	John Pyke, QUT (Second Submission)
56	Local Government Association of Queensland Inc
57	Travelsafe Committee
58	Members' Ethics and Parliamentary Privileges Committee

## **PART II**

### **CONSTITUTION OF QUEENSLAND BILL 1999**

**CONSTITUTION OF QUEENSLAND BILL 1999 (FINAL DRAFT)**

**NOTES TO THE BILL**

**TABLE COMPARING CLAUSE OF THE CONSOLIDATED CONSTITUTION  
WITH EXISTING PROVISIONS**

Queensland



**CONSTITUTION OF  
QUEENSLAND BILL 1999**

Queensland



# CONSTITUTION OF QUEENSLAND BILL 1999

## TABLE OF PROVISIONS

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
1	Short title .....	10
2	Commencement .....	10
3	Object (~EARC reprint s 3(1) + (4)) .....	10
4	Status of particular provisions (new) .....	10
5	References to the Sovereign (new) .....	11
<b>CHAPTER 2—PARLIAMENT</b>		
<b>PART 1—CONSTITUTION AND POWERS OF PARLIAMENT</b>		
6	Legislative Assembly (CA s 1+ EARC reprint s 5) .....	11
7	Law-making power (CA s 2 + EARC reprint s 6) .....	12
8	The Parliament (CA s 2A + EARC reprint s 4) .....	12
9	Powers, rights and immunities of Legislative Assembly (CA s 40A) .....	12
10	Members of Legislative Assembly (CA s 28) .....	13
11	Division of State into electoral districts (new) .....	13
12	1 member for each electoral district (LAA s 4 + EARC reprint s 8) .....	13
13	Number of members of Legislative Assembly (LAA s 3 + EARC reprint s 7) .....	13
14	Power to alter system of representation (CA 1867 s 10) .....	14

**PART 2—PROCEDURAL REQUIREMENTS FOR THE  
LEGISLATIVE ASSEMBLY**

15	Summoning, proroguing and dissolution of Legislative Assembly (CA s 27 + part of s 12) . . . . .	14
16	Duration of Legislative Assembly to be 3 years only (CAAA 1890 s 2) . . .	15
17	Time and place for sessions of Legislative Assembly (part of CA s 12) . . .	15
18	Minimum sitting requirement for Legislative Assembly (CA s 3 + EARC reprint s 11) . . . . .	15

**PART 3—MEMBERS**

*Division 1—Generally*

19	Eligibility to stand for election as a member (Electoral Act s 83(1) + part of s 83(2) + EARC reprint s 27) . . . . .	16
20	Disqualification of member (part of CA s 7 + EARC reprint s 29) . . . . .	16
21	No member to sit or vote without first taking oath (CA s 4 + 5) . . . . .	17

*Division 2—Members who are Ministers or Parliamentary  
Secretaries*

22	Ministers (new) . . . . .	17
23	Appointment of Parliamentary Secretaries (CA s 57) . . . . .	17
24	Functions of Parliamentary Secretary (CA s 58) . . . . .	17
25	Duration of appointment as Parliamentary Secretary (CA s 59) . . . . .	17
26	Reimbursement of expenses (CA s 60) . . . . .	18

**CHAPTER 3—GOVERNOR AND EXECUTIVE GOVERNMENT**

**PART 1—INTERPRETATION**

27	Governor (COGA s 12) . . . . .	18
28	Governor in Council (EARC reprint s 21) . . . . .	19

**PART 2—GOVERNOR**

29	Governor (COGA s 3(1) + 3(2)(a) + EARC reprint s 16) . . . . .	19
30	Office of Governor (CA ss 11A-11B + EARC reprint ss 17-18) . . . . .	19
31	Publication of commission, declaration of allegiance etc. (COGA s 5) . . .	20
32	Termination of appointment as Governor (COGA s 3(2)(b) + EARC reprint s 19) . . . . .	21
33	General power of Governor (COGA s 4(1) + EARC reprint s 20) . . . . .	21
34	Power of Governor—Ministers (CA s 14 + EARC reprint s 26) . . . . .	21
35	Power of Governor—removal or suspension of officer (COGA s 8(a)) . . . .	21



*Constitution of Queensland*

36	Power of Governor—relief for offender (COGA s 8(b)) . . . . .	21
37	Power of Governor—public seal (COGA s 4(2)) . . . . .	22
38	Power of Governor—appointment of Lieutenant-Governor (~part COGA s 10(1)) . . . . .	22
39	Statutory powers when Sovereign personally in State (RPA s 2) . . . . .	22
40	Delegation by Governor to Deputy Governor (~COGA 10(1) + (4)) . . . . .	23
41	Administration of Government by Acting Governor (~COGA s 9) . . . . .	23
<b>PART 3—MINISTERS OF THE STATE</b>		
42	Appointment of Ministers of the State (~part OPA s 3(1) + ~EARC reprint s 25 + OPA s 8A) . . . . .	25
43	Minister may act for another Minister (~OPA s 8) . . . . .	25
44	Acting Ministers (~OPA s 3(3) + (4)) . . . . .	25
45	Administrative arrangements (~AIA s 33(14) + ~ EARC reprint s 25(2)) . . . . .	26
46	Sick leave (OPA s 3(2)) . . . . .	26
<b>PART 4—EXECUTIVE COUNCIL</b>		
47	Executive Council (part of COGA s 6 + EARC reprint s 22) . . . . .	27
48	Duration of appointment as members of Executive Council (part of COGA s 6) . . . . .	27
49	Meetings of Executive Council (COGA s 7 + EARC reprint s 24) . . . . .	27
<b>PART 5—POWERS OF THE STATE</b>		
<i>Division 1—General</i>		
50	Powers of the State (AIA s 47A + 47B) . . . . .	28
<i>Division 2—Commercial activities</i>		
51	Definitions for div 2 (AIA s 47C) . . . . .	29
52	Commercial activities by State (AIA s 47C) . . . . .	29
53	Commercial activities by Minister (AIA s 47D) . . . . .	30
54	Delegation by Minister (AIA s 47E) . . . . .	30
55	Regulation-making power (AIA s 47F) . . . . .	30
<b>CHAPTER 4—COURTS</b>		
56	Supreme Court and District Court (SCQA 1991 s 7 + DCA 1967 s 4 + EARC reprint s 32) . . . . .	30
57	Supreme Court's superior jurisdiction (SCQA 1991 s 8 + EARC reprint s 33) . . . . .	31

*Constitution of Queensland*

58	Appointment of judges (SCQA 1991 s 12 + DCA s 9) . . . . .	31
59	Length of judge's appointment (CA s 15 + SCQA 1991 s 23 + SCA 1995 s 195(1) + DCA s 14(1) + (2) + EARC reprint s 35) . . . . .	31
60	Removal of judge for misbehaviour or incapacity (CA s 16 + SCA 1995 s 195(2) + DCA s 15 + EARC reprint s 36 with PCEAR pars 47, 52, 58, 60, 67 and 69) . . . . .	32
61	Judge's salary (CA s 17 + SCA 1995 s 196 + EARC reprint s 37(1) with PCEAR par 79) . . . . .	32
62	Protection if judicial office abolished (new) . . . . .	33
<b>CHAPTER 5—REVENUE</b>		
63	Consolidated fund (CA s 34) . . . . .	33
64	Requirement to pay tax etc. (Bill Rts art 4) . . . . .	34
65	Payment from consolidated fund (CA s 39(1)) . . . . .	34
66	Charges on consolidated fund (CA s 35 + 39(1) + EARC reprint s 41) . . . . .	34
67	Governor's recommendation required for appropriation (CA s 18 + EARC reprint s 42) . . . . .	34
<b>CHAPTER 6—LANDS</b>		
68	Lands (CA ss 30 + 40 + EARC reprint s 9) . . . . .	35
<b>CHAPTER 7—LOCAL GOVERNMENT</b>		
<b>PART 1—LOCAL GOVERNMENT SYSTEM</b>		
69	System of local government (part of CA s 54(1) + EARC reprint s 43) . . . . .	35
70	Requirements for a local government (CA s 54 + EARC reprint s 44) . . . . .	35
<b>PART 2—PROCEDURE RESTRICTING DISSOLUTION OF LOCAL GOVERNMENT AND INTERIM ARRANGEMENT</b>		
71	Dissolution of local government must be tabled (part of CA s 55(2) + EARC reprint s 46(1)) . . . . .	36
72	Suspension until dissolution ratified (CA s 55(2) + (5) + EARC reprint s 47) . . . . .	36
73	Ratification of dissolution (CA s 55(2) + (3) + EARC reprint s 48) . . . . .	37
74	No tabling or ratification of dissolution (CA s 55(4) + EARC reprint s 49) . . . . .	37
<b>PART 3—SPECIAL PROCEDURES FOR CERTAIN LOCAL GOVERNMENT BILLS</b>		
75	Procedure for Bill affecting a local government (CA s 56(1) + EARC reprint s 50) . . . . .	38

*Constitution of Queensland*

76	Procedure for Bill ending system of local government (CA s 56(2)-(6) + EARC reprint s 51-53) . . . . .	38
<b>CHAPTER 8—MISCELLANEOUS</b>		
77	Issue of compliance not justiciable (COGA s 11) . . . . .	39
<b>CHAPTER 9—TRANSITIONAL PROVISIONS</b>		
78	Continuation of Legislative Assembly and its membership (EARC Bill cl 51) . . . . .	40
79	Continuation of appointment of Governor (EARC Bill cl 47) . . . . .	40
80	Continuation of appointment as Minister of State (EARC Bill cl 49) . . . . .	40
81	Continuation of appointment as Parliamentary Secretary (new) . . . . .	41
82	Continuation of administrative arrangements (~EARC Bill cl 50) . . . . .	41
83	Continuation of membership of Executive Council (EARC Bill cl 48) . . . . .	41
84	Continuation of Supreme Court (new) . . . . .	41
85	Continuation of District Court (new) . . . . .	41
87	Continuation of consolidated fund (EARC Bill cl 52) . . . . .	42
<b>CHAPTER 10—CONSEQUENTIAL AMENDMENTS AND REPEALS</b>		
88	Amendments (EARC Bill cl 53) . . . . .	42
89	Repeals etc. (EARC Bill cl 56) . . . . .	42
<b>SCHEDULE 1 . . . . .</b>		
<b>OATHS AND AFFIRMATIONS</b>		
<b>SCHEDULE 2 . . . . .</b>		
<b>GENERAL AMENDMENTS</b>		
	ACTS INTERPRETATION ACT 1954 . . . . .	45
	CONSTITUTION ACT 1867 . . . . .	46
	CONSTITUTION ACT AMENDMENT ACT 1890 . . . . .	47
	CONSTITUTION ACT AMENDMENT ACT 1934 . . . . .	47
	DISTRICT COURT ACT 1967 . . . . .	48
	ELECTORAL ACT 1992 . . . . .	48
	SUPREME COURT ACT 1995 . . . . .	48
	SUPREME COURT OF QUEENSLAND ACT 1991 . . . . .	49
<b>SCHEDULE 3 . . . . .</b>		
<b>REPEALED LAWS</b>		

SCHEDULE 4 .....	51
IMPERIAL LAWS NO LONGER IN FORCE	
ATTACHMENT 1 .....	52
CONSTITUTION ACT 1867, SECTIONS 1, 2, 2A, 11A, 11B AND 53	
ATTACHMENT 2 .....	55
CONSTITUTION ACT AMENDMENT ACT 1890, SECTION 2	
CONSTITUTION ACT AMENDMENT ACT 1934, SECTION 4	
ATTACHMENT 3 .....	57
CONSTITUTION ACT AMENDMENT ACT 1934, SECTION 3	
KEY .....	59

**1999**

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**A BILL**

**FOR**

**An Act to consolidate the laws relating to the Constitution of the State  
of Queensland**

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**The Parliament of Queensland enacts—** 1

**CHAPTER 1—PRELIMINARY** 2

**Short title** 3

1. This Act may be cited as the *Constitution of Queensland Act 1999*. 4

**Commencement** 5

2. This Act commences on a day to be fixed by proclamation. 6

**Object (~EARC reprint s 3(1) + (4))** 7

3. This Act declares, consolidates and modernises, to the extent practicable, the Constitution of Queensland.[~EARC reprint s 3(1)] 8  
9

**Status of particular provisions (new)** 10

4.(1) Sections 6, 7, 8 and 30 are— 11

(a) restatements of the corresponding provisions of the *Constitution Act 1867*, namely, sections 1, 2, 2A and 11A and 11B of that Act;<sup>1</sup> and 12  
13  
14

(b) not intended to affect in any way the meaning or effect of those corresponding provisions. 15  
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<sup>1</sup> *Constitution Act 1867*, sections 1 (Legislative Assembly), 2 (Legislative Assembly constituted), 2A (The Parliament), 11A (Office of Governor) and 11B (Definition of Royal Sign Manual)

Attachment 1 sets out the text of these provisions as well as the text of the *Constitution Act 1867*, section 53 (Certain measures to be supported by referendum).

*Constitution of Queensland*

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(2) Section 16 is a restatement of the *Constitution Act Amendment Act 1890*, section 2<sup>2</sup> and is not intended to affect in any way the meaning or effect of the provision. 1  
2  
3

(3) In restating the corresponding provisions mentioned, it is not intended to change the law stated in the provisions. 4  
5

**References to the Sovereign (new)** 6

5. A reference in this Act to the Sovereign is a reference to the Queen or King for the time being, and, if necessary, includes the Queen's or King's heirs and successors. 7  
8  
9

**CHAPTER 2—PARLIAMENT** 10

**PART 1—CONSTITUTION AND POWERS OF  
PARLIAMENT** 11  
12

**Legislative Assembly (CA s 1+ EARC reprint s 5)** 13

6. <sup>3</sup>There is to be within the State of Queensland a Legislative Assembly. 14

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<sup>2</sup> *Constitution Act Amendment Act 1890*, section 2 (Duration of Legislative Assembly to be 3 years only)

Attachment 2 sets out the text of that provision as well as the text of the *Constitution Act Amendment Act 1934*, section 4 (Duration of Legislative Assembly not to be extended except in accordance with this section).

<sup>3</sup> This is merely a restatement of the *Constitution Act 1867*, section 1 (Legislative Assembly)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the *Constitution Act 1867*, section 1 and section 53 which provides that a Bill that expressly or impliedly in any way affects section 1 of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.

*Constitution of Queensland*

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<b>Law-making power (CA s 2 + EARC reprint s 6)</b>	1
7. <sup>4</sup> Within the State of Queensland, the Sovereign has power by and with the advice and consent of the Legislative Assembly to make laws for the peace, welfare and good government of the State in all cases.	2 3 4
<b>The Parliament (CA s 2A + EARC reprint s 4)</b>	5
8.(1) <sup>5</sup> The Parliament of Queensland consists of the Sovereign and the Legislative Assembly.	6 7
(2) Every Bill, after its passage through the Legislative Assembly, must be presented to the Governor for assent by or in the name of the Sovereign and has no effect unless it has been duly assented to by or in the name of the Sovereign.	8 9 10 11
<b>Powers, rights and immunities of Legislative Assembly (CA s 40A)</b>	12
9.(1) The powers, rights and immunities of the Legislative Assembly and its members and committees are—	13 14
(a) the powers, rights and immunities defined under Act; and	15

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<sup>4</sup> This is merely a restatement of the *Constitution Act 1867*, section 2 (Legislative Assembly constituted)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the *Constitution Act 1867*, section 2 and section 53 which provides that a Bill that expressly or impliedly in any way affects section 2 of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.

<sup>5</sup> This is merely a restatement of the *Constitution Act 1867*, section 2A (The Parliament)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the *Constitution Act 1867*, section 2A and section 53 which provides that a Bill that expressly or impliedly in any way affects section 2A of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.

Also see attachment 3 which sets out the text of the *Constitution Act Amendment Act 1934*, section 3 (Parliament not to be altered in the direction of re-establishing the Legislative Council or other body except in accordance with this section).



*Constitution of Queensland*

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(b) until defined under Act—the powers, rights and immunities, by custom, statute or otherwise, of the Commons House of Parliament of the United Kingdom and its members and committees at the establishment of the Commonwealth. <sup>6</sup> [CA s 40A]	1 2 3 4 5
(2) In this section—	6
“rights” include privileges.	7
<b>Members of Legislative Assembly (CA s 28)</b>	8
10. The Legislative Assembly is to consist of members who are eligible <sup>7</sup> to be elected by the inhabitants of the State who are eligible <sup>8</sup> to elect members.	9 10 11
<b>Division of State into electoral districts (new)</b>	12
11. The State is to be divided into the same number of electoral districts as there are members of the Legislative Assembly. <sup>9</sup>	13 14
<b>1 member for each electoral district (LAA s 4 + EARC reprint s 8)</b>	15
12. Each member of the Legislative Assembly is to represent 1 of the electoral districts.	16 17
<b>Number of members of Legislative Assembly (LAA s 3 + EARC reprint s 7)</b>	18 19
13. The Legislative Assembly is to consist of 89 members.	20

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<sup>6</sup> Date of establishment of the Commonwealth—1 January 1901

<sup>7</sup> See the *Parliament of Queensland Bill*.

<sup>8</sup> See the *Electoral Act 1992*.

<sup>9</sup> The *Electoral Act 1992* sets out the process.

<b>Power to alter system of representation (CA 1867 s 10)</b>	1
<b>14. The Parliament under an Act may—</b>	2
(a) vary the electoral districts of the State that are to be represented in the Legislative Assembly; and	3 4
(b) establish new and other electoral districts; and	5
(c) vary the number of members to be elected to the Legislative Assembly; and	6 7
(d) vary and regulate the appointment of returning officers and make any new and other provision that it considers convenient for the issuing and return of writs for the election of members to the Legislative Assembly and the time and place of holding the elections.[CA s10]	8 9 10 11 12
<b>PART 2—PROCEDURAL REQUIREMENTS FOR THE LEGISLATIVE ASSEMBLY</b>	13 14
<b>Summoning, proroguing and dissolution of Legislative Assembly (CA s 27 + part of s 12)</b>	15 16
<b>15.(1)</b> The Governor may summon the Legislative Assembly in the Sovereign's name by instrument under the Public Seal of the State.[CA s 27]	17 18 19
<b>(2)</b> The Governor may prorogue or dissolve the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.[CA s 12]	20 21 22

<b>Duration of Legislative Assembly to be 3 years only (CAAA 1890 s 2)</b>	1
16. <sup>10</sup> Every Legislative Assembly is to continue for 3 years from the day appointed for the return of the writs for choosing it, and no longer, unless it is dissolved earlier.	2 3 4
<b>Time and place for sessions of Legislative Assembly (part of CA s 12)</b>	5
17.(1) The Governor may set the times and places in Queensland for sessions of the Legislative Assembly that the Governor considers appropriate.[CA s 12]	6 7 8
(2) The Governor may change the times and places if the Governor considers change advisable and more consistent with general convenience and the public welfare.[CA s 12]	9 10 11
(3) The Governor must give sufficient notice of a change.[CA s 12]	12
<b>Minimum sitting requirement for Legislative Assembly (CA s 3 + EARC reprint s 11)</b>	13 14
18.(1) The Legislative Assembly must meet at least once in every calendar year.[CA s 3 + EARC reprint s 11(1)]	15 16
(2) One year must not pass between a sitting of the Legislative Assembly and the next sitting of the Legislative Assembly.[CA s 3 + EARC reprint s 11(2)]	17 18 19

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<sup>10</sup> This is merely a restatement of the *Constitution Act Amendment Act 1890*, section 2 (Duration of Legislative Assembly to be 3 years only)—see section 4 (Status of particular provisions). Also see attachment 2 for the text of the *Constitution Act Amendment Act 1890*, section 2 and the *Constitution Act Amendment Act 1934*, section 4 which provides that the *Constitution Act Amendment Act 1890*, section 2 must not be amended to extend the 3 year period except in the way provided by section 4 which involves the approval of the relevant bill by a majority of electors at a referendum.

*Constitution of Queensland*

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**PART 3—MEMBERS** 1

*Division 1—Generally* 2

**Eligibility to stand for election as a member (Electoral Act s 83(1) + part of s 83(2) + EARC reprint s 27)** 3  
4

19.(1) <sup>11</sup>An adult who is an Australian citizen living in Queensland is eligible to stand for election as a member of the Legislative Assembly.[-Electoral Act s 83(1) + EARC reprint s 27(1)] 5  
6  
7

(2) However, a person disqualified under an Act from standing for election is not eligible to stand for election.[part Electoral Act s 83(2) + EARC reprint s 27(2)] 8  
9  
10

(3) Subsection (1) is subject to any conditions imposed by an Act.[EARC reprint s 27(3)] 11  
12

**Disqualification of member (part of CA s 7 + EARC reprint s 29)** 13

20.(1) <sup>12</sup>No person who is disqualified under an Act from being a member of the Legislative Assembly is capable of becoming a candidate for election as a member or becoming a member. 14  
15  
16

(2) A member of the Legislative Assembly who becomes disqualified under an Act from being a member stops being a member in accordance with that Act. 17  
18  
19

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<sup>11</sup> This section is a basic statement about eligibility. The *Parliament of Queensland Bill* contains specific provisions about the qualification of members.

<sup>12</sup> This section is a basic statement about disqualification. The *Parliament of Queensland Bill* contains specific provisions about the disqualification of members and the effect of unduly qualified members on the validity of the operations of Parliament.

*Constitution of Queensland*

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<b>No member to sit or vote without first taking oath (CA s 4 + 5)</b>	1
<b>21.(1)</b> No member may sit or vote in the Legislative Assembly unless the member has made the oath or affirmation of allegiance in schedule 1. <sup>13</sup> [CA s 4 + 5]	2 3 4
<b>(2)</b> The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.[CA s 4]	5 6 7
 <i>Division 2—Members who are Ministers or Parliamentary Secretaries</i>	 8
 <b>Ministers (new)</b>	 9
<b>22.</b> The law relating to the appointment of members as Ministers or Acting Ministers is set out in chapter 3, part 3. <sup>14</sup>	10 11
 <b>Appointment of Parliamentary Secretaries (CA s 57)</b>	 12
<b>23.(1)</b> The Governor in Council may appoint members of the Legislative Assembly as Parliamentary Secretaries.[CA s 57(1)]	13 14
<b>(2)</b> However, a Minister may not be appointed as a Parliamentary Secretary.[CA s 57(2)]	15 16
 <b>Functions of Parliamentary Secretary (CA s 58)</b>	 17
<b>24.</b> A Parliamentary Secretary has the functions decided by the Premier.[CA s 58]	18 19
 <b>Duration of appointment as Parliamentary Secretary (CA s 59)</b>	 20
<b>25.(1)</b> The appointment of a member of the Legislative Assembly as a Parliamentary Secretary ends on the polling day of the next election conducted of the members of the Legislative Assembly.[CA s 59(1)]	21 22 23

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<sup>13</sup> Schedule 1 (Oaths and affirmations)

<sup>14</sup> Chapter 3 (Governor and Executive Government), part 3 (Ministers of the State)

*Constitution of Queensland*

(2) However, the appointment ends before polling day if—	1
(a) the member's seat becomes vacant otherwise than because the Legislative Assembly is dissolved or expires by the passage of time; or	2 3 4
(b) the member resigns as Parliamentary Secretary by written notice of resignation given to the Premier; or	5 6
(c) the member is appointed as a Minister; or	7
(d) the appointment is ended by the Premier under subsection (3).[CA s 59(2)]	8 9
(3) The Premier may, at any time, end the appointment for reasons the Premier considers sufficient.[CA s 59(3)]	10 11
<b>Reimbursement of expenses (CA s 60)</b>	12
26.(1) A Parliamentary Secretary is entitled to be reimbursed the Parliamentary Secretary's reasonable expenses of office.[CA s 60(1)]	13 14
(2) The consolidated fund is appropriated for the reimbursement.[CA s 60(2)]	15 16

## **CHAPTER 3—GOVERNOR AND EXECUTIVE GOVERNMENT**

### **PART 1—INTERPRETATION**

<b>Governor (COGA s 12)</b>	20
27. "Governor" means—	21
(a) generally—the person appointed for the time being to the office of Governor of the State; and	22 23

*Constitution of Queensland*

(b) for sections 28, 35, 36, 40, 41, 47 and 49 <sup>15</sup> —includes a person for the time being exercising the Governor's powers under a delegation as Deputy Governor under section 40 and a person for the time being administering the Government of the State as Acting Governor under section 41.	1 2 3 4 5
<b>Governor in Council (EARC reprint s 21)</b>	6
28. The Governor in Council is the Governor acting with the advice of Executive Council.[EARC reprint s 21]	7 8
<b>PART 2—GOVERNOR</b>	9
<b>Governor (COGA s 3(1) + 3(2)(a) + EARC reprint s 16)</b>	10
29.(1) There must be a Governor of Queensland.[COGA s 3(1) + EARC reprint s 16]	11 12
(2) The Governor must be appointed by commission under the signature or royal hand of the Sovereign.[COGA s 3(2)(a) + EARC reprint s 16(2)].	13 14
<b>Office of Governor (CA ss 11A-11B + EARC reprint ss 17-18)</b>	15
30.(1) <sup>16</sup> The Sovereign's representative in Queensland is the Governor who holds office during the Sovereign's pleasure.	16 17

<sup>15</sup> Sections 28 (Governor in Council), 35 (Power of Governor—removal or suspension of officer), 36 (Power of Governor—relief for offender), 40 (Delegation by Governor to Deputy Governor), 41 (Administration of Government by Acting Governor), 47 (Executive Council) and 49 (Meetings of Executive Council)

<sup>16</sup> This is merely a restatement of the *Constitution Act 1867*, sections 11A (Office of Governor) and 11B (Definition of Royal Sign Manual)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the *Constitution Act 1867*, sections 11A and 11B and section 53 which provides that a Bill that expressly or impliedly in any way affects sections 11A and 11B of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.

*Constitution of Queensland*

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(2) Abolition of or alteration in the office of Governor may not be effected by an Act of the Parliament except under the <i>Constitution Act 1867</i> , section 53. <sup>17</sup>	1 2 3
(3) In this Act and in every other Act, a reference to the Governor is taken—	4 5
(a) to be a reference to the person appointed for the time being by the Sovereign by commission under the Sovereign’s Royal Sign Manual to the office of Governor of the State of Queensland; and	6 7 8
(b) to include any other person appointed by dormant or other commission under the Royal Sign Manual to administer the Government of the State of Queensland.	9 10 11
(4) In this section—	12
<b>“Royal Sign Manual”</b> means the signature or royal hand of the Sovereign.	13
<b>Publication of commission, declaration of allegiance etc. (COGA s 5)</b>	14
<b>31.(1)</b> Before undertaking any duties as Governor, a person appointed as Governor must, in the presence of the Chief Justice, or the next senior judge of the State who is able to act, (the <b>“judicial officer”</b> ) and of at least 2 members of the Executive Council—	15 16 17 18
(a) cause the commission appointing the person as Governor to be read and published at the seat of government of the State; and	19 20
(b) make the oath or affirmation of allegiance and the oath or affirmation of office in schedule 1, subject to and in accordance with the law and practice of the State.[COGA s 5(1)]	21 22 23
<b>(2)</b> The judicial officer must administer the oaths or affirmations.[COGA s 5(2)]	24 25

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<sup>17</sup> *Constitution Act 1867*, section 53 (Certain measures to be supported by referendum)



*Constitution of Queensland*

<b>Termination of appointment as Governor (COGA s 3(2)(b) + EARC reprint s 19)</b>	1 2
<b>32.(1)</b> The appointment of a person as Governor may be terminated only by instrument signed by the Sovereign.[COGA s 3(2)(b) + EARC reprint s 19(1)]	3 4 5
<b>(2)</b> The instrument takes effect on its publication in the gazette or at a later time stated in the instrument.[COGA s 3(2)(b) + EARC reprint s 19(2)]	6 7
<b>General power of Governor (COGA s 4(1) + EARC reprint s 20)</b>	8
<b>33.</b> The Governor is authorised and required to do all things that belong to the Governor's office under any law.[COGA s 4(1) + EARC reprint s 20]	9 10 11
<b>Power of Governor—Ministers (CA s 14 + EARC reprint s 26)</b>	12
<b>34.</b> Ministers hold office at the pleasure of the Governor who in the exercise of the Governor's power to appoint and dismiss the Ministers is not subject to direction by any person and is not limited as to the Governor's sources of advice.	13 14 15 16
<b>Power of Governor—removal or suspension of officer (COGA s 8(a))</b>	17
<b>35.(1)</b> This section applies without prejudice to the operation of another Act.[COGA s 8(a)]	18 19
<b>(2)</b> To the extent that it is within the Governor's power and if the Governor considers there is sufficient reason, the Governor may remove or suspend from office a person holding an office or place under an appointment made in the name or under the authority of the Sovereign.[COGA s 8(a)]	20 21 22 23 24
<b>Power of Governor—relief for offender (COGA s 8(b))</b>	25
<b>36.(1)</b> This section applies without prejudice to the operation of another Act.[COGA s 8(b)]	26 27

*Constitution of Queensland*

(2) If an offender may be tried in the State for an offence (not being an offence against a Commonwealth law), the Governor may grant the offender, in the name and on behalf of the Sovereign—	1 2 3
(a) a pardon, a commutation of sentence or a reprieve of execution of sentence for a period the Governor considers appropriate; or	4 5
(b) a remission of a fine, penalty, forfeiture or other consequence of conviction of the offender.[COGA s 8(b)]	6 7
(3) The grant may be unconditional or subject to lawful conditions.[COGA s 8(b)]	8 9
<b>Power of Governor—public seal (COGA s 4(2))</b>	10
37. The Governor may keep and use the Public Seal of the State for sealing all public instruments made and passed in the Sovereign's name.[COGA s 4(2)]	11 12 13
<b>Power of Governor—appointment of Lieutenant-Governor (~part COGA s 10(1))</b>	14 15
38. The Governor may by an instrument under the Public Seal of the State appoint a Lieutenant-Governor.[~part COGA s 10(1)]	16 17
<b>Statutory powers when Sovereign personally in State (RPA s 2)</b>	18
39.(1) When the Sovereign is personally present in the State, any power under an Act exercisable by the Governor may be exercised by the Sovereign.[RPA 2(1)]	19 20 21
(2) The Governor has the same powers in relation to an act done, or an instrument made, by the Sovereign under this section as the Governor has in relation to an act done, or an instrument made, by the Governor himself or herself.[RPA 2(2)]	22 23 24 25
(3) This section does not affect or prevent the exercise of any power under an Act by the Governor.[RPA 2(3)]	26 27
(4) In this section, references to the Governor or to the Sovereign include references to the Governor, or to the Sovereign, acting by and with the advice of the Executive Council.[RPA 2(4)]	28 29 30

<b>Delegation by Governor to Deputy Governor (~COGA 10(1) + (4))</b>	1
<b>40.(1)</b> The Governor may delegate the Governor's powers to the person mentioned in subsection (2) only during—	2 3
(a) any period, or all periods, the Governor is temporarily absent for a short period from the State or from the seat of government but not from the State, except when administering the Government of the Commonwealth; or	4 5 6 7
(b) any period, or all periods, the Governor is ill if there are reasonable grounds for believing the illness will be of short duration.[COGA s 10(1)]	8 9 10
<b>(2)</b> The person to whom the Governor's powers may be delegated is—	11
(a) the Lieutenant-Governor; or	12
(b) if there is no Lieutenant-Governor in the State and able to act—the Chief Justice; or	13 14
(c) if there is no Chief Justice in the State and able to act—the next most senior judge of the State who is in the State and able to act.[~COGA s 10(1) + (4)]	15 16 17
<b>(3)</b> The delegation must be by an instrument under the Public Seal of the State and specify the power given to the delegate.[COGA s 10(1)]	18 19
<b>(4)</b> A person exercises the Governor's powers under a delegation as Deputy Governor.	20 21
<b>Administration of Government by Acting Governor (~COGA s 9)</b>	22
<b>41.(1)</b> The person mentioned in subsection (2) must administer the government of the State during—	23 24
(a) any vacancy, or all vacancies, in the office of Governor; or	25
(b) any period the Governor assumes the administration of the Government of the Commonwealth; or	26 27

*Constitution of Queensland*

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(c) any period, or all periods, when the Governor is absent from duty, or can not, for another reason, perform the functions of the office unless a Deputy Governor is exercising the Governor's powers under section 40. <sup>18</sup> [~COGA s 9(1)]	1 2 3 4
(2) The person who must administer the government of the State is—	5
(a) the Lieutenant-Governor; or	6
(b) if there is no Lieutenant-Governor in the State and able to act—the Chief Justice; or	7 8
(c) if there is no Chief Justice in the State and able to act—the next most senior judge of the State who is in the State and able to act.[~COGA s 9(1)]	9 10 11
(3) A person administering the government of the State under this section has all the functions and powers of the Governor and performs the functions and exercises the powers as Acting Governor.	12 13 14
(4) Before, or as soon as is reasonably practicable after, assuming the administration of the State, the person must take the oaths or affirmations directed by section 31 <sup>19</sup> to be taken by the Governor in the way stated in section 31.[COGA s 9(1)]	15 16 17 18
(5) The person must not continue to administer the government of the State after—	19 20
(a) the Governor, by proclamation; or	21
(b) some other person holding an office prior in title to administer the government of the State under subsections (1) and (2), by gazette notice on the advice of and signed by the Premier;	22 23 24
has given notice that the Governor or other person has assumed or resumed or is about to assume or resume, the administration of government of the State.[COGA s 9(4)]	25 26 27

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<sup>18</sup> Section 40 (Delegation by Governor to Deputy Governor)

<sup>19</sup> Section 31 (Publication of commission, declaration of allegiance etc.)

**PART 3—MINISTERS OF THE STATE**

	1
<b>Appointment of Ministers of the State (~part OPA s 3(1) + -EARC reprint s 25 + OPA s 8A)</b>	2 3
<b>42.(1)</b> The Governor may appoint a person to be a Minister of the State. <sup>20</sup> [~part OPA s 3(1) + EARC reprint s 25 (1)]	4 5
<b>(2)</b> To remove any doubt, it is declared that the Attorney-General is a Minister.[OPA s 8A]	6 7
<b>(3)</b> The maximum number of Ministers at any time is 18.[part OPA s 3(1) + EARC reprint s 25(3)]	8 9
<b>(4)</b> A Minister must, before entering on the duties of the Minister's office, make an oath or affirmation of office in schedule 1. <sup>21</sup>	10 11
<b>(5)</b> The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.	12 13
<b>Minister may act for another Minister (~OPA s 8)</b>	14
<b>43.(1)</b> The Governor or Premier may, in writing, appoint a Minister to perform all or any of the functions, and exercise all or any of the powers, of another Minister.[OPA s 8(1) + part of s 8(2)]	15 16 17
<b>(2)</b> However, an appointment by the Premier may not be for a period of more than 14 days.[part of OPA s 8(2)]	18 19
<b>Acting Ministers (~OPA s 3(3) + (4))</b>	20
<b>44.(1)</b> The Governor may appoint a member of the Legislative Assembly to act as a Minister—	21 22
<b>(a)</b> for any period the office of Minister is vacant; or	23

<sup>20</sup> This was previously a reference to 'officers of the Crown liable to retire from office on political grounds'.

<sup>21</sup> Schedule 1 (Oaths and affirmations)

*Constitution of Queensland*

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(b) for any period, or all periods, when the Minister is absent from duty, or is, for another reason, unable to perform the duties of the office.[~OPA s 3(3)]	1 2 3
(2) The member may be appointed to perform all or part of a Minister's functions and exercise all or any of a Minister's powers.[OPA s 3(3)]	4 5
(3) If a member acts as a Minister for a continuous period of 30 days or more, then, in addition to the salary payable to the member as a member of the Legislative Assembly, the member must be paid additional salary at the rate applicable to the office of Minister. <sup>22</sup> [OPA s 3(4)]	6 7 8 9
<b>Administrative arrangements (~AIA s 33(14) + ~ EARC reprint s 25(2))</b>	10 11
<b>45. The Governor in Council may make administrative arrangements—</b>	12
(a) distributing the public business, or any of that business, among the several departments of government or any of those departments; or	13 14 15
(b) showing—	16
(i) the offices or any of the offices placed under the control of each Minister respectively, or of any Minister; or	17 18
(ii) the Acts, or any of the Acts administered by, each Minister respectively, or by any Minister.[~AIA s 33(14) + ~ EARC reprint s 25(2)]	19 20 21
<b>Sick leave (OPA s 3(2))</b>	22
<b>46. The Governor may, by proclamation, give a Minister who is ill leave of absence with pay for a period of not more than 6 months.</b>	23 24

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<sup>22</sup> See the *Parliamentary Members' Salaries Act 1988*.

**PART 4—EXECUTIVE COUNCIL****Executive Council (part of COGA s 6 + EARC reprint s 22)**

47.(1) There must be an Executive Council for the State.[COGA s 6 + EARC reprint s 22(1)]

(2) Executive Council consists of the persons appointed as members of the Executive Council by the Governor under the Public Seal of the State.[EARC reprint s 22(2)].

(3) A member of the Executive Council must, before entering on the duties of the member's office, make an oath or affirmation of office and of secrecy in schedule 1.<sup>23</sup>

(4) The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.

**Duration of appointment as members of Executive Council (part of COGA s 6)**

48. The appointment of a person as a member of Executive Council ends only on the happening of either of the following—

- (a) the person's resignation as a member of Executive Council;
- (b) the person's removal from Executive Council by the Governor.

**Meetings of Executive Council (COGA s 7 + EARC reprint s 24)**

49.(1) The Governor must preside over a meeting of Executive Council.[COGA s 7(1) + EARC reprint s 24(1)]

(2) However, if for good reason, the Governor can not preside, Executive Council must be presided over by—

- (a) if the Governor has appointed a member of Executive Council to preside—the member; or

<sup>23</sup> Schedule 1 (Oaths and affirmations)

*Constitution of Queensland*

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- (b) if the Governor does not appoint a person to preside—the member who is taken to be the most senior member present.[COGA s 7(1) + EARC reprint s 24(2)] 1  
2  
3
- (3) Executive Council must not deal with any business at a meeting unless— 4  
5
- (a) it has been properly summoned to meet by the Governor; and 6
- (b) at least 2 members, other than any presiding member, are present for the entire meeting.[COGA s 7(2) + EARC reprint s 24(3)] 7  
8

**PART 5—POWERS OF THE STATE** 9*Division 1—General* 10**Powers of the State (AIA s 47A + 47B)** 11

**50.(1)** The Executive Government of the State of Queensland (the “State”) has all the powers, and the legal capacity, of an individual.[AIA s 47A + s 47B(1)] 12  
13  
14

**(2)** The State may exercise its powers— 15

(a) inside and outside Queensland; and 16

(b) inside and outside Australia.[AIA s 47B(2)] 17

**(3)** This part does not limit the State’s powers. 18

*Example—* 19

This part does not affect any power a Minister has apart from this part to bind the State by contract.[AIA s 47B(3)] 20  
21



<i>Division 2—Commercial activities</i>	1
<b>Definitions for div 2 (AIA s 47C)</b>	2
<b>51. In this division—</b>	3
<b>“commercial activities” includes—</b>	4
(a) commercial activities that are not within the ordinary functions of the State; and	5 6
(b) commercial activities of a competitive nature; and	7
(c) activities declared under regulation to be commercial activities;	8
but does not include activities declared by regulation not to be commercial activities.	9 10
<b>“State” includes—</b>	11
(a) a department of government of the State; and	12
(b) a part of a department of government of the State.[AIA s 47C(5)]	13
<b>Commercial activities by State (AIA s 47C)</b>	14
<b>52.(1)</b> The State may carry out commercial activities.[AIA s 47C(1)]	15
<b>(2)</b> This section is sufficient statutory authority for the State to carry out a commercial activity.[AIA s 47C(2)]	16 17
<b>(3)</b> Commercial activities may be carried out—	18
(a) without further statutory authority; and	19
(b) without prior appropriation from the public accounts for the purpose.[AIA s 47C(3)]	20 21
<b>(4)</b> Commercial activities may be carried out—	22
(a) inside and outside Queensland; and	23
(b) inside and outside Australia.[AIA s 47C(4)]	24

<b>Commercial activities by Minister (AIA s 47D)</b>	1
<b>53.</b> A Minister may carry out commercial activities for the State.[AIA s 47D]	2 3
<b>Delegation by Minister (AIA s 47E)</b>	4
<b>54.(1)</b> A Minister may delegate the State's powers to an appropriately qualified officer of the State.[AIA s 47E(1)]	5 6
<b>(2)</b> An officer of the State may subdelegate delegated powers to another appropriately qualified officer of the State.[AIA s 47E(2)]	7 8
<b>(3)</b> In this section—	9
<b>“appropriately qualified”</b> includes having the qualifications, experience or standing appropriate to exercise the power.	10 11
<i>Example of standing—</i>	12
A person's level of employment in the entity in which the person is employed.	13
<b>“officer of the State”</b> means—	14
(a) a chief executive, or employee, of a public sector unit; or	15
(b) an officer of the public service.[AIA s 47E(3)]	16
<b>Regulation-making power (AIA s 47F)</b>	17
<b>55.</b> The Governor in Council may make regulations under this part.	18

## CHAPTER 4—COURTS

<b>Supreme Court and District Court (SCQA 1991 s 7 + DCA 1967 s 4 + EARC reprint s 32)</b>	20 21
<b>56.</b> There must be a Supreme Court of Queensland and a District Court.[SCQA 1991 s 7 + DCA 1967 s 4 + EARC reprint s 32]	22 23

<b>Supreme Court's superior jurisdiction (SCQA 1991 s 8 + EARC reprint s 33)</b>	1
	2
<b>57.(1)</b> The Supreme Court has all jurisdiction necessary for the administration of justice in Queensland.[SCQA 1991 s 8 (1)+ EARC reprint s 33(1)]	3
	4
	5
<b>(2)</b> Without limiting subsection (1), the court—	6
<b>(a)</b> is the superior court of record in Queensland and the supreme court of general jurisdiction in and for the State; and	7
	8
<b>(b)</b> has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.[SCQA 1991 s 8(2) + EARC reprint s 33(2)]	9
	10
	11
<b>Appointment of judges (SCQA 1991 s 12 + DCA s 9)</b>	12
<b>58.</b> The Governor in Council may, by commission, appoint a barrister or solicitor of the Supreme Court of at least 5 years standing to be a judge of the Supreme Court or District Court.[SCQA 1991 s 12 + DCA s 9]	13
	14
	15
<b>Length of judge's appointment (CA s 15 + SCQA 1991 s 23 + SCA 1995 s 195(1) + DCA s 14(1) + (2) + EARC reprint s 35)</b>	16
	17
<b>59.(1)</b> A judge holds office indefinitely during good behaviour.[CA s 15 + SCA 1995 s 195(1) + EARC reprint s 35(1)]	18
	19
<b>(2)</b> However, a judge must retire at 70 years.[SCQA 1991 s 23(1)+ DCA s 14(1) + EARC reprint s 35(2)]	20
	21
<b>(3)</b> Despite subsection (2), a judge who, before reaching 70 years, starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.[SCQA 1991 s 23(2) + DCA s 14(2)]	22
	23
	24
<b>(4)</b> A judge's appointment is unaffected by the end of the Sovereign's reign.[CA s 15 + SCA 1995 s 195(1) + EARC reprint s 35(3)]	25
	26
<b>(5)</b> In this section—	27
“ <b>judge</b> ” means a Supreme Court judge or a District Court judge.	28

<b>Removal of judge for misbehaviour or incapacity (CA s 16 + SCA 1995 s 195(2) + DCA s 15 + EARC reprint s 36 with PCEAR pars 47, 52, 58, 60, 67 and 69)</b>	1 2 3
<b>60.(1)</b> A Supreme Court judge or a District Court judge may be removed from office only by the Sovereign on the address of the Legislative Assembly for proved misbehaviour or proved incapacity.[CA s 16 + SCA 1995 s 195(2) + DCA s 15 + EARC reprint s 36(1) with PCEAR par 47]	4 5 6 7
<b>(2)</b> The address may only be made after a tribunal has found that, on the balance of probabilities, the person to be removed has misbehaved, or is incapable of performing the duties of office, and the person's removal is justified.[EARC reprint s 36(2) + PCEAR pars 58 + 60]	8 9 10 11
<b>(3)</b> The tribunal is to consist of at least 3 persons.[part PCEAR par 69]	12
<b>(4)</b> A tribunal member must—	13
<b>(a)</b> be a former judge or former justice of a State or Federal superior court in Australia; and	14 15
<b>(b)</b> not be a former judge of the court of which the person who may be removed is a judge.[part ~PCEAR par 69]	16 17
<b>(5)</b> The tribunal members are to be appointed by resolution of the Legislative Assembly.[PCEAR par 67]	18 19
<b>(6)</b> The tribunal has the functions, powers, protection and immunity given by an Act. <sup>24</sup> [partly PCEAR par 52]	20 21
<b>Judge's salary (CA s 17 + SCA 1995 s 196 + EARC reprint s 37(1) with PCEAR par 79)</b>	22 23
<b>61.(1)</b> A judge must be paid a salary at the rate applicable to the judge's office.[CA s 17 + SCA 1995 s 196]	24 25
<b>(2)</b> This Act authorises payment of the amount for judges' salaries from the consolidated fund.	26 27

<sup>24</sup> The Legal, Constitutional and Administrative Review Committee agrees with the Parliamentary Committee for Electoral and Administrative Review's *Report on Consolidation and Review of the Queensland Constitution* (1994), para 52, that the functions and powers of the tribunal can be specified in another Act such as the *Parliamentary (Judges) Commission of Inquiry Act 1988*.

*Constitution of Queensland*

(3) The amount of a judge's salary may not be decreased.[CA s 17 + SCA 1995 s 196 + EARC reprint s 37(1)] 1  
2

(4) In this section— 3

“judge” means a Supreme Court judge or a District Court judge. 4

**Protection if judicial office abolished (new) 5**

62.(1) This section applies if a judicial office held by a Supreme Court judge or a District Court judge is abolished either directly or by abolition of a court or part of a court. 6  
7  
8

(2) The judge is entitled at least, without loss of salary, to be appointed to, and to hold, another judicial office of equivalent or higher status in the same court in which the judge held the abolished judicial office or in another court, unless the judge already holds that type of judicial office. 9  
10  
11  
12

(3) The right mentioned in subsection (2)— 13

(a) continues for the period during which the judge would have been entitled to hold the abolished judicial office, subject to removal under section 60; and 14  
15  
16

(b) lapses if the judge fails to take up an appointment to the other judicial office or resigns from it. 17  
18

**CHAPTER 5—REVENUE 19**

**Consolidated fund (CA s 34) 20**

63. All taxes, imposts, rates and duties and other revenues of the State are to form one consolidated fund to be appropriated for the public service of the State in the way, and subject to the charges, specified by this Act.[CA s 34] 21  
22  
23  
24

<b>Requirement to pay tax etc. (Bill Rts art 4)</b>	1
64. A requirement to pay a tax, impost, rate or duty of the State must be authorised by Act.[Article 4 of the Bill of Rights (Imp)]	2 3
<b>Payment from consolidated fund (CA s 39(1))</b>	4
65.(1) The payment of an amount from the consolidated fund must be authorised by Act.[CA s 39(1)]	5 6
(2) Further, the Act authorising the payment must specify the purpose for which the payment is made.[CA s 39(1)]	7 8
(3) This section does not apply in relation to the costs, charges and expenses relating to the collection and management of the fund.[CA s 39(1)]	9 10 11
<b>Charges on consolidated fund (CA s 35 + 39(1) + EARC reprint s 41)</b>	12
66.(1) The consolidated fund is permanently charged with all the costs, charges and expenses relating to the collection and management of the fund.[CA s 35 + EARC reprint s 41(1)]	13 14 15
(2) The costs, charges and expenses are the first charge on the consolidated fund.[CA s 39(1) + EARC reprint s 41(2)]	16 17
(3) However, the costs, charges and expenses may be reviewed and audited under an Act.[CA s 35 + EARC reprint s 41(3)]	18 19
<b>Governor's recommendation required for appropriation (CA s 18 + EARC reprint s 42)</b>	20 21
67.(1) The Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of—	22 23
(a) an amount from the consolidated fund; or	24
(b) an amount required to be paid to the consolidated fund;	25
that has not first been recommended by a message of the Governor.[CA s 18 + EARC reprint s 42(1)]	26 27

*Constitution of Queensland*

(2) The message must be given to the Legislative Assembly during the session in which the vote, resolution or Bill will be passed.[CA s 18 + EARC reprint s 42(2)]	1
	2
	3

## **CHAPTER 6—LANDS**

4

<b>Lands (CA ss 30 + 40 + EARC reprint s 9)</b>	5
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68.(1) Parliament may make laws for regulating the sale, letting, disposal and occupation of the waste lands of the Crown in Queensland.	6
	7

(2) The entire management and control of the waste lands of the Crown in Queensland and also the appropriation of the gross proceeds of the sales of the lands and all other proceeds and revenues of the lands from any source including all royalties mines and minerals vest in the Parliament.	8
	9
	10
	11

## **CHAPTER 7—LOCAL GOVERNMENT**

12

### **PART 1—LOCAL GOVERNMENT SYSTEM**

13

<b>System of local government (part of CA s 54(1) + EARC reprint s 43)</b>	14
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69.(1) There must be and continue to be a system of local government in Queensland.[CA s 54(1) + EARC reprint s 43(1)]	15
	16

(2) The system consists of a number of local governments.[CA s 54(1) + EARC reprint s 43(2)]	17
	18

<b>Requirements for a local government (CA s 54 + EARC reprint s 44)</b>	19
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70.(1) A local government is an elected body that is charged with the good rule and local government of a part of Queensland allocated to the body.[CA s 54(1) + EARC reprint s 44(1)]	20
	21
	22

*Constitution of Queensland*

(2) Other legislation (whenever made) decides the way in which a local government is constituted and the nature and extent of its functions and powers.[CA s 54(2) + EARC reprint s 44(2) + (4)]	1 2 3
(3) Despite subsection (1), if a local government is dissolved or is unable to be properly elected, other legislation (whenever made) may provide for all or any of the local government's functions to be performed and all or any of the local government's powers to be exercised by 1 or more appointed bodies or persons until the local government has been properly elected.[CA s 54(3) + (4)]	4 5 6 7 8 9
(4) In subsection (3)—	10
“local government” includes a joint local government and a person or persons appointed to perform the functions and exercise the powers of the local government as an administrator.	11 12 13

<b>PART 2—PROCEDURE RESTRICTING</b>	14
<b>DISSOLUTION OF LOCAL GOVERNMENT AND</b>	15
<b>INTERIM ARRANGEMENT</b>	16

<b>Dissolution of local government must be tabled (part of CA s 55(2) + EARC reprint s 46(1))</b>	17 18
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71. A copy of an instrument purporting to dissolve a local government must be tabled in the Legislative Assembly within 14 sitting days after the instrument is made.[CA s 55(2) + EARC reprint s 46(1)]	19 20 21
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<b>Suspension until dissolution ratified (CA s 55(2) + (5) + EARC reprint s 47)</b>	22 23
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72.(1) From the time an instrument purporting to dissolve a local government is made until it is ratified under section 73 or its effect ends under section 74, it has the effect only of suspending the local government's councillors from office. [CA s 55(2) + EARC reprint s 47]	24 25 26 27
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*Constitution of Queensland*

(2) During the suspension, 1 or more bodies or persons appointed by law to perform the functions and exercise the powers of the local government because of its purported dissolution may be taken to be the local government and to perform its functions and exercise its powers.[CA s 55(5)]

**Ratification of dissolution (CA s 55(2) + (3) + EARC reprint s 48)**

73.(1) The Legislative Assembly may, on the motion of the Minister responsible for local government, ratify the dissolution of a local government within 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled.[CA s 55(2) + EARC reprint s 48(1)]

(2) If the Legislative Assembly ratifies the dissolution, the local government is dissolved in accordance with the instrument from the time of ratification.[CA s 55(3) + EARC reprint s 48(2)]

**No tabling or ratification of dissolution (CA s 55(4) + EARC reprint s 49)**

74.(1) This section applies if—

- (a) a copy of the instrument purporting to dissolve the local government is not tabled under section 71;<sup>25</sup> or
- (b) the Legislative Assembly refuses to ratify a dissolution of a local government moved by the Minister responsible for local government; or
- (c) at the end of 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled—
  - (i) the Minister has not moved that the dissolution be ratified; or
  - (ii) the Legislative Assembly has not ratified the dissolution, even though the Minister has moved that it be ratified.[CA s 55(4) + EARC reprint s 49(1) other than (b)(i)]

<sup>25</sup> Section 71 (Dissolution of local government must be tabled)

(2) The effect of the instrument purporting to dissolve the local government ends.[CA s 55(4) + EARC reprint s 49(2)]	1 2
(3) The suspension from office of the local government's councillors ends and they are reinstated in their respective offices.[CA s 55(4)(c) + EARC reprint s 49(3) + (4)]	3 4 5
(4) The appointment of a body or person appointed to perform the functions and exercise the powers of the local government because of its purported dissolution ends.[CA s 55(4)(d) + EARC reprint s 49(5)]	6 7 8
 <b>PART 3—SPECIAL PROCEDURES FOR CERTAIN LOCAL GOVERNMENT BILLS</b>	 9 10
 <b>Procedure for Bill affecting a local government (CA s 56(1) + EARC reprint s 50)</b>	 11 12
75.(1) This section applies for a Bill for an Act that would—	13
(a) be administered by the Minister responsible for local government; and	14 15
(b) affect local governments generally or any of them.[CA s 56(1) + EARC reprint s 50(1)]	16 17
(2) The member of the Legislative Assembly who is to be in charge of the passage of the Bill in the Legislative Assembly must, if the member considers it practicable, arrange for a summary of the Bill to be given to a body representing local governments in the State a reasonable time before the Bill is introduced in the Legislative Assembly.[CA s 56(1) + EARC reprint s 50(2) + (3)]	18 19 20 21 22 23
 <b>Procedure for Bill ending system of local government (CA s 56(2)–(6) + EARC reprint s 51-53)</b>	 24 25
76.(1) This section applies for a Bill for an Act ending the system of local government in Queensland.[CA s 56(2) + EARC reprint s 51(1)]	26 27

*Constitution of 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.[CA s 56(2) + EARC reprint s 51(2) + (5)] 1  
2  
3  
4
- (3) The Bill has no effect as an Act if assented to after presentation in contravention of subsection (2).[CA s 56(3) + EARC reprint s 52] 5  
6
- (4) The vote about the proposal must be taken on a day prescribed under a regulation that is more than 1 month but less than 6 months before the Bill is introduced in the Legislative Assembly.[CA s 56(2) + EARC reprint s 51(3)] 7  
8  
9  
10
- (5) The vote must be taken in the way prescribed by an Act.[CA s 56(4) + EARC reprint s 51(4)] 11  
12
- (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.[CA s 56(5) + EARC reprint s 53(1) + (2)] 13  
14  
15  
16
- (7) In this section— 17
- “elector” means a person entitled to vote at a general election of members of the Legislative Assembly.[CA s 56(6) + EARC reprint s 51(6)] 18  
19

**CHAPTER 8—MISCELLANEOUS** 20**Issue of compliance not justiciable (COGA s 11)** 21

77. Without affecting the justiciability of any other issue under this Act, it is declared that the issue of compliance with section 31, 40, 41, 47 or 49<sup>26</sup> is not justiciable in any court.[COGA s 11] 22  
23  
24

<sup>26</sup> Section 31 (Publication of commission, declaration of allegiance etc.), 40 (Delegation by Governor to Deputy Governor), 41 (Administration of Government by Acting Governor), 47 (Executive Council) or 49 (Meetings of Executive Council)

<b>CHAPTER 9—TRANSITIONAL PROVISIONS</b>	1
<b>Continuation of Legislative Assembly and its membership (EARC Bill cl 51)</b>	2 3
<b>78.(1)</b> The Legislative Assembly as constituted immediately before the commencement of this section, is continued in existence under this Act.	4 5
<b>(2)</b> A person who, immediately before the commencement of section 21, <sup>27</sup> is a member of the Legislative Assembly—	6 7
(a) is taken to be a member of the Legislative Assembly under this Act; and	8 9
(b) is taken to have made the oath or affirmation of allegiance for the purpose of section 21.[EARC Bill cl 51]	10 11
 <b>Continuation of appointment of Governor (EARC Bill cl 47)</b>	 12
<b>79.</b> The appointment as Governor of the person who, immediately before the commencement of section 29, <sup>28</sup> was the Governor is not affected by the section's commencement.[EARC Bill cl 47]	13 14 15
 <b>Continuation of appointment as Minister of State (EARC Bill cl 49)</b>	 16
<b>80.</b> A person who, immediately before the commencement of section 42, <sup>29</sup> was an Officer of the Crown declared under the <i>Officials in Parliament Act 1896</i> to be capable of being elected as a member of the Legislative Assembly and of sitting and voting in the Legislative Assembly at the same time is taken to have been appointed as a Minister of the State under this Act.[EARC Bill cl 49]	17 18 19 20 21 22

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<sup>27</sup> Section 21 (No member to sit or vote without first taking oath)

<sup>28</sup> Section 29 (Governor)

<sup>29</sup> Section 42 (Appointment of Ministers of the State)

<b>Continuation of appointment as Parliamentary Secretary (new)</b>	1
81. A person who, immediately before the commencement of section 23, <sup>30</sup> was a member of the Legislative Assembly appointed as a Parliamentary Secretary is taken to have been appointed as a Parliamentary Secretary under this Act.	2 3 4 5
<b>Continuation of administrative arrangements (~EARC Bill cl 50)</b>	6
82. The administrative arrangements as in force immediately before the commencement of section 45 <sup>31</sup> are not affected by the section's commencement.[~EARC Bill cl 50]	7 8 9
<b>Continuation of membership of Executive Council (EARC Bill cl 48)</b>	10
83. A person who, immediately before the commencement of section 47, <sup>32</sup> was a member of Executive Council under the <i>Constitution (Office of Governor) Act 1987</i> is taken to be a member of Executive Council under this Act.[EARC Bill cl 48]	11 12 13 14
<b>Continuation of Supreme Court (new)</b>	15
84. The Supreme Court as formerly established as the superior court of record in Queensland is continued in existence.	16 17
<b>Continuation of District Court (new)</b>	18
85. The District Court as formerly established is continued in existence.	19

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<sup>30</sup> Section 23 (Appointment of Parliamentary Secretaries)

<sup>31</sup> Section 45 (Administrative arrangements)

<sup>32</sup> Section 47 (Executive Council)

<b>Continuation of appointment of judges (new)</b>	1
86. The appointment as a Supreme Court judge or District Court judge of a person who, immediately before the commencement of section 58, <sup>33</sup> was a Supreme Court judge or District Court judge is not affected by the section's commencement.	2 3 4 5
<b>Continuation of consolidated fund (EARC Bill cl 52)</b>	6
87. The consolidated fund in existence immediately before the commencement of section 63 <sup>34</sup> is taken to be the consolidated fund.[EARC Bill cl 52]	7 8 9
<b>CHAPTER 10—CONSEQUENTIAL AMENDMENTS AND REPEALS</b>	10 11
<b>Amendments (EARC Bill cl 53)</b>	12
88. An Act mentioned in schedule 2 <sup>35</sup> is amended as set out in the schedule.[EARC bill cl 53]	13 14
<b>Repeals etc. (EARC Bill cl 56)</b>	15
89.(1) The laws mentioned in schedule 3 <sup>36</sup> are repealed.[EARC Bill cl 56(1)]	16 17
(2) The Imperial laws mentioned in schedule 4 <sup>37</sup> have no force in Queensland.[EARC Bill cl 56(2)]	18 19

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<sup>33</sup> Section 58 (Appointment of judges)

<sup>34</sup> Section 63 (Consolidated fund)

<sup>35</sup> Schedule 2 (General amendments)

<sup>36</sup> Schedule 3 (Repealed laws)

<sup>37</sup> Schedule 4 (Imperial laws no longer in force)

<b>SCHEDULE 1</b>	1
<b>OATHS AND AFFIRMATIONS</b>	2
sections 21, 31, 42 and 47 <sup>38</sup>	3
<b>Oath or affirmation of allegiance</b>	4
'I,..(name)..., do sincerely promise and swear ( <i>or, for an affirmation—do solemnly and sincerely affirm and declare</i> ) that I will be faithful and bear true Allegiance to Her ( <i>or His</i> ) Majesty..(name of Sovereign).. as lawful Sovereign of the United Kingdom, Australia and Her ( <i>or His</i> ) other realms and territories and to Her ( <i>or His</i> ) heirs and successors, according to law.	5 6 7 8 9
So help me God! ( <i>or omitted for an affirmation</i> ).'	10
<b>Oath or affirmation of office—Governor</b>	11
'I,..(name)..., do swear ( <i>or, for an affirmation—do solemnly and sincerely affirm and declare</i> ) that I will well and truly serve Her ( <i>or His</i> ) Majesty..(name of Sovereign).. in the office of Governor of Queensland and its Dependencies, in the Commonwealth of Australia, and will duly carry out the office according to the best of my ability, skill and knowledge and that I will, in all things associated with the office, duly and impartially administer justice in Queensland.	12 13 14 15 16 17 18
So help me God! ( <i>or omitted for an affirmation</i> ).'	19

<sup>38</sup> Sections 21 (No member to sit or vote without first taking oath), 31 (Publication of commission, declaration of allegiance etc.), 42 (Appointment of Ministers of the State) and 47 (Executive Council)

## SCHEDULE 1 (continued)

<b>Oath or affirmation of office—Premier or other Minister of the State</b>	1
'I,..(name).., do swear ( <i>or, for an affirmation—do solemnly and</i>	2
sincerely affirm and declare) that I will, according to the best of my ability,	3
skill and knowledge, well and faithfully carry out the office and trust of	4
Premier ( <i>or Minister for (name of portfolio)</i> ) of the State of Queensland in	5
the Commonwealth of Australia, and that I will in all things honestly.	6
zealously, and impartially discharge and exercise the duties, powers and	7
authorities belonging to me in the office.	8
So help me God! ( <i>or omitted for an affirmation</i> ).'	9
 <b>Oath or affirmation of office and of secrecy—Member of Executive</b>	10
<b>Council</b>	11
'I,..(name).., do swear ( <i>or, for an affirmation—do solemnly and</i>	12
sincerely affirm and declare) that I will, to the best of my ability, skill and	13
knowledge, faithfully advise and assist the Governor or other officer	14
exercising a function or power of the Governor as Deputy Governor or	15
Acting Governor, in all matters that are brought under my consideration as a	16
Member of the Executive Council of Queensland.	17
And I do swear ( <i>or, for an affirmation—do solemnly and sincerely</i>	18
affirm and declare) that, except as may be required by law, I will not divulge	19
any information (including the contents of any document) of which I	20
become aware by reason of my membership of the Executive Council of	21
Queensland.	22
So help me God! ( <i>or omitted for an affirmation</i> ).'	23



<b>SCHEDULE 2</b>	1
<b>GENERAL AMENDMENTS</b>	2
section 88	3
<b>ACTS INTERPRETATION ACT 1954</b>	4
<b>1. Section 33(1)(a), 'Crown'—</b>	5
<i>omit, insert—</i>	6
'State'.	7
<b>2. Section 33(14)—</b>	8
<i>omit.</i>	9
<b>3. Section 36, definition "Constitution of Queensland"—</b>	10
<i>omit, insert—</i>	11
' "Constitution of Queensland" means the following—	12
(a) <i>Constitution of Queensland Act 1999;</i>	13
(b) <i>Constitution Act 1867;</i>	14
(c) <i>Constitution Act Amendment Act 1890;</i>	15
(d) <i>Constitution Act Amendment Act 1934.'</i>	16
<b>4. Section 36, definition "Governor" paragraph (a)—</b>	17
<i>omit, insert—</i>	18
'(a) for Queensland—has the meaning given by the <i>Constitution of Queensland Act 1999</i> ; or'	19
	20

## SCHEDULE 2 (continued)

<b>5. Part 12—</b>	1
<i>omit.</i>	2
<b>CONSTITUTION ACT 1867</b>	
<b>1. Preamble—</b>	4
<i>omit.</i>	5
<b>2. Section 1A, '1867.'—</b>	6
<i>omit, insert—</i>	7
'1867. <sup>39</sup> '.	8
<b>3. Sections 3 to 10—</b>	9
<i>omit.</i>	10
<b>4. Heading before section 12 to section 52—</b>	11
<i>omit.</i>	12

<sup>39</sup> There are restatements of sections 1, 2, 2A, 11A and 11B of this Act in the *Constitution of Queensland Act 1999*. The 1999 provisions are not intended to affect in any way the meaning or effect of those provisions of this Act—see the *Constitution of Queensland Act 1999*, section 4(1) (Status of particular provisions).

For the restatement of section 1, see the *Constitution of Queensland Act 1999*, section 6 (Legislative Assembly).

For the restatement of section 2, see the *Constitution of Queensland Act 1999*, section 7 (Law-making power).

For the restatement of section 2A, see the *Constitution of Queensland Act 1999*, section 8 (The Parliament).

For the restatement of sections 11A and 11B, see the *Constitution of Queensland Act 1999*, section 30 (Office of Governor).

## SCHEDULE 2 (continued)

<b>5. Heading before section 54 to section 60—</b>	1
<i>omit.</i>	2
 <b>CONSTITUTION ACT AMENDMENT ACT 1890</b>	3
 <b>1. Section 2, ‘hereafter to be summoned and chosen shall’—</b>	4
<i>omit, insert—</i>	5
‘is to’.	6
 <b>2. Section 2, ‘the same’—</b>	7
<i>omit, insert—</i>	8
‘it’.	9
 <b>3. Section 2, ‘; subject nevertheless to be sooner dissolved’—</b>	10
<i>omit, insert—</i>	11
‘, unless it is dissolved earlier’.	12
 <b>CONSTITUTION ACT AMENDMENT ACT 1934</b>	13
 <b>1. Preamble—</b>	14
<i>omit.</i>	15
 <b>2. Sections 1 and 2—</b>	16
<i>omit, insert—</i>	17
<b>‘Short title</b>	18
‘1. This Act may be cited as the <i>Constitution Act Amendment Act 1934</i> .	19

## SCHEDULE 2 (continued)

<b>'Act to be read as part of the Constitution of Queensland</b>	1
'2. This Act is to be read and construed with, and as an amendment of, the Constitution of Queensland.'	2 3
 <b>DISTRICT COURT ACT 1967</b>	 4
<b>1. Sections 4, 9, 14 and 15—</b>	5
<i>omit.</i>	6
 <b>ELECTORAL ACT 1992</b>	 7
<b>1. Section 83(1)—</b>	8
<i>omit.</i>	9
<b>2. Section 83(2), 'is a disqualified person if—'</b>	10
<i>omit, insert—</i>	11
'is disqualified from standing for election as a member of the Legislative Assembly if—'	12 13
 <b>SUPREME COURT ACT 1995</b>	 14
<b>1. Part 9, division 2—</b>	15
<i>omit.</i>	16

## SCHEDULE 2 (continued)

<b>SUPREME COURT OF QUEENSLAND ACT 1991</b>	1
<b>1. Part 2, division 1 (heading)—</b>	2
<i>omit, insert—</i>	3
' <i>Division 1— Jurisdiction and composition</i> '.	4
<b>2. Sections 8, 9, 12 and 23—</b>	5
<i>omit.</i>	6
<b>3. Section 44(a)—</b>	7
<i>omit, insert—</i>	8
'(a) the <i>Constitution of Queensland Act 1999</i> , section 61; <sup>40</sup> and'.	9
	10

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<sup>40</sup> The *Constitution of Queensland Act 1999*, section 61 (Judge's salary)

<b>SCHEDULE 3</b>	1
<b>REPEALED LAWS</b>	2
section 89(1)	3
<i>Legislative Assembly Act 1867</i> <sup>41</sup>	4
Proclamation declaring transfer of certain islands dated 22 August 1872 and published in the gazette on 24 August 1872 at page 1325	5 6
<i>Officials in Parliament Act 1896</i> <sup>41</sup>	7
<i>Constitution Act Amendment Act 1922</i>	8
<i>Royal Powers Act 1953</i>	9
<i>Australia Acts (Request) Act 1985</i>	10
Proclamation of Letters Patent for Governor dated 6 March 1986 and published in the gazette on 8 March 1986 at pages 903-6	11 12
<i>Constitution (Office of Governor) Act 1987</i> <sup>42</sup>	13 14

<sup>41</sup> It is proposed that the provisions of this Act will be dealt with by this Act and the *Parliament of Queensland Bill*.

<sup>42</sup> It is also proposed that the *Parliament of Queensland Bill* will repeal the *Constitution Act Amendment Act 1896*.

<b>SCHEDULE 4</b>	1
<b>IMPERIAL LAWS NO LONGER IN FORCE</b>	2
section 89(2)	3
<i>Australian Constitutions Act 1850</i>	4
(Amending Act)	5
<i>New South Wales Constitution Act 1855</i>	6
(Amending Acts)	7
Order in Council dated 6 June 1859 mentioned in the preamble to the <i>Constitution Act 1867</i>	8 9
<i>Australian Constitutions Act 1862</i>	10
(Amending Acts)	11
<i>Colonial Letters Patent Act 1863</i>	12
(Amending Acts)	13 14

<b>ATTACHMENT 1</b>	1
section 4	2
<b>CONSTITUTION ACT 1867, SECTIONS 1, 2, 2A, 11A, 11B AND 53</b>	3 4
<b>The Constitution Act 1867—</b>	5 6
<b>Legislative Assembly</b>	7
1. There shall be within the said Colony of Queensland a Legislative Assembly.	8 9
<b>Legislative Assembly constituted</b>	10
2. Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace welfare and good government of the colony in all cases whatsoever.	11 12 13 14
<b>The Parliament</b>	15
2A.(1) The Parliament of Queensland consists of the Queen and the Legislative Assembly referred to in sections 1 and 2.	16 17
(2) Every Bill, after its passage through the Legislative Assembly, shall be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.	18 19 20 21
.....	22



## ATTACHMENT 1 (continued)

<b>Office of Governor</b>	1
<b>11A.(1)</b> The Queen's representative in Queensland is the Governor who shall hold office during Her Majesty's pleasure.	2 3
<b>(2)</b> Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with section 53.	4 5
<b>(3)</b> In this Act and in every other Act a reference to the Governor shall be taken—	6 7
(a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty's Royal Sign Manual to the office of Governor of the State of Queensland; and	8 9 10
(b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual to administer the Government of the State of Queensland.	11 12 13
<b>Definition of Royal Sign Manual</b>	14
<b>11B.</b> In section 11A the expression "Royal Sign Manual" means the signature or royal hand of the Sovereign.	15 16
.....	17
<b>Certain measures to be supported by referendum</b>	18
<b>53.(1)</b> A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely—	19 20 21
sections 1, 2, 2A, 11A, 11B; and	22
this section 53	23
shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.	24 25 26 27

## ATTACHMENT 1 (continued)

- (2) On a day not sooner than two months after the passage through the Legislative Assembly of a Bill of a kind referred to in subsection (1) the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the *Elections Act* 1915-1973 and of any Act amending the same or of any Act in substitution therefor. 1  
2  
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- Such day shall be appointed by the Governor in Council by Order in Council. 7  
8
- (3) When the Bill is submitted to the electors the vote shall be taken in such manner as the Parliament of Queensland prescribes. 9  
10
- (4) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for reservation thereof for the signification of the Queen's pleasure. 11  
12  
13
- (5) Any person entitled to vote at a general election of members of the Legislative Assembly is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this section either before or after a Bill of a kind referred to in subsection (1) is presented for assent by or in the name of the Queen. 14  
15  
16  
17  
18
- Act 24 Geo. 5 No. 35 preserved** 19
- (6) The provisions of this section shall in no way affect the operation of *The Constitution Act Amendment Act of 1934*. 20  
21

.....

22  
23

## ATTACHMENT 2

1

section 4

2

**CONSTITUTION ACT AMENDMENT ACT 1890,  
SECTION 2**

3

4

**The Constitution Act Amendment Act 1890—**

5

6

**Duration of Legislative Assembly to be 3 years only**

7

2. Every Legislative Assembly is to continue for 3 years from the day appointed for the return of the writs for choosing it, and no longer, unless it is dissolved earlier.

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**CONSTITUTION ACT AMENDMENT ACT 1934,  
SECTION 4**

11

12

**The Constitution Act Amendment Act 1934—**

13

14

**Duration of Legislative Assembly not to be extended except in  
accordance with this section**

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16

4.(1) The provisions of section two of "*The Constitution Act Amendment Act of 1890*" (referred to in the preamble to this Act) shall not be amended in the direction of extending the period of three years, which, as provided by the said section two, is the period for which any Legislative Assembly, now or hereafter summoned and chosen, shall continue from the day appointed for the return of the writs for choosing the same and no longer (subject, nevertheless, to be sooner dissolved by the Governor), nor shall any other Act or law relating to the Constitution be passed extending such period of three years as aforesaid, except in the manner provided by this section.

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## ATTACHMENT 2 (continued)

- (2) A Bill for any purpose within subsection (1) of this section shall not be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure, or for the Governor's Assent, or be in any other way assented to, until the Bill has been approved by the electors in accordance with this section. 1  
2  
3  
4  
5
- (3) On a day not sooner than two months after the passage of the Bill through the Legislative Assembly, the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of "*The Elections Acts, 1915 to 1932,*" or any Act amending the same or in substitution therefor. 6  
7  
8  
9  
10  
11
- Such day shall be appointed by the Governor in Council. 12
- (4) When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes. 13  
14
- (5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure. 15  
16  
17
- (6) The provisions of this section shall extend to any Bill for the repeal or amendment of this section. 18  
19

## ATTACHMENT 3

1

section 8

2

**CONSTITUTION ACT AMENDMENT ACT 1934,  
SECTION 3**

3

4

**The Constitution Act Amendment Act 1934—**

5

6

**Parliament not to be altered in the direction of re-establishing the  
Legislative Council or other body except in accordance with this  
section**

7

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9

3.(1) The Parliament of Queensland (or, as sometimes called, the Legislature of Queensland), constituted by His Majesty the King and the Legislative Assembly of Queensland in Parliament assembled shall not be altered in the direction of providing for the restoration and/or constitution and/or establishment of another legislative body (whether called the "Legislative Council," or by any other name or designation, in addition to the Legislative Assembly) except in the manner provided in this section.

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(2) A Bill for any purpose within subsection one of this section shall not be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure, or for the Governor's Assent, or be in any other way assented to, until the Bill has been approved by the electors in accordance with this section.

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(3) On a day not sooner than two months after the passage of the Bill through the Legislative Assembly, the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of "*The Elections Acts, 1915 to 1932*," or any Act amending the same or in substitution therefor.

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Such day shall be appointed by the Governor in Council.

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(4) When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes.

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## ATTACHMENT 3 (continued)

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure. 1  
2  
3

(6) The provisions of this section shall extend to any Bill for the repeal or amendment of this section. 4  
5

6

## KEY

		1
AIA	<i>Acts Interpretation Act 1954</i>	2
Bill Rts	<i>Bill of Rights (1 William and Mary Sess.2.c.2 (Imp))</i>	3
CA	<i>Constitution Act 1867</i>	4
CAAA 1890	<i>Constitution Act Amendment Act 1890</i>	5
CAAA 1896	<i>Constitution Act Amendment Act 1896</i>	6
CAAA 1922	<i>Constitution Act Amendment Act 1922</i>	7
CAAA 1934	<i>Constitution Act Amendment Act 1934</i>	8
COGA	<i>Constitution (Office of Governor) Act 1987</i>	9
DCA	<i>District Court Act 1967</i>	10
EARC	<i>Electoral and Administrative Review Commission</i>	11
EARC Bill	<i>Queensland Constitution Bill 1993 in Appendix B to EARC's Report on Consolidation and Review of the Queensland Constitution (1993)</i>	12 13 14
EARC reprint	<i>Queensland Constitution Bill 1993 in Appendix A to EARC's Report on Consolidation and Review of the Queensland Constitution (1993)</i>	15 16 17
	<i>Appendix A shows the Bill as reprinted to include amendments up to the Queensland Constitution Amendment Act 1993</i>	18 19 20
Electoral Act	<i>Electoral Act 1992</i>	21
LAA	<i>Legislative Assembly Act 1867</i>	22
OPA	<i>Officials in Parliament Act 1896</i>	23
PCA	<i>Parliamentary Committees Act 1995</i>	24
PCEAR	<i>Parliamentary Committee for Electoral and Administrative Review's Report on Consolidation and Review of the Queensland Constitution (1994)</i>	25 26 27
PPA	<i>Parliamentary Papers Act 1992</i>	28
RPA	<i>Royal Powers Act 1953</i>	29
SCA 1995	<i>Supreme Court Act 1995</i>	30
SCQA 1991	<i>Supreme Court of Queensland Act 1991</i>	31

## CONSTITUTION OF QUEENSLAND BILL 1999

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### FINAL DRAFT

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### NOTES TO THE BILL

Along with the accompanying draft Parliament of Queensland Bill 1999 ('the Parliament Bill'), the attached final draft of the Constitution of Queensland Bill 1999 ('the Constitution Bill' or 'the Bill') represents the Legal, Constitutional and Administrative Review Committee's proposals for consolidating Queensland's constitutional laws. This finalised draft Bill, and the attached Parliament of Queensland Bill, supersede the consultation draft Bills which the committee released for public consultation in its May 1998 interim report on the consolidation of the Queensland Constitution. Changes have been made to the Bills to incorporate suggestions made in public submissions to the committee and to put into effect a change in the committee's approach to dealing with entrenched provisions<sup>1</sup> in the consolidation.

These notes consequently supersede the notes to the consultation draft version of the Bill (contained in Part II of the interim report). Nevertheless, the notes to the majority of clauses remain unchanged from those to the consultation draft version of the Bill, reflecting the fact that the majority of the clauses themselves remain unchanged.

The notes explain each clause of the Constitution Bill, its origins in existing law (which is also noted in clause headings in the actual Bill) and any major changes that have been made in rewording the existing provision(s) which the clause represents. The notes also highlight proposed changes to existing law that might be regarded as substantial in nature.

Shaded boxes are used to explain how EARC (and, where relevant, the PCEAR)<sup>2</sup> had approached the consolidation and revision of particular provisions. The boxed text especially highlights instances where this committee's approach diverges from EARC's proposals.

The boxes also contain commentary on any substantial modifications made to a clause since the consultation draft Bill was released. Minor changes are not noted. An asterisk ('\*') at the start of the notes for a clause denotes that at least some change has been made to the text of the clause. Mere renumbering of clauses is not referred to in the notes. (Most clauses have been renumbered since the consultation draft Bill was released.)

Along with these notes, **Table 1** (attached to this report) enables the reader to fully analyse not only where the clauses of the current Bill originate but how their wording changes, if at all, from that of the existing law. Table 1 lists each clause of the Constitution Bill alongside the complete wording of the existing provision(s) on which the clause is based.

The last page of the Bill provides a key to abbreviated names of Acts referred to in the Bill and in these notes.

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<sup>1</sup> 'Entrenchment' is discussed in the notes to cl 3 below and in the committee's final report (attached).

<sup>2</sup> EARC's and the PCEAR's approaches to consolidating the Queensland Constitution are discussed in the attached final report and (more fully) in the committee's interim report.



## CHAPTER 1—PRELIMINARY

Clause 1 provides the short title of the Act.

\*Clause 2 provides for the commencement of the Act.

Clause 3 provides the object of the Bill—the Bill brings together existing constitutional provisions, modernises them and declares the Constitution of Queensland. The clause, by providing that the Bill consolidates the Constitution of Queensland *to the extent practicable*, recognises that a small number of ‘entrenched’ constitutional provisions currently contained in separate Acts have proved to be a barrier to a complete consolidation.

Entrenched provisions are laws that the Parliament has sought to protect so that the law may not be repealed or changed through normal law-making procedures. Entrenched provisions may not be repealed or amended, or affected (depending on the terms of the entrenchment) by Parliament unless Parliament follows certain special measures that are required, for example, obtaining the approval of electors at a referendum.

In Queensland, entrenched constitutional provisions are currently contained in the *Constitution Act 1867* and in the *Constitution Act Amendment Acts* of 1890 and 1934. How the committee approached the entrenched provisions contained in *Constitution Act 1867* and the *Constitution Act Amendment Act 1890* is discussed in the notes to clause 4. How the committee approached the *Constitution Act Amendment Act 1934* is discussed in these notes at the end of chapter 2, part 2 under the heading ‘Other Parliament-related provisions’ (see pages 8-9).

\*Clause 4 provides that cls 6 (Legislative Assembly), 7 (Law-making power), 8 (The Parliament) and 30 (Office of Governor) are **restatements** of the corresponding provisions of the *Constitution Act 1867*; namely, ss 1, 2, 2A and 11A and 11B of that Act. Clause 4 also provides that cls 6, 7, 8 and 30 are not intended to affect in any way the meaning or effect of those corresponding provisions. Clause 4(3) provides that the restatement of the provisions is not intended to change the law stated in the provisions.

See attachment 1 to the Bill which sets out the text of the *Constitution Act 1867*, ss 1, 2, 2A, 11A and 11B. Those sections continue in existence in that Act. Attachment 1 also sets out the text of the *Constitution Act 1867*, s 53 (Certain measures to be supported by referendum).

Clause 4(2) provides that cl 16 (Duration of Legislative Assembly to be 3 years only) is a restatement of the *Constitution Act Amendment Act 1890*, s 2 and is not intended to affect in any way the meaning or effect of the provision.

See Attachment 2 of the Bill which sets out the text of the *Constitution Act Amendment Act 1890*, s 2. Attachment 2 also sets out the text of the *Constitution Act Amendment Act 1934*, s 4 (Duration of Legislative Assembly not to be extended except in accordance with this section). Again, cl 4(3) provides that the restatement of the provision is not intended to change the law stated in that provision.

Clauses 2 and 4 have been inserted since the release of the consultation draft version of the Bill. The clauses represent a change of approach to the consolidation of entrenched provisions since the consultation draft was published. The earlier 'Bill' was in the form of a 1998 reprint of the existing CA 1867 as it would have appeared following the enactment of the two Constitution Amendment Bills attached to the committee's interim report. The entrenched sections of that Act were to continue as renumbered. The rest of consolidation was to be effected through omitting the other sections of the CA 1867 and replacing them with their modernised versions and with other insertions. The entrenched provisions in the earlier 'Bill' were to be amended in minimal stylistic ways which would not have in any way affected their meaning.

However, in this final version, a fresh 1999 Bill is created. Clause 2 therefore provides for the commencement of the new Act. Clause 4 provides that the entrenched provisions of the CA have been restated in a modernised version in the current Act, but nevertheless remain as they are in the CA 1867. Clause 4 also notes the reproduction of CAAA 1890, s 2 as cl 16 and provides that such restatement—like the restatement of the entrenched CA provisions—is not intended to change the law.

**\*Clause 5** provides that a reference to the Sovereign in the Bill is a reference to the Queen (or King, or descendants as the case may be).

Clause 5 was inserted after publication of the consultation draft Bill to give effect to the *Acts Interpretation Act*, s 52(a) in this Bill, which replaces many references to "King" or "Queen" or to "His/Her Majesty" in existing provisions with references to "the Sovereign".

## CHAPTER 2—PARLIAMENT

### PART 1—CONSTITUTION AND POWERS OF PARLIAMENT

#### *Provisions consolidated:*

- |            |   |
|------------|---|
| • CA s 1   | Legislative Assembly  |
| • CA s 2   | Legislative Assembly constituted                                |
| • CA s 2A  | The Parliament  |
| • CA s 10  | Power to alter system of representation                         |
| • CA s 28  | Members of Legislative Assembly                                 |
| • CA s 40A | Powers, privileges and immunities of the Legislative Assembly   |
| • LAA s 3  | Number of members of Legislative Assembly (previously LAA s 1A) |
| • LAA s 4  | One member for each electoral district (previously LAA s 1B)    |

**\*Clause 6** restates *Constitution Act 1867* (CA), s 1. CA s 1 provides for the Legislative Assembly. CA s 1 is entrenched by the requirement under CA s 53 that any Bill that expressly or impliedly in any way affects CA s 1 be approved by the majority of electors in a referendum.

Reference to *the Colony* in CA s 1 is replaced by reference to *the State* in cl 6 to reflect the true nature of the polity of Queensland. Refer to the notes to cl 4 (Status of particular provisions) which provides that cl 6 is not intended to change the law stated in CA s 1.

**\*Clause 7** restates CA s 2. CA s 2 provides for the legislative power of Parliament. The legislative power of Parliament is to make laws for the peace, welfare and good government of the State in all cases. CA s 2 is entrenched by the requirement under CA s 53 that any Bill that expressly or impliedly in any way affects CA s 2 be approved by the majority of electors in a referendum.

Reference to *Her Majesty* in CA s 2 is replaced by reference to *the Sovereign* in cl 7. This replacement is repeated in cl 8 and in other clauses of the Bill which represent existing provisions that currently refer to the *Queen* or *King* or *Her* or *His Majesty*. Clause 5 provides a definition for *the Sovereign*. Refer to cl 4 (Status of particular provisions) which provides that cl 8 is not intended to change the law stated in CA s 2.

The power of the Parliament to legislate for the 'peace, welfare and good government' of the State is traditionally regarded as 'plenary' or absolute. Nevertheless, the legislative power of the State is, of course, subject to the federal structure and other limitations imposed by the *Commonwealth Constitution* (ss 52, 90, 92, 109, 114, 115, 117). It is also limited by extra-territorial restraints and 'manner and form' limitations recognised in the *Australia Acts 1986*, ss 5 and 6.

**\*Clause 8** restates CA s 2A. CA s 2A defines the Parliament as consisting of the Sovereign and the Legislative Assembly. It also provides that every Bill passed through the Legislative Assembly must be presented to the Governor for royal assent and that a Bill is of no effect unless it has received royal assent. CA s 2A is entrenched by the requirement under CA s 53 that any Bill that expressly or impliedly in any way affects CA s 2A be approved by the majority of electors in a referendum.

The phrase *must be presented* in cl 8 replaces *shall be presented* in CA s 2A(2). This reflects another practice adopted throughout the Bill—pre-existing use of the word *shall* (now an outdated drafting practice) is replaced by modern equivalents, as the intent of the provision requires. Each instance where the word *shall* in entrenched provisions has been replaced in their restatements will not be referred to in these notes. Refer to cl 4 (Status of particular provisions) which provides that cl 8 is not intended to change the law stated in CA s 2A.

The Electoral and Administrative Review Commission (EARC) recommended that the Queensland Constitution be consolidated in its August 1993 *Report on Consolidation and Review of the Queensland Constitution* (EARC's 'consolidation report'). Appendix A of that report contains an Act—in reprinted form—incorporating EARC's proposed changes (hereafter referred to as 'EARC's Constitution Bill 1993'). Appendices B and C to EARC's consolidation report are the machinery Bills which would have made the actual changes contained in the Act in Appendix A.

As noted in the attached report, this committee takes a different approach to consolidating the entrenched CA provisions; namely, by restating the provisions in the proposed consolidated Constitution Bill 1999 while retaining the ('original') provisions in the 1867 Act. EARC recommended that CA ss 1, 2 and 2A be included in EARC's Constitution Bill 1993 (as, respectively, clauses 5, 6 and 4 of that Bill). The stylistic changes made in the committee's restatements of entrenched CA ss 1, 2 and 2A also resemble the drafting changes recommended by EARC. (See EARC's consolidation report, para 6.54.) However, this committee instead maintains the existing order of the provisions.

\***Clause 9** (CA s 40A) provides generally for the powers, rights and immunities of the Legislative Assembly. This broad statement provides a link to the more specific provisions of the CA dealing with the Legislative Assembly's powers, rights and immunities (CA ss 41–52) which are consolidated in chapter 4 of the attached Parliament Bill.

Clause 9 states that the powers, rights and immunities of the Legislative Assembly, its members and committees are those defined by Act and, until defined by Act, are those of the UK House of Commons as at the establishment of the Commonwealth (1 January 1901).

EARC expressed concern in its October 1992 *Report on Review of Parliamentary Committees* ('EARC's committees report'), at para 10.26, that the wording of existing CA s 40A, especially the phrase *for the time being*, might have *unintended consequences* for the Queensland Legislative Assembly. Should the UK House of Commons today change any of its powers, rights or immunities, such changes would, EARC thought, *flow automatically* to the Queensland Legislative Assembly. This contrasts with the *Commonwealth Constitution*, s 49, which precludes such a possibility happening in relation to the Commonwealth Parliament. Section 49 refers to the powers, privileges and immunities of the House of Commons *at the establishment of the Commonwealth*.

The linkage in CA s 40A of the Legislative Assembly to the House of Commons was recently subject to a recommendation of another committee of this Parliament, the Members' Ethics and Parliamentary Privileges Committee. (See that committee's report, *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members*, Report No 26, January 1999.) In light of the recommendation at section 4.1.4 of that report, this committee has amended s 40A in cl 9 to provide that the powers, rights and immunities of the Queensland Legislative Assembly, its members and committees are those that applied in the House of Commons as at the date of federation, 1 January 1901.

The committee does not use EARC's redraft of s 40A (cl 4 of EARC's Parliament Bill 1993 contained in Appendix G to its committees report) as the basis for drafting cl 9 of this Bill. EARC's redraft in particular deleted the phrase *for the time being* in referring to the link to the privileges of the House of Commons when describing the residual privileges of the Legislative Assembly. Instead, the committee adopts the recommendation of the Members' Ethics and Parliamentary Privileges Committee (Report 26, section 4.1.4, p 8) that s 40A be amended to provide *that the powers, rights and immunities of the Queensland Legislative Assembly, its members and committees are those that applied in the House of Commons as at the date of Federation - 1 January 1901*. The Members' Ethics and Parliamentary Privileges Committee report was published after the consultation draft version of this Bill was released. Therefore, the reference to 'as at the establishment of the Commonwealth' appears in this finalised draft version of the Bill for the first time.

On a matter of positioning, EARC recommended (committees report, para 10.29; consolidation report, para 6.66) that *all* the provisions of the *Constitution Act* dealing with powers, rights and immunities of the Legislative Assembly (namely, s 40A as well as ss 41–52) be relocated to EARC's Parliament Bill 1993. This committee instead retains s 40A in this Constitution Bill (as cl 9) as a general provision and relocates ss 41–52 to the attached Parliament Bill. See chapter 4 (Powers, rights and immunities) of that Bill.

**Clause 10** (CA s 28) provides that the Legislative Assembly consists of members who are eligible to be elected by the inhabitants of Queensland eligible to vote. Clause 10 faithfully reproduces the essence of existing CA s 28, modernising the provision and updating the references therein.

EARC recommended that CA s 28 be repealed without re-enactment in the EARC Constitution Bill because the provision is somewhat redundant in light of CA ss 1, 2, 2A and 10. However, this committee provides for CA s 28—after its drafting is modernised—in this Bill (as cl 10).

Clauses 11–13 provide for electoral districts in the State.

**Clause 11** (new) provides that the State is to be divided into the same number of electoral districts as there are members of the Legislative Assembly. A footnoted reference is made to the *Electoral Act 1992* which sets out the process of electoral (re)distribution.

**Clause 12** [*Legislative Assembly Act 1867* (LAA) s 4] provides that each member of the Legislative Assembly is to represent one electoral district.

**Clause 13** (LAA s 3) provides that the Legislative Assembly is to consist of 89 members.

EARC reproduced LAA ss 3 and 4 (then LAA ss 1A and 1B) as cls 9 and 10 of its Constitution Bill 1993 [consolidation report, para 6.54(a)]. This committee slightly redrafts LAA ss 3 and 4 in cls 11, 12 and 13.

**Clause 14** (CA s 10) provides that Parliament has the specific power to alter the system of electoral representation. The clause includes a reference to electoral districts being represented in the Legislative Assembly.

EARC recommended (consolidation report, para 6.61) that CA s 10 be deleted because it is superfluous in light of Parliament's general law making power under CA s 2 (cl 7 of this Bill). However, this committee re-enacts CA s 10—following changes to the wording to make it easier to understand—in this Bill (cl 14).

## PART 2—PROCEDURAL REQUIREMENTS FOR THE LEGISLATIVE ASSEMBLY

### *Provisions consolidated:*

- CA Preamble (deleted)
- CA s 3 One session of Parliament to be held each year
- CA s 12 Place and time of holding Parliament
- CA s 27 Constitution of Legislative Assembly
- CAAA 1890 s 2 Duration of Legislative Assembly to be 3 years only
- CAAA 1922 s 2(1)–(5) Abolition of Legislative Council (repealed)
- CAAA 1922 s 4 Repeal etc. of certain enactments (repealed)
- CAAA 1934 Preamble (repealed)
- CAAA 1934 s 2 Interpretation—Constitution of Queensland (repealed)

**Provisions considered:**

- CAAA 1934 s 3 Parliament not to be altered in the direction of re-establishing the Legislative Council or other body except in accordance with this section
- CAAA 1934 s 4 Duration of Legislative Assembly not to be extended except in accordance with this section

**\*Clause 15** (CA ss 12 and 27) empowers the Governor to summon the Assembly and, when the Governor considers it expedient, to prorogue or dissolve the Assembly.

**\*Clause 16** restates the *Constitution Act Amendment Act 1890* (CAAA 1890), s 2. CAAA 1890 s 2 provides that every Legislative Assembly has a term of three years (unless dissolved earlier) and no longer than three years. CAAA 1890 s 2 is entrenched by the *Constitution Act Amendment Act 1934* (CAAA 1934), s 4. CAAA 1934 s 4 provides that CAAA 1890 s 2 *shall not be amended in the direction of extending* the three-year maximum duration of any Parliament provided by CAAA 1890, s 2. Refer to cl 4 (Status of particular provisions) which provides that cl 16 is not intended to change the law stated in CAAA 1890 s 2.

EARC recommended [consolidation report, para 6.54(e)] that CAAA 1890 s 2 be 'relocated' to its consolidated Constitution. CAAA 1890 s 2 became cl 10 of EARC's Constitution Bill 1993 and EARC subsequently purported to repeal the 1890 Act (consolidation report, Schedule 3 to Appendix B).

The committee decided that it would not follow EARC's approach of relocating CAAA 1890 s 2 to a consolidated Constitution and repealing the 1890 Act. Accordingly—as with CAAA 1934 ss 3 and 4—CAAA 1890 s 2 is retained in its original Act (and its text is referred to in this Bill in attachment 2). CAAA 1890 s 2 is (with some minor stylistic changes) *restated* in the Bill as cl 16.

**Clause 17** (CA s 12) empowers the Governor to set the time and place for holding Parliament as the Governor considers appropriate.

EARC recommended that CA s 12 be incorporated into its Constitution Bill 1993 [consolidation report, para 6.54(f)]. This committee endorses that recommendation but the drafting of cls 15 and 17 of this Bill deviates from EARC's suggested redrafting of CA s 12 (as EARC's cls 12 and 15). For example, EARC's cl 12(1)—*the Legislative Assembly is to hold session ... at times and places decided by the Governor*—is reworded in cl 17 of this Bill to read *the Governor may set the times and places ... for sessions of the Legislative Assembly*. This more closely reflects the existing wording of CA s 12.

In addition, EARC recommended that CA ss 27 (Constitution of the Legislative Assembly) be repealed without re-enactment because it is somewhat redundant in light of CA ss 1, 2, 2A and, especially, s 12 (consolidation report, para 6.67). However, the committee provides for CA s 27 to some degree in cl 15 of this Bill.

**Clause 18** (CA s 3) prescribes how regularly the Parliament must sit. The Legislative Assembly must meet at least once in every calendar year. Further, one year must not pass between a sitting of the Legislative Assembly and the next sitting of the Legislative Assembly.

Clause 18 follows EARC's rewrite of CA s 3 (as cl 11 of EARC's Constitution Bill 1993) but omits the existing references to 'sessions' of the Legislative Assembly.

### Other Parliament-related provisions

The extensive preamble to the *Constitution Act 1867* is now spent and the preamble is omitted without the relocation of any of its contents.

The remaining provisions of the *Constitution Act 1867* (ss 6–7A, 8 and 41–52) are relocated to the accompanying Parliament Bill, along with the majority of provisions contained in the *Legislative Assembly Act 1867*. The *Legislative Assembly Act* is consequently proposed to be repealed.

The *Constitution Act Amendment Act 1896* is dealt with in the accompanying Parliament Bill and is consequently proposed to be repealed by that Bill.

The provisions of the *Constitution Act Amendment Act 1922* (CAAA 1922) are also relevant to the provisions about Parliament in this Bill. CAAA 1922 ss 2(1)–(3) declare that the Legislative Council and related offices are abolished. The provisions are superfluous in light of the *Constitution Act Amendment Act 1934* (CAAA 1934) s 3 and are repealed. CAAA 1922 s 2(4) provides that Parliament is constituted by His Majesty and the Legislative Assembly. The section is superfluous in light of CA s 2A (cl 8 of this Bill) and is repealed. The remaining provisions—CAAA 1922 ss 1 (Short title), 2(5) dealing with references to the Parliament and 4 (Repeal etc of certain enactments)—are spent provisions and are proposed to be repealed.

Thus, the entire 1922 Amendment Act is proposed to be repealed by this Bill without any of its provisions being relocated. EARC had also recommended [consolidation report, paras 6.31, 6.54(c)] that the CAAA 1922 be repealed without re-enacting any of its provisions.

#### *The Constitution Act Amendment Act 1934*

The two substantive sections of the CAAA 1934 presented a challenge as to how they might be consolidated and/or modernised as part of this exercise. These sections are ss 3 (Parliament not to be altered in the direction of re-establishing the Legislative Council or other body except in accordance with this section) and 4 (Duration of Legislative Assembly not to be extended except in accordance with this section). CAAA 1934 ss 3(6) and 4(6) respectively entrench CAAA 1934 ss 3 and 4 by providing that the sections may not be *repealed or amended* without the approval of electors at a referendum.

EARC made no changes to the drafting of CAAA 1934 ss 3 and 4. However, EARC recommended [consolidation report, para 6.54(d) & (e)] that CAAA 1934 ss 3 and 4 be incorporated into its consolidated Constitution. EARC ‘relocated’ CAAA 1934 ss 3 and 4 to its Constitution Bill 1993 (where they were placed, along with CA s 53, in a schedule of ‘entrenching’ provisions). EARC subsequently purported to repeal the 1934 Amendment Act (consolidation report, Schedule 3 to Appendix B).

This committee has not followed EARC’s approach. The committee has proceeded cautiously in relation to the entrenched CAAA 1934 ss 3 and 4. Accordingly:

- CAAA 1934 ss 3 and 4 are retained in the 1934 Act as currently drafted; and
- CAAA 1934 ss 3 and 4 are not re-enacted in the Bill.

Nevertheless:

- schedule 2 to the Bill (General amendments) omits the preamble to the CAAA 1934 and substantially amends the remainder of the Act (namely, ss 1 and 2—those provisions are not entrenched and are spent or superfluous); and
- the text of CAAA 1934 ss 3 and 4 is reproduced in the attachments to the Bill (attachments 3 and 2 respectively).

It is because the entrenched provisions of the CA 1867, CAAA 1890 and CAAA 1934 remain in their respective Acts (though the entrenched provisions of the 1867 and 1890 Acts are *restated* in the Bill) that the current consolidation is described in cl 3 (Object) of the Bill as consolidated *to the extent practicable*.

### PART 3—MEMBERS

#### *Division 1—Generally*

***Provisions consolidated:***

- |  |  |
|--|--|
| • CA s 4                               | No member to sit or vote until the member has taken the following oath of allegiance |
| • CA s 5                               | Affirmation may be made instead of oath  |
| • CA s 7                               | Election of disqualified person void   |
| • <i>Electoral Act 1992</i><br>s 83(1) | Who may be nominated   |

**Clause 19** [~ *Electoral Act 1992*, s 83(1)] provides that adult Australian citizens living in Queensland are eligible to stand for election unless they are disqualified from doing so by an Act. Clause 19 is a basic statement as to eligibility. However, the statement is explicitly made subject to conditions imposed by this and other Acts, such as the attached Parliament Bill. The Parliament Bill is where most existing provisions regarding the eligibility of candidates and continuing eligibility of members are consolidated.

Clause 19 largely copies cl 27 of EARC's Constitution Bill 1993, partly reflecting s 83(1) of the *Electoral Act 1992*. Section 83(1) of the *Electoral Act 1992* is re-expressed differently (and expanded) in cl 64 of the accompanying Parliament Bill (Qualifications to be a candidate and be elected a member).

\***Clause 20** (~ CA s 7) makes basic statements about the disqualification of persons from either becoming a candidate or member of the Legislative Assembly or from continuing as a member of the Legislative Assembly. Like cl 19, cl 20 operates as a foundation provision supplemented by the specific provisions about disqualification of members contained in the Parliament Bill. It is in that Bill where the numerous existing provisions about the qualification and disqualification of candidates and members are consolidated, a task EARC never completed when it undertook its consolidation exercise. Clause 20 largely copies cl 29 of EARC's Constitution Bill 1993. To



some extent, cl 20, along with the provisions of the accompanying Parliament Bill, gives effect to existing CA s 7.

**Clause 21** (CA ss 4 & 5) requires a member of the Legislative Assembly to take the oath of allegiance provided in schedule 1, or make a corresponding affirmation, before the member can sit or vote in the Assembly.

EARC's redraft of CA ss 4 and 5 (as cl 28 of its Constitution Bill 1993) did not include the actual wording of the oath that is currently provided in CA s 4. EARC's clause instead referred to an external *Oaths Act*. This committee retains the current oath within schedule 1 of the Bill. This enables Queenslanders to readily see the oath that is taken by their parliamentary representatives.

### *Division 2—Members who are Ministers or Parliamentary Secretaries*

#### **Provisions consolidated:**

- CA s 57 Appointment of Parliamentary Secretaries
- CA s 58 Functions of Parliamentary Secretary
- CA s 59 Duration of appointment as Parliamentary Secretary
- CA s 60 Reimbursement of expenses
- OPA s 6(1) Parliamentary Secretary not officer liable to retire on political grounds

The appointment of Parliamentary Secretaries to assist Ministers is, at least in Queensland, a relatively recent development. CA ss 57–60 were inserted into the *Constitution Act* by the *Constitution (Parliamentary Secretaries) Amendment Act 1996*. This occurred after EARC had completed its consolidation exercise. The committee thinks it appropriate to retain the provisions in the consolidated Constitution. The sections are reproduced as cls 23–26 virtually without amendment because the sections, being recent, are consistent with the drafting style used throughout the Bill.

**Clause 22** refers the reader to chapter 3, part 3 for provisions relating to the appointment of members of the Legislative Assembly as Ministers of State.

**Clause 23** [CA s 57; *Officials in Parliament Act 1896* (OPA), s 6(1)] provides for the appointment of members of the Legislative Assembly as Parliamentary Secretaries. Appointments are made by the Governor in Council. A Minister may not be appointed as a Parliamentary Secretary.

OPA s 6(2) provides that an appointment as Parliamentary Secretary is not an *office or place of profit under the Crown*. That traditional ground for the disqualification of members of Parliament is addressed in cl 65 of the accompanying Parliament Bill (which now refers to '*paid public appointments*'). Clause 65(7)(a) of that Bill puts existing OPA s 6(2) into effect by providing that the remuneration payable to Parliamentary Secretaries under the *Parliamentary Members' Salaries Act 1988* does not constitute a 'reward' for the purposes of cls 65 and 70 of that Bill.

Also note the definition of 'reward' in cl 70(5) of the Parliament Bill, addressing restrictions on members' dealings with the State.

**Clause 24** (CA s 58) provides that a Parliamentary Secretary has the functions decided by the Premier.

**Clause 25** (CA s 59) sets out when the appointment of a Parliamentary Secretary ends.

**Clause 26** (CA s 60) provides for reimbursement of expenses reasonably incurred by a Parliamentary Secretary and deems that the consolidated fund is appropriated for the reimbursement.

## CHAPTER 3—GOVERNOR AND EXECUTIVE GOVERNMENT

### PART 1—INTERPRETATION

**Provisions consolidated:**

- COGA s 12 Interpretation—"Governor"
- AIA s 36 Definitions—"Governor in Council"

**Clause 27** [*Constitution (Office of Governor) Act 1987* (COGA), s 12] defines 'Governor'. The clause relocates the existing definition of 'Governor' in COGA s 12.

EARC had not considered COGA s 12 suitable for relocation to a consolidated Constitution. However, for the reasons mentioned in the notes to cl 31 below, this committee has relocated COGA s 12 to this Bill (as cl 27) and made suitable stylistic changes. COGA s 12 also defines 'Premier'. However, that definition is not relocated to this Bill. COGA s 12 defines 'Premier' for the purposes of COGA s 9(4) as including a *Minister of the Crown for the time being performing the duties of the Premier of the State*. The 'definition' is omitted because it is incomplete and superfluous in light of the *Acts Interpretation Act 1954*, s 33(1) which provides that a reference to a particular Minister by title includes a reference to another Minister (or member of the Executive Council) who is acting for the Minister.

**Clause 28** [*Acts Interpretation Act 1954* (AIA), s 36] clarifies that the Governor in Council is the Governor acting with advice from Executive Council.

Clause 28 replicates cl 21 of EARC's Constitution Bill 1993 and replicates AIA s 36, definition of 'Governor in Council', that definition having been introduced in 1993, after the publication of EARC's consolidation report.

## PART 2—GOVERNOR

### *Provisions consolidated:*

• CA s 11A	Office of Governor
• CA s 11B	Definition of Royal Sign Manual
• CA s 14	Ministers hold office at the Governor's pleasure
• COGA s 3	Governor
• COGA s 4	Authorities and powers of Governor
• COGA s 5	Publication of Governor's commission-declaration of Governor's allegiance
• COGA s 8	Specific power of Governor
• COGA s 9	Administration of Government in absence etc. of Governor
• COGA s 10	Appointment of deputy for Governor
• <i>Royal Powers Act 1953 s 2</i>	Exercise of Statutory Powers by Her Majesty

This part consolidates CA ss 11A, 11B and 14, the *Royal Powers Act 1953* and the provisions of the *Constitution (Office of Governor) Act 1987* that relate to the Office of Governor.

The *Constitution (Office of Governor) Act (COGA)* was introduced to give legislative effect to the Letters Patent issued by the Queen on 14 February 1986 (proclaimed by the Governor on 6 March 1996). Those Letters Patent (re)constituted the office of Governor in anticipation of the commencement of the *Australia Acts 1986* (Cth and Imp) on 3 March 1986.

The *Australia Acts* themselves confirm the status and functions of the Governors of each State. Section 7 of the *Australia Acts* provides the following.

- The Governor is the Queen's representative in each State.
- All powers and functions of the Queen in respect of each State are exercisable only by the Governor, but this:
  - does not apply to the powers to appoint and to terminate the appointment of the Governor; and
  - does not preclude the Queen, while personally present in the State, from exercising any of the Queen's powers and functions in respect of the State (see the notes to cl 39).
- The Premier shall advise the Queen in relation to the powers and functions of the Queen in respect of the State.

\***Clause 29** [COGA ss 3(1) & (2)(a)] provides for the office of Governor of Queensland. The Governor is appointed by commission signed by the Sovereign.

\***Clause 30** restates CA ss 11A and 11B. CA s 11A provides that the Sovereign's representative in Queensland is the Governor who holds office during the Sovereign's pleasure. By convention, the appointment is made for periods of five years. CA s 11A also provides, amongst other things, that abolition of, or alteration in, the office of Governor may not be effected by legislation except in accordance with CA s 53 (Certain measures to be supported by referendum). CA s 11B [cl 30(4)] defines 'Royal Sign Manual' for the purposes of the clause to mean the signature or royal hand of the Sovereign.

CA ss 11 and 11B are entrenched by the requirement for a referendum under CA s 53. The restatement of CA ss 11A and 11B in cl 30 contains minimal stylistic changes. Refer to cl 4 (Status of particular provisions) which provides that cl 30 is not intended to change the law stated in CA ss 11A and 11B.

Clause 29 follows cl 16 of EARC's Constitution Bill 1993. However, cl 30 appears differently to EARC's re-enactment of entrenched CA ss 11A and 11B as cls 17 and 18 of EARC's Constitution Bill 1993. In this Bill, stylistic changes have been made in the cl 30 restatement of CA ss 11A and 11B. In particular, CA s 11B has been incorporated as a definitional subclause in cl 30 and not as a separate clause.

**Clause 31** (COGA s 5) provides that a person appointed as Governor must do certain things before the person undertakes any duties of that office. Firstly, the appointee must ensure that the commission of his or her appointment is read and published at the seat of government of the State; namely, Parliament House in Brisbane. Secondly, the appointee must make the oath or affirmation of allegiance and the oath or affirmation of office contained in schedule 1. Both these things must be done in the presence of the Chief Justice (or next senior Judge of the State who is able to act) and at least two Executive Councillors. The Chief Justice or next senior Judge must administer the two oaths or take corresponding affirmations.

EARC had not considered COGA s 5 suitable for relocation to a consolidated Constitution Act. When EARC analysed the *Constitution (Office of Governor) Act*, it considered that only COGA ss 3, 4, 6 and 7 were of sufficient constitutional status to be relocated to a consolidated Constitution. Accordingly, EARC recommended that the remaining COGA sections remain in *legislation of lesser status*, namely the COGA itself, which was to be retitled *Governor Act 1987* (EARC, consolidation report, paras 6.163, 6.164, 6.166, 6.191 & 6.192). EARC presumably considered those remaining sections of the COGA to be of *insignificant general importance for such an [consolidated Constitution] Act* (EARC, *Issues Paper No.21: Consolidation and Review of the Queensland Constitution*, para 4.60).

This committee, however, decided that the 'remaining' provisions of the COGA are of, at least, sufficient educational value to be relocated to this consolidating Bill. This decision has the added benefit of enabling the subsequent repeal of the COGA, since all of that Act's substantive provisions are now relocated here.

This committee, then, has endorsed EARC's recommendations that COGA ss 3, 4, 6 and 7 be placed in the consolidated Constitution. But the committee has gone further in relocating to this Bill COGA ss 5 (cl 31 of this Bill), 8 (cls 35 & 36), 9 (cl 41), 10 (cl 38 & 40), 11 (cl 77), and 12 (cl 27). These relocated provisions are reworded to suit the drafting style of the current Bill, to make the provisions easier to understand and to remove any superfluous provisions, especially in light of the provisions of the *Acts Interpretation Act 1954*.

**Clause 32** [COGA s 3(2)(b)] provides that the appointment of a person as Governor may be terminated only by instrument signed by the Sovereign. Importantly, the instrument takes effect only on its publication in the gazette or at a later time stated in the instrument.

Clause 32 copies cl 19 of EARC's Constitution Bill 1993, except that the word *only* has been inserted after *Governor may be terminated* to reflect the existing wording of COGA s 3(2)(b).

**Clause 33** [COGA s 4(1)] authorises the Governor to do all things that belong to the Governor's office.

Clause 33 copies cl 20 of EARC's Constitution Bill 1993, relocating COGA s 4(1).

**\*Clause 34** (CA s 14) provides that the appointment and dismissal of Ministers is vested in the Governor alone. The Governor's power to appoint and dismiss Ministers is not subject to direction by any person and is not limited as to the Governor's sources of advice.

In the explanatory notes to then cl 46 of the consultation draft Bill (interim report, Part II, p 20), the committee noted:

*CA s 14 is purportedly entrenched by the requirement for a referendum under CA s 53 ... at least to the extent that CA s 53 is binding in respect of CA s 14. (It is reasonably arguable that CA s 14 is not a law respecting the constitution, powers or procedure of the Parliament within s 6 of the Australia Acts.)*

The committee notes the recent commencement of the *Public Service Act 1996*, section 146 which amended CA s 14 (as it stood when the consultation draft of this Bill was released) by omitting CA s 14(1) and the proviso thereto. The committee also notes that CA s 53 (reproduced in attachment 1) was also amended by s 146 of the *Public Service Act* to omit the reference to section 14 in that provision.

**Clause 35** [COGA s 8(a)] empowers the Governor—so far as it is in the Governor's power to do so and if the Governor considers there is sufficient cause—to remove or suspend from office a person appointed under authority of the Sovereign.

The current phrase in COGA s 8(a) *so far as it is within the powers of Her Majesty* is replaced in cl 35(2) by the phrase *To the extent that it is within the Governor's power*. This is because the reference to the Sovereign's power is redundant. Whatever power the Sovereign has to remove or suspend an officer, the power is now vested in the Governor by s 7 of the *Australia Acts*, except when the Sovereign is personally present in the State.

**Clause 36** [COGA s 8(b)] empowers the Governor, in the name of the Sovereign, to grant an offender a pardon, a commutation of sentence or a reprieve of execution of sentence or remission of a fine or other consequence of conviction.

EARC did not consider COGA s 8 suitable for relocation to a consolidated Constitution. However, for the reasons mentioned in the notes to cl 31, this committee redrafts and relocates COGA s 8 to this Bill (as cls 35 and 36).

**Clause 37** [COGA s 4(2)] provides that the Governor may keep and use the Public Seal of the State for sealing instruments in the Sovereign's name.

EARC neglected to refer to COGA s 4(2) in its Bill or in its consolidation report. This committee rewords and relocates COGA s 4(2) to this Bill (as cl 37).

**Clause 38** [~COGA s 10(1)] introduces a new provision by providing that the Governor may appoint a Lieutenant-Governor. Currently, COGA s 9(1) and s 10(1) (redrafted respectively as cls 41 and 40) do not unambiguously provide for the appointment of a Lieutenant-Governor. And there is no such provision elsewhere. Clause 38 provides for such an appointment. (Although, it might be noted that no Lieutenant-Governor has been appointed in Queensland for over fifty years.)

**Clause 39** [*Royal Powers Act 1953* (RPA) s 2] provides, amongst other things, that when the Sovereign is personally present in the State, the Sovereign may exercise any statutory power exercisable by the Governor.

Section 7(2) of the *Australia Acts* terminated the Sovereign's power to exercise all powers and functions of the Sovereign in respect of the State except the power of appointment and dismissal of the Governor [s 7(3)] and except when the Sovereign is personally present in the State [s 7(4)]. Thus, s 7(4) of the *Australia Acts* allows the Sovereign when present in the State to exercise those powers which are actually vested in the Sovereign. Clause 39(1) [RPA s 2(1)] confers the additional power on the Sovereign when present in the State to exercise any of the statutory powers which are actually vested in the Governor.

After the relocation of RPA s 2 to this Bill, the only remaining provision of the Act, s 1 (Short title), is spent and the *Royal Powers Act 1953* is consequently repealed.

\***Clause 40** (~ COGA s 10) provides for the delegation of the Governor's powers to a Deputy Governor when the Governor is:

- temporarily absent from the State for a short period (but not if that absence is due to the Governor administering the Commonwealth Government under the Governor's dormant commission); or
- ill for what is expected to be a short period.

In those circumstances, the Governor may delegate the Governor's powers to the Lieutenant-Governor or, if there is no Lieutenant-Governor, to the Chief Justice or, if the Chief Justice is unavailable, to the next most senior Judge of the State. The delegation must specify the powers being delegated and it must be made by an instrument under the Public Seal of the State.

Clause 40 refers to a 'delegation' of the Governor's powers to a person who acts as a Deputy Governor; the original provision refers to the 'appointment' of the Governor's deputy. Reference in the Bill to a delegation (rather than an acting appointment in existing COGA s 10) better reflects the reality of the situation that COGA s 10 provides for. [See and compare *Acts Interpretation Act 1954* (AIA), s 27A (Delegation of powers) and s 24B (Acting appointments).]

Because cl 40 now expressly refers to a delegation, COGA ss 10(2)–(4) are deleted. They are superfluous in light of AIA s 27A(1), (2) and (10) and the insertion of 'may' in cl 40(1). COGA ss 10(2)–(4) currently provide:

- (2) Any appointment of a deputy made under subsection (1) may be revoked by the Governor at any time.
- (3) The authority and power of the Governor of the State shall not be abridged, altered or in anyway affected by the appointment of a deputy made under subsection (1).
- (4) This section shall not be construed to require the Governor of the State to constitute and appoint a deputy upon an event referred to in subsection (1).

EARC had not considered COGA s 10 suitable for relocation to a consolidated *Constitution Act*. However, for the reasons mentioned above in the notes to cl 31, this committee relocates COGA s 10 to this Bill (as cl 40). The drafting of the clause is quite different to that of the original provision. This is largely as a result of the provisions of the *Acts Interpretation Act*.

\***Clause 41** (COGA s 9) provides that a specified person must administer the government at certain times. The times are: when the office of Governor becomes vacant; when the Governor assumes the administration of the Commonwealth Government; or when the Governor is absent from the State or otherwise cannot perform the Governor's functions and a deputy is not exercising the Governor's powers under cl 40. The person who must administer the government during those times is the Lieutenant-Governor or, if there is no Lieutenant-Governor available, the Chief Justice or, if the Chief Justice is not available, the next most senior Judge of the State available.

The person who administers the government of the State under the clause has all the functions and powers of the Governor and performs the functions and exercises the powers as Acting Governor. The person must take the oaths or make the affirmations referred to in cl 31. The person must cease administering the government when the conditions outlined in cl 41(5) occur.

COGA s 9 is redrafted in cl 41 to make it clear that the provisions of AIA s 24B (Acting appointments) apply to the provisions. One consequence is that the title given to the person who would have acted under existing COGA s 9, 'Administrator', is changed to 'Acting Governor'.

Clause 41(1)(c) refers to when the Governor is *absent from duty*, whereas COGA s 9(1)(c) refers to *absent from the State*. In addition, COGA s 9(2) is deleted. Section 9(2) currently provides:

- (2) *Where the Governor is beyond the boundaries of the State in the course of passage from one part of the State to another part of the State the Governor shall be deemed not to be absent from the State for the purposes of subsection (1).*

EARC had not considered COGA s 9 suitable for relocation to a consolidated Constitution. However, for the reasons mentioned in the notes to cl 31, this committee relocates COGA s 9 to this Bill. COGA s 9 is worded differently here as cl 41, though closer to the original than the related cl 40 is to COGA s 10.

Other parts of this Bill also deal with specific powers and functions of the Governor. These include:

- summoning, proroguing or dissolving the Legislative Assembly (cl 15);
- setting the time and place for sessions of the Legislative Assembly (cl 17);
- appointing Ministers (cls 34 and 42-44) and Executive Councillors [cl 47(2)]; and
- recommending Bills for appropriation of amounts from or to the consolidated fund (cl 67).

Also see CA s 53 (Certain measures to be supported by referendum) reproduced in attachment 1. CA s 53 not only entrenches certain existing provisions that explicitly refer to the Governor but subjects any Bill *that expressly or impliedly provides for the abolition of or alteration in the office of Governor to a referendum requirement* (in terms similar to those of cl 30 above).

### PART 3—MINISTERS OF THE STATE

***Provisions consolidated:***

- part of OPA s 3(1) Governor may declare what Ministers may sit in Legislative Assembly
- OPA s 3(2) Sick leave
- OPA s 3(3) When member of Legislative Assembly may act as officer
- OPA sub 3(4)–(6)
- OPA s 8 Duties imposed by law on any Minister may be ordered to be performed by other Minister
- OPA s 8(A) Attorney-General is a Minister
- AIA s 33(14) Administrative

Clause 42 [~ OPA ss 3(1), 5 & 8A] provides for Ministers of the State.

While Queensland statutes are, of course, replete with references to Ministers, this consolidation exercise will, for the first time, result in the word *Ministers* being used within constitutional provisions dealing with their appointment. Currently, the antiquated phrase *officers liable to retire from office on political grounds* is used to refer to Ministers in such fundamental provisions as CA s 14 (cl 34 of this Bill), which provides that Ministers hold office at the pleasure of the Governor, and OPA s 3(1), which is at least a partial basis to this clause 42.

Clause 42(1) [~ OPA s 3(1)] provides that the Governor may appoint a person to be a Minister of the State. The subclause takes into account CA s 14 and intends to succinctly give at least partial effect to existing OPA s 3(1).

This drafting reproduces EARC's approach as to who may be appointed as a Minister [cl 25(1) of EARC's Constitution Bill 1993].

In referring to *a person* instead of, say, *members of the Legislative Assembly*, the committee recognises that there is no *legislative* provision in Queensland that expressly requires Ministers to sit in Parliament. Instead, it is a widely-recognised and long-held convention in Queensland that Ministers must sit in the Legislative Assembly.

The committee had considered stating this essential Westminster principle of responsible government—that Ministers must sit in Parliament—in express legislative form but chose not to in light of the consolidatory nature of the current exercise.

It may not be the case that the convention in Queensland (namely, that Ministers must sit in Parliament) permits a Ministerial appointment before the appointee takes his or her seat in Parliament. Such provision is made in s 64 of the *Commonwealth Constitution* which requires a Minister to become a member of Parliament within 3 months of the Ministerial appointment. Consideration might be given to including such a provision in the Queensland Constitution in the future.



In addition, the committee had considered providing for the ending of appointments of Ministers—apart from the provision in CA s 14 (cl 34 of this Bill) that the Governor has the power to appoint and dismiss Ministers—but also chose not to in light of the consolidatory nature of the current exercise. [But see the notes to cl 48 (Duration of appointment as members of Executive Council).]

Clause 42(2) clarifies that the Attorney-General is a Minister. The clause replicates OPA s 8A. Section 8A was inserted into the *Officials in Parliament Act* in 1995, after EARC had completed its consolidation exercise.

Clause 42(3) provides that there shall be no more than 18 Ministers. The clause is based on OPA s 3(1) and replicates cl 25(3) of EARC's Constitution Bill 1993.

Clauses 42(4) & (5) provide that a Ministerial appointee must take the oath or make the affirmation of office in schedule 1. The oath or affirmation of office must be made in the presence of the Governor or other person specified in subclause (5).

EARC had included a new provision in subclause (2) of EARC's Ministerial appointments provision (cl 25 of its Constitution Bill 1993). EARC's subclause (2) stated that the Governor may declare a particular area of the government's activities for which a Minister is responsible. That provision has not been repeated in this clause of the Bill because this committee has incorporated AIA s 33(14) into this Bill as cl 45 (Administrative arrangements).

Provisions of OPA ss 3 & 5 effectively provide that an appointment as Minister is not an *office or place of profit under the Crown*. That traditional ground for the disqualification of members of Parliament is addressed in cl 65 of the accompanying Parliament Bill (which now refers to '*paid public appointments*'). Clause 65(7)(a) of that Bill puts existing OPA ss 3 & 5 into effect (at least as they relate to Ministers) by providing that the remuneration payable to Ministers under the *Parliamentary Members' Salaries Act 1988* does not constitute a 'reward' for the purposes of cls 65 and 70 of that Bill.

Also note the definition of 'reward' in cl 70(5) of the Parliament Bill, addressing restrictions on members' dealings with the State.

**Clause 43** [OPA subs 8(1) and (2)] provides that the Governor may appoint a Minister to act for another Minister. Clause 43 also provides that the Premier may also appoint a Minister to act for another Minister. However, when the acting appointment is made by the Premier, the appointment can not last longer than 14 days.

EARC in its consolidation exercise did not consider the issue of the appointment of Ministers to act for other Ministers, as provided for by OPA ss 8(1)–(3). This Bill consolidates OPA s 8. Clause 43 relocates the operative provisions of OPA s 8, subsections (1) and (2) (rewording them for ease of understanding and consistency across the circumstances they deal with), and deletes the superfluous provisions of OPA s 8, subsections (2A) and (3).

OPA s 8(2A) is superfluous in light of the *Evidence Act 1977*, s 50 (Proof of act done by Governor or Minister). The intended effect of OPA s 8(3) is superfluous in light of AIA, s 24B(8) (Acting appointments).

**Clause 44** [~ OPA ss 3(3)–(4)] provides that the Governor may appoint a member of the Legislative Assembly to act as a Minister. Such an appointment may be made when the Ministerial office is vacant or when the Minister is absent from duty or is, for another reason, unable to perform the duties of the office.

The member may be appointed to perform all or part of a Minister's functions and exercise all or any of a Minister's powers. The member must be paid additional salary as a Minister if the member acts as a Minister for a continuous period of 30 days or more.

EARC in its consolidation exercise did not consider the issue of appointment of members as Acting Ministers, as provided for by OPA ss 3(3)–(5) and 5(1). Clause 44 of this Bill relocates the operative provisions of those OPA subsections which deal with the appointment of Acting Ministers. Note that the circumstances for an acting appointment in existing OPA s 3(3) are narrower than the standard circumstances now used for acting appointments generally and the committee considered them to be unduly restrictive. The circumstances are extended in cl 44(1) of this Bill.

**Clause 45** [~ AIA s 33(14)] provides that the Governor in Council may make administrative arrangements for, amongst other things mentioned, the distribution of the public business among government departments. See the notes to cl 42 which refer to this clause.

**Clause 46** [OPA s 3(2)] provides for leave of absence—not to exceed six months—for Ministers who are ill.

EARC in its consolidation exercise neglected to consider the issue of sick leave for Ministers, as provided for by OPA s 3(2). This committee thought the provision best re-enacted in this Bill (as cl 46).

#### PART 4—EXECUTIVE COUNCIL

**Provisions consolidated:**

- COGA s 6                      Executive Council
- COGA s 7                      Meetings of Executive Council
- part of OPA s 3(1)          Governor may declare what Ministers may sit in Legislative Assembly

**Clause 47** (part of COGA s 6) provides for the Executive Council and states that the Executive Council consists of the persons appointed as members of the Executive Council by the Governor. Before performing any duties, an Executive Council appointee must make the oath or affirmation of office and of secrecy contained in schedule 1. Also see the notes to schedule 1.

When EARC provided for the Executive Council in cl 22 of its Constitution Bill 1993, EARC's provision stated: *Executive Council consists of persons appointed to be Ministers of the State*. Clause 47 of this Bill makes no such provision.

This committee recognises that, in Queensland, it is customary for Executive Council to comprise the current Ministers. However, the committee avoids the wording in EARC's cl 22 because the committee considers that EARC's clause may overstate the existing relationship. While there is no doubt that Ministers are Executive Councillors, they become so only after undergoing an additional and supplementary appointment as Executive Councillors. When Ministers resign their portfolio and they no longer remain in the Ministry, they must also resign as members of the Executive Council. EARC's cl 22 might have operated to deem Ministers to be Executive Councillors *by virtue of* their appointment as *Ministers*. This could have made both appointments as Executive Councillors and the oath of office and of secrecy that is currently taken by the Executive Councillors obsolete. That oath of secrecy is important.

Clause 47(2) of this Bill instead remains more faithful to existing COGA s 6(b) & (c) and refers specifically to *persons appointed as members of the Executive Council by the Governor under the Public Seal of the State*.

The committee considered making it explicit that *Executive Council consists of Ministers appointed as members of the Executive Council*. However, in light of the consolidatory nature of the current exercise, the committee chose not to adopt such drafting. Convention will continue to dictate the matter.

EARC had also included a new provision in its Constitution Bill 1993, cl 23, which was presumably intended to act as a descriptive provision. EARC's cl 23 provided that: *The function of Executive Council is to exercise the executive power of the State*, and that Executive Council may do all things ancillary to perform this function.

This committee does not endorse—as part of this exercise—the inclusion of EARC's cl 23 in the consolidated Constitution. The committee is concerned that the clause might inadvertently vest the executive power of the State in the Executive Council, instead of in the Governor or the Governor in Council.

**Clause 48** (part of COGA s 6) provides that the appointment of a person as a member of Executive Council ends upon the person's resignation as member of Executive Council or removal from Executive Council by the Governor. Clause 48 is based on the last paragraph of existing COGA s 6.

**Clause 49** (COGA s 7) provides for Executive Council meetings. The clause requires the Governor to preside over Executive Council meetings (even though the Governor is not a 'member' of the Executive Council as such) and specifies who is to preside over meetings when the Governor cannot. The clause also provides that Executive Council may not meet to dispatch business unless it has been properly summoned by the Governor and the defined quorum has been satisfied. Clause 49 copies much of the wording of cl 24 of EARC's Constitution Bill 1993, succinctly providing for existing COGA s 7.

## PART 5—POWERS OF THE STATE

### *Provisions consolidated:*

- AIA s 47A            Meaning of "State" in part
- AIA s 47B            Powers of the State
- AIA s 47C            Commercial activities by State
- AIA s 47D            Commercial activities by Minister
- AIA s 47E            Delegation by Minister
- AIA s 47F            Regulation making power

### *Division 1—General*

**Clause 50** (AIA s 47B) declares that the State (that is, the Executive Government of the State of Queensland) has all the powers and legal capacity of an individual and that those powers may be exercised beyond the boundaries of Queensland.

### Division 2—Commercial Activities

\***Clause 51** [AIA s 47C(5)] provides definitions for the division, including a wide definition of “commercial activities”, and a definition of “State” which includes government departments and parts of those departments.

AIA s 47C had been reproduced as one clause (former cl 47) in the consultation draft of the Bill. AIA s 47C is now reproduced as two clauses (cls 51 and 52) and amended so that the definitions in AIA ss 47C(5) apply to the whole of (new) division 2 (Commercial activities).

\***Clause 52** [AIA s 47C (1)-(4)] provides a statutory grant of power to the State (the Executive Government) to carry out commercial activities.

**Clause 53** (AIA s 47D) provides that a Minister may carry out commercial activities for the State.

\***Clause 54** (AIA s 47E) provides that a Minister may delegate the State’s powers to an appropriately qualified officer of the State. In turn, an officer of the State may sub-delegate delegated powers to another appropriately qualified officer of the State.

**Clause 55** (AIA s 47F) provides that the Governor in Council may make regulations under this part.

Sections 47B–47F [comprising Part 12 (Executive Government of the State)] were inserted into the *Acts Interpretation Act* by a 1994 Amendment Act in order to *remove any doubt that the State of Queensland by administrative action may undertake commercial activities whether or not these are within the ordinary functions of State and whether or not such activities are wholly or partly within Queensland, within Australia and its Territories, or outside Australia and its Territories* [Explanatory Notes to the Acts Interpretation (State Commercial Activities) Amendment Bill 1994].

AIA ss 47B–47F postdate EARC’s consolidation report. This committee does not make comment as to the merit or otherwise of the provisions. However, it is appropriate for the provisions to be relocated to the current Bill. Indeed, at the time of the introduction of the provisions into the *Acts Interpretation Act*, it was foreshadowed that the provisions would be later relocated to the Constitution Act [Acts Interpretation (State Commercial Activities) Amendment Bill 1994, *Queensland Parliamentary Debates*, Second Reading Debate, Hon. K. E. De Lacy MLA, 22 November 1994, p 10645]. The provisions, being recent in origin, are relocated with only minor change to their wording.

## CHAPTER 4—COURTS

### *Provisions consolidated:*

- CA s 15 Judges continued in the enjoyment of their offices during their good behaviour notwithstanding any demise of the Crown
- CA s 16 But they may be removed by the Crown on the address of Parliament
- CA s 17 Their salaries secured during the continuance of their commissions

- *District Court Act*  
1967 (DCA) s 4 Appointment of District Courts
- DCA s 9 Appointment and qualification of judges
- DCA s 14 Retirement of judges
- DCA s 15 Removal from office
- *Supreme Court Act*  
1995 (SCA) ss 195 Commission of judges
- SCA s 196 Judges' salaries
- *Supreme Court of Queensland Act*  
1991 (SCQA) s 7 Continuance
- SCQA s 8 Jurisdiction generally
- SCQA s 12 Appointment of judges
- SCQA s 23 Retirement of judges

**Provisions considered:**

- *Criminal Justice Act* Commission's report insufficient for judge's removal from  
1989 s 28 Supreme Court
- *Judges (Salaries and Allowances)*  
Act 1967 s 3(2) Salary and allowance of District Court judges
- SCA s 227 Salaries to be charged on consolidated fund
- SCQA s 9 Jurisdiction of court not impaired etc
- SCQA s 44 Remuneration of judges of appeal
- SCQA s 45 Appropriation

EARC devoted an entire chapter of its consolidation report (chapter 7) to substantial proposals for enhancing the security of State judicial tenure. The objects clause (cl 3) of EARC's Constitution Bill 1993 highlights that the provisions in the Act about the judiciary are *reformed*, as opposed to the remainder of EARC's Act which is described in EARC's cl 3 as *consolidated*. EARC's proposals are represented by cls 32-37 of EARC's Constitution Bill 1993.

In its *Report on Review of the Queensland Constitution*, Report No 24 (November 1994), the Parliamentary Committee for Electoral and Administrative Review (PCEAR) considered EARC's proposals to protect judicial tenure. The PCEAR discussed what it called EARC's *significant changes* to the provisions relating to the independence of the judiciary and made recommendations to endorse, clarify and/or limit some of EARC's proposals on the:

- retirement age of judges;

- grounds for removing judges;
- process for removing judges; and
- maintenance of judges' salaries (PCEAR, consolidation report, paras 21–79).

Subject to the last paragraph of this discussion, this committee thought it appropriate to limit its review of EARC's legislative proposals about the judiciary by endorsing and implementing the recommendations made by the PCEAR and implementing those recommended modifications of EARC's proposals in the drafting of this Bill. Public comment could then address the PCEAR's recommendations when the consultation draft version of the Bill was released.

The wording of the judiciary provisions in this Bill puts into effect what the PCEAR recommended in paras 21–79 of its consolidation report. Nevertheless, the committee has made some refinements to the judiciary provisions.

Clauses 56–61, then, are based on existing laws (as referred to in the brackets at the start of the notes to each clause), EARC's substantive proposals, the PCEAR's modifications of EARC's proposals and this committee's refinements.

Clause 62 (Protection if judicial office abolished) is a new provision, inserted after further consideration by this committee during the public consultation process. Clause 62 attempts to prevent the removal of Supreme Court judges and District Court judges from office without following the formal procedure outlined in cl 60.

**Clause 56** (DCA s 4; SCQA s 7) provides that there must be a Supreme Court of Queensland and a District Court. The District Court is not acknowledged in the existing *Constitution Act*.

**Clause 57** (SCQA s 8) provides that the Supreme Court has all jurisdiction necessary for the administration of justice in Queensland. The clause also provides that the Supreme Court:

- is the superior court of record in Queensland;
- is the supreme court of general jurisdiction in and for the State; and
- has, subject to the *Commonwealth Constitution*, unlimited jurisdiction at law, in equity and otherwise.

**Clause 58** (DCA s 9; SCQA s 12) provides that the Governor in Council may, by commission, appoint judges of the Supreme Court or District Court. Appointees must be barristers or solicitors of the Supreme Court of at least five years standing.

**\*Clause 59** [CA s 15; DCA s 14(1) & (2); SCA s 195(1); SCQA s 23(1) & (2)] provides that a judge of the Supreme Court or District Court holds office *indefinitely during good behaviour*. Currently, CA s 15 provides that the commissions of judges of the Supreme Court *shall remain in full force during their good behaviour*.

Clause 59 also provides that a judge must retire at age 70 (although the judge may finish hearing a proceeding that commenced before the judge reached age 70). In addition, the appointment of a judge of the Supreme Court or District Court is unaffected by the end of the Sovereign's reign.

Clause 59 represents an important change to the law by referring to the tenure of District Court judges alongside Supreme Court judges. Currently, the *Constitution Act* makes no reference to the District Court or to District Court judges. Note, however, that the provisions purporting to

protect the judiciary in this Bill nevertheless remain not entrenched, and the provisions dealing with the judiciary can be repealed or amended by any normal Act of Parliament.

**\*Clause 60** [CA s 16; DCA s 15; SCA s 195(2)] provides that a judge of the Supreme Court or District Court may be removed from office only by the Sovereign on the address of the Legislative Assembly for proved misbehaviour or proved incapacity. The address may only be made after a tribunal has found that, firstly, and on the balance of probabilities, the person to be removed has misbehaved or is incapable of performing the duties of office and, secondly, that the removal is justified.

Clause 60 further provides that the tribunal is to consist of at least 3 persons and that members of the tribunal must be former Judges or Justices of State or Federal superior courts. A member of the tribunal cannot be a former judge of the court of which the person who may be removed is a judge. Tribunal members are to be appointed by resolution of the Legislative Assembly. The tribunal has the functions, powers, protection and immunity given by an Act.

Clause 60 makes important changes to the present law about the removal of judges from office. These changes include the following.

- For Supreme Court judges, the grounds of removal by the Governor on an address of the Legislative Assembly are in the Bill confined to *proved misbehaviour* and *proved incapacity*. Under existing CA s 16 and SCA s 195(2) the power of removal is not confined to any specific grounds (though judicial commissions are referred to in CA s 15 and SCA s 195(1) as continuing during the judge's good behaviour). The two prescribed grounds reflect the accepted grounds for removal of judges in Australia and those provided under s 72 of the *Commonwealth Constitution* for the removal of Federal Justices. Under DCA s 15, the two grounds are prescribed for the removal of District Court judges, albeit without the element of *proved*.

Largely, cl 60 reflects the procedure taken in respect of the Hon Mr Justice Vasta of the Supreme Court of Queensland in 1989. The tribunal in that case was established by s 3 of the *Parliamentary (Judges) Commission of Inquiry Act 1988* and comprised three former judges appointed by resolution of the Legislative Assembly. The tribunal considered the civil standard of proof appropriate. It also reflects the procedures provided for in s 28(2) of the *Criminal Justice Act 1989*. (See the PCEAR's consolidation report, para 49).

- The legislative requirement for the establishment of a tribunal of 3 current or former judges to decide on the balance of probabilities whether either of the grounds for removal exist and whether removal is justified.
- Any other possible avenues for removal of Supreme Court judges are now abrogated. Uncertainty as to the continuing availability of two forms of proceeding led the PCEAR (at para 47) to recommend that this procedure in the Constitution be declared the *only* method for removal. The two other possible forms of proceeding were: (i) Supreme Court proceedings for removal for breach of judicial commission (that is, for misbehaviour) and (ii) removal by the Governor in Council pursuant to the *Colonial Leave of Absence Act 1782 (Imp)* (22 Geo III c 75) (Burke's Act). [New cl 62 supports this intention to abrogate other ways of removing Supreme Court (and District Court) judges.]

**\*Clause 61** (CA s 17; SCA s 196) provides that a judge of the Supreme Court or a judge of the District Court must be paid a salary applicable to the judge's office and that the amount of the salary may not be decreased. The clause further authorises payment of judges' salaries from the

consolidated fund. Note that the provisions of the *Judges' (Salaries and Allowances) Act 1867* are relevant to cl 61.

By comparison, existing CA s 17 merely provides that salaries of judges of the Supreme Court, as provided for in an Act or otherwise, *shall .. be paid and payable to every such judge and judges for the time being so long as the patents or commissions of them or any of them respectively shall continue and remain in force.*

\***Clause 62** (new) provides protection for a Supreme Court judge or District Court judge if they hold a judicial office that is abolished because a court or part of a court is abolished. The judge is entitled to hold, without loss of salary, a judicial office of equivalent or higher status in the same court in which the judge held the abolished judicial office or in another court. Clause 62 has no counterpart in existing Queensland law. The provision attempts to prevent the removal of Supreme Court judges and District Court judges from office without following the formal procedure outlined in cl 60.

Clause 62 has been inserted since the consultation draft version of the Bill was released. It aims to further protect judicial tenure. The clause is partly based on s 56 of the *Constitution Act 1902* (NSW).

## CHAPTER 5—REVENUE

### *Provisions consolidated:*

- CA s 18                      No money vote or Bill lawful unless recommended by Governor
- CA s 34                      All duties and revenues to form Consolidated Fund
- CA s 35                      Such fund permanently charged with expenses of collection
- CA s 39(1)                   Consolidated fund to be appropriated by Act of the legislature
- CA s 39(2)                   Proviso to s 39 – Debentures or any other charges on Consolidated Fund not to be affected by such consolidation (deleted)

\***Clause 63** (CA s 34) provides that all taxes and other revenues of the State are to form one consolidated fund to be appropriated for the public service of the State in the manner, and subject to the charges, specified in the Bill.

\***Clause 64** [Bill of Rights 1688 (Imp), art 4] provides that a requirement to pay a tax, impost, rate or duty must be authorised by an enactment of Parliament.

Clause 64 provides one of the two rules which provide for the important principle that Parliament controls public finance: government cannot *raise* revenue through taxation except as authorised by Parliament through legislation. That rule is provided for in article 4 of the Bill of Rights 1688 (UK) which states: *That levying money for or to use of the Crown, by pretence of prerogative, without grant of Parliament ... is illegal.*



Clause 64 has been inserted since the consultation draft of the Bill was released. Its insertion follows the committee's endorsement of a suggestion made in a public submission that article 4 of the Bill of Rights 1688, which currently has legal force in Queensland, be given effect in the Queensland statute book.

**\*Clause 65** [CA s 39(1)] provides that expenditure from the consolidated fund must be authorised by an Act. Further, the Act authorising the payment must specify the purpose of the payment. The clause replaces the existing phrase in CA s 39(1), that the consolidated fund *shall be subject to be appropriated*, with *the payment of an amount from the consolidated fund must be authorised by an Act*.

Clause 65 provides the second rule concerning Parliamentary control of public finance, namely, the government cannot spend public revenue without Parliament's authorisation.

Clause 65(3) effectively recognises the exception to cl 65(1) which cl 66 represents.

**\*Clause 66** (CA ss 35 & 39) provides that expenses related to the collection and management of the consolidated fund are charged to the fund—as the first charge—without requiring specific appropriations for that purpose. This is an exception to the rule contained in cl 65 that payment from the consolidated fund must be authorised by an Act of Parliament.

Section 39(2) of the CA is omitted without re-enactment because it is obsolete.

**Clause 67** (CA s 18) represents a further balance between the Executive and Parliament in relation to finance. While cl 65 provides that the Executive must not spend public money without the Legislative Assembly's authorisation, cl 67 provides that the Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of an amount from, or an amount required to be paid to, the consolidated fund unless it has first been recommended by message of the Governor. The clause further provides that the message must be given to the Legislative Assembly during the session of Legislative Assembly in which the vote, resolution or Bill will be passed.

Clause 63 more closely follows existing CA s 34 than cls 38 and 39 of EARC's Constitution Bill 1993.

Clauses 64 and 65 represent, in two clauses, EARC's cl 40. Clause 65 differs from EARC's cl 40 by re-enacting the specific requirement contained in CA s 39(1) that the Act authorising the payment must specify the purpose for which the payment is made.

Clause 66 copies EARC's cl 41 in transcribing CA s 35 and part of CA s 39(1). The wording of cls 63 and 66 is based somewhat on that of the *Commonwealth Constitution*, ss 81 and 82.

Clause 67 copies EARC's cl 40 in transcribing CA s 18.

## CHAPTER 6—LANDS

### *Provisions consolidated:*

- CA s 30                      Legislature empowered to make laws regulating sale and other disposal of waste lands
- CA s 40(1)                 The entire management of Crown lands and all revenues thence arising to be vested in the local legislature
- CA s 40(2)                 Proviso to s 40 (deleted)

\***Clause 68** (CA ss 30 and 40) provides that Parliament has legislative power over the sale, letting, disposal and occupation of the waste lands of the Crown. The clause further provides that the management and control of the waste lands of the Crown and all revenues from those lands vest in the Parliament.

The clause re-enacts the substantive portions of CA ss 30 and 40 which explicitly vested power over the waste lands of the Crown in the local—not the Imperial—Legislature. Subclause (1) of cl 68 provides for CA s 30 without the lengthy historical references introducing the provision. Subclause (2) of cl 68 provides for CA s 40(1). Minimal stylistic changes which do not change the effect of the provisions have been made to the substantial matters that have been retained.

The proviso contained in CA s 40(2) is deleted because it is spent.

EARC combined CA ss 30 and 40 as cl 9 of its Constitution Bill 1993. While EARC suspected that the totality of CA s 30 is superfluous in light of the general law making power in CA s 2 (clause 6 of this Bill), EARC cautioned away from entirely deleting the provision because it might *inadvertently disturb the constitutional status quo* surrounding land ownership and native title (consolidation report, para 6.223). This committee substantially replicates EARC's provision (as cl 68).

## CHAPTER 7—LOCAL GOVERNMENT

### *Provisions consolidated:*

- CA s 54                      System of local government
- CA s 55                      Manner of appointing persons to exercise powers, authorities, duties and functions of local government
- CA s 56                      Procedure on Bills affecting local government

Clauses 69–76 are founded on existing CA ss 54–56 which purport to give constitutional status to the State's system of local government. Sections ss 54–56 of the *Constitution Act* were inserted by the *Constitution Act Amendment Act 1989*. EARC comments on these sections at para 4.52 of its February 1993 consolidation Issues Paper (No 21):

*Sections 54–56 might be thought to mark a break from the normal state of local government in Australia, and indeed England, typically at the mercy of a sovereign Parliament. The protection is almost wholly illusory, however, as the sections are all subject to express or even implied repeal by any later Act.*

EARC noted that, while CA s 56(2) states that a referendum on a proposal to end the system of local government must be held if a Bill would end the system of local government, CA s 56 [unlike, say, CA s 53(1)] does not entrench itself and could thus be expressly repealed by an ordinary Act of Parliament to effect what it purports to protect against.

Local government provisions have been redrafted to enhance the logic and readability of the provisions, to reflect the passage of the *Local Government Act 1993* and to adopt the phraseology contained in that Act.

For example, existing CA ss 54–56 (as well as EARC's redraft of those provisions) refer to both a *local government* and a *local government's council*. However, the *Local Government Act* refers

only to a *local government*. [See, for example, *Local Government Act*, ss 32 (Membership of local governments), 35 (Local governments are bodies corporate) and, especially, 113 (Dissolution of local government)].

It should be noted that EARC's scheme of redrafting CA ss 54–56 (as cls 43–53 of its Constitution Bill 1993) has not been followed in the clauses below. This is partly for stylistic reasons and partly to adopt the current language of the *Local Government Act 1993*.

## PART 1—LOCAL GOVERNMENT SYSTEM

**Clause 69** [CA s 54(1)] provides that there must be and continue to be a system of local government in the State. The system consists of a number of local governments.

\***Clause 70** [CA ss 54(1)–(4)] defines a local government as an elected body that is charged with the good rule and local government of the area allocated to it. At the same time, the clause makes it clear that the constitution of a local government and its functions and powers are subject to control by statutes of the Parliament.

## PART 2—PROCEDURE RESTRICTING DISSOLUTION OF LOCAL GOVERNMENT COUNCIL AND INTERIM ARRANGEMENT

Clauses 71–74 transcribe the provisions of the lengthy CA s 55, essentially providing that an instrument purporting to dissolve a local government must be approved by the Legislative Assembly before it can have effect.

**Clause 71** [CA s 55(2)] provides that, a copy of an instrument seeking to dissolve a local government must be tabled in the Legislative Assembly within 14 sitting days of the instrument's making.

\***Clause 72** [CA s 55(2) & (5)] provides that until the instrument purporting to dissolve a local government is ratified by the Legislative Assembly, the instrument only has the effect of suspending the local government's councillors from office. During the suspension, the persons appointed to act as the local government may be taken to be the local government.

\***Clause 73** [CA s 55 (2) & (3)] provides that if the Legislative Assembly—upon motion of the Minister responsible for local government—ratifies the dissolution of a local government within 14 sitting days of the tabling of the instrument purporting to dissolve the local government, the local government is dissolved (in accordance with the instrument).

**Clause 74** [CA s 55 (4); ~CA s 55(1)] provides that, if the Legislative Assembly refuses to ratify or does not effectively ratify the dissolution within 14 days of the tabling of the instrument purporting to dissolve the local government, the effect of the instrument ends. In addition, the clause provides that, if a copy of the instrument is not tabled in Parliament within 14 sitting days of its making pursuant to section 71, the effect of the instrument also ends.

Subsequently, on the ending of the effect of the instrument:

- the local government's suspended councillors are reinstated in their respective offices; and

- the appointment of a body or a person appointed to perform the functions and exercise the powers of the local government because of its purported dissolution ends.

### PART 3—SPECIAL PROCEDURES FOR CERTAIN LOCAL GOVERNMENT BILLS

**Clause 75** [CA s 56(1)] provides that a member introducing any Bill for an Act that would *affect* a local government, or local governments generally, must—if the member introducing the Bill thinks it practicable—circulate a summary of the Bill to a local government representative body within a reasonable time before the Bill is introduced.

**\*Clause 76** [CA s 56(2)–(6)] provides for a Bill that would *end* the system of local government. Before such a Bill can be effective, a proposal that the system of local government should end must be approved by electors at a referendum. However, as noted in the introduction to the notes for this chapter, the clause does not entrench itself so it is subject to amendment by an ordinary Act of Parliament.

Note that cl 71 of the consultation draft version of the Bill had consisted of *renumbered* CA s 53 (Certain measures to be supported by referendum). Former clause 71 is not contained in this finalised draft 1999 Bill. That provision remains, unaltered, as CA s 53 in that Act. Note that the text of CA s 53 is nevertheless reproduced in attachment 1 to the Bill. Also see the notes to cl 4 (Status of particular provisions).

### CHAPTER 8—MISCELLANEOUS

***Provisions consolidated:***

- COGA s 11            Issue of compliance not justiciable
- COGA s 13            Suspension of letters patent (omitted)

**Clause 77** (COGA s 11) provides that the issue of compliance with the following clauses is not justiciable. In other words, whether or not the requirements contained in the following clauses have been followed cannot be challenged in court. The clauses are:

- cl 31 (Publication of commission, declaration of allegiance etc) – COGA s 5;
- cl 40 (Delegation by Governor to Deputy Governor) – COGA s 10;
- cl 41 (Administration of government by Acting Governor) – COGA s 9;
- cl 47 (Executive Council) – COGA s 6; and
- cl 49 (Meetings of Executive Council) – COGA s 7.

Clause 77 relocates COGA s 11 and ensures that the five *Constitution (Office of Governor) Act* sections (COGA ss 5, 6, 7, 9 & 10) that are declared non-justiciable in that Act are continued to be declared so here. Presumably, those administrative provisions were sought to be placed beyond challenge when the Act was created in 1987 to give legislative force to the letters patent (re)constituting the office of Governor made on 14 February 1986 and proclaimed on 8 March 1986.

The phrase *Without affecting the justiciability of any other issue under this Act* is inserted in cl 77. This is done to prevent the clause being misinterpreted to affect the justiciability or otherwise of the other provisions in this Bill which might have occurred if COGA s 11 was simply reproduced outside its limited original environment of the provisions of the COGA. The courts, including Queensland courts, have traditionally recognised that the issue of compliance with some constitutional provisions (for example, provisions about proceedings of Parliament) are sometimes not open for adjudication by the courts. The courts instead recognise that compliance with such provisions is a matter solely for the Parliament. The committee did not want to inadvertently affect the courts' recognition of the non-judiciability of such provisions by relocating COGA s11 without the limiting introductory phrase.

EARC had not considered COGA s 11 suitable for relocation to a consolidated *Constitution Act*. For the reasons mentioned in the notes to cl 31, this committee has relocated COGA s 11 to this Bill.

COGA s 13 is the only provision of that Act which is repealed without relocation. The *Constitution (Office of Governor) Act* is subsequently repealed.

COGA s 13 suspended the operation of the letters patent proclaimed on 6 March 1986 so long as various provisions of the COGA Act were in force. This committee endorses EARC's recommendation (Schedule 3 to the Bill in Appendix B of EARC's consolidation report) to repeal those letters patent. The committee considers that the relocation to this Bill of all the COGA sections which COGA s 13 purports to protect, and the resultant elevation of the status of those sections by being in the primary Constitution Act, is now sufficient protection in itself to deter against any unconsidered amendment or repeal of those sections by a future Parliament. The committee notes that the New South Wales and Victorian Parliaments did not introduce equivalents to COGA s 13 when letters patent for those States, similar to those proclaimed in Queensland on 6 March 1986, were given legislative effect.

This Bill does not include a general regulation-making power. The committee does not think it appropriate that the Governor in Council should be provided with a regulation-making power under the Bill. Of the eight main Acts being consolidated in this Bill, only the *Legislative Assembly Act* contains a regulation-making power for the Act. Even the recent *Parliamentary Committees Act 1995* does not contain a regulation-making power. It should be noted, however, that a regulation-making power appears in cl 55 which applies to chapter 3, part 5.

Note that former cl 73 [Stylistic amendments and renumbering (new)] of the consultation draft version of the Bill is not contained in this finalised draft 1999 Bill. Clause 73 is no longer necessary, given that the committee's consolidation is now in the form of a new 1999 Bill, not as amendments to the *Constitution Act 1867* (as it was in the consultation draft version of the Bill).

## \*CHAPTER 9—TRANSITIONAL PROVISIONS

Clauses 78 to 87 provide for transitional arrangements for when the Bill is introduced.

**\*CHAPTER 10—CONSEQUENTIAL AMENDMENTS AND REPEALS**

**Clause 88** amends certain Acts as set out in Schedule 2.

**Clause 89** repeals the Acts set out in Schedule 3 and declares that the Imperial Laws set out in Schedule 4 have no force in Queensland.

**SCHEDULE 1—OATHS & AFFIRMATIONS**

**Schedule 1** contains various oaths and affirmations referred to in the Bill. The schedule includes:

- the oath or affirmation of allegiance taken from existing CA s 4 and referred to in the *Oaths Act 1867*, s 5A. This oath or affirmation is to be taken by a member of the Legislative Assembly under cl 21;
- the oath or affirmation of office to be taken by the Governor under cl 31 (and by the Acting Governor under cl 41);
- the oath or affirmation of office to be taken by the Premier or other Minister under cl 42; and
- the oath or affirmation of office and of secrecy to be taken by members of the Executive Council under cl 47.

Currently, the oath or affirmation of office for the offices of Governor, Premier or other Ministers and members of the Executive Council are not contained in legislation. In expressing these oaths or affirmations of office, some stylistic changes have been made to their wording. The oath of office and of secrecy to be taken by members of the Executive Council has been altered quite considerably (by replacing the oath of secrecy with an equivalent oath contained in the current Northern Territory Draft Constitution (Northern Territory). Sessional Committee on Constitution Development, *Final Draft Constitution for the Northern Territory*, Government Printer, Darwin, December 1996—Schedule 5, p 66).

**\*SCHEDULE 2—GENERAL AMENDMENTS**

Certain provisions of the following Acts are amended in **Schedule 2**:

- *Acts Interpretation Act 1954*;
- *Constitution Act 1867*;
- *Constitution Act Amendment Act 1890*;
- *Constitution Act Amendment Act 1934*;
- *District Court Act 1967*;
- *Electoral Act 1992*;
- *Supreme Court Act 1995*; and
- *Supreme Court of Queensland Act 1991*.

### \*SCHEDULE 3—REPEALED LAWS

**Schedule 3** provides for the repeal of the following laws:

- *Legislative Assembly Act 1867*;
- Proclamation declaring transfer of certain islands dated 22 August 1872 and published in the gazette on 24 August 1872 at page 1325;
- *Officials in Parliament Act 1896*;
- *Constitution Act Amendment Act 1922*;
- *Royal Powers Act 1953*;
- *Australia Acts (Request) Act 1985*;
- Proclamation of Letters Patent for Governor dated 6 March 1986 and published in the gazette on 8 March 1986 at pages 903–6; and
- *Constitution (Office of Governor) Act 1987*.

Existing provisions of the *Legislative Assembly Act 1867* and the *Officials in Parliament Act 1896* are relocated to both this Bill and the adjunct Parliament of Queensland Bill 1999. It is this Bill, however, that provides for the repeal of those Acts.

The Parliament of Queensland Bill 1999 incorporates the *Constitution Act Amendment Act 1896*, the *Parliamentary Papers Act 1992*, and the *Parliamentary Committees Act 1995* and consequently provides for the repeal of those Acts.

The commencement provisions contained in this Bill and the Parliament Bill refer to the Acts commencing on a day to be fixed by proclamation. To completely effect the consolidation exercise, both this and the Parliament Bill would together be proclaimed to commence at the same time.

### SCHEDULE 4—IMPERIAL LAWS NO LONGER IN FORCE

**Schedule 4** provides for the declaration of the following laws to be of no force in Queensland:

- *Australian Constitutions Act 1850*;
- *New South Wales Constitution Act 1855*;
- Order in Council dated 6 June 1859 mentioned in the preamble to the *Constitution Act 1867*;
- *Australian Constitutions Act 1862*; and
- *Colonial Letters Patent Act 1863*.

**\*ATTACHMENT 1**

Attachment 1 sets of the text of the *Constitution Act 1867*, ss 1, 2, 2A, 11A, 11B and 53.

**\*ATTACHMENT 2**

Attachment 2 sets of the text of the *Constitution Act Amendment Act 1892*, s 2 and the *Constitution Act Amendment Act 1934*, s 4.

**\*ATTACHMENT 3**

Attachment 2 sets of the text of the *Constitution Act Amendment Act 1934*, s 3.



# LCARC'S DRAFT CONSTITUTION OF QUEENSLAND BILL 1999 - COMPARATIVE TABLE

## (THE COMMITTEE'S DRAFT *CONSTITUTION OF QUEENSLAND BILL 1999* COMPARED WITH EXISTING LAW AND EARC'S DRAFT *QUEENSLAND CONSTITUTION ACT 1993 (REPRINT)*)

### *Explanation of table*

The left hand side column, '*LCARC's Constitution Bill 1999*', lists the provisions of the Legal, Constitutional and Administrative Review Committee's draft Constitution of Queensland Bill 1999 in reprinted form as it is presented in Part II of this report.

The middle column, '*Existing provisions*', contains the existing provisions upon which the clauses of the committee's draft Bill are based. Blank areas in the column indicate that there is no existing legislation that is relevant. The column also includes related provisions that are repealed by the draft because they are superfluous or spent.

The right hand side column, '*EARC's draft Constitution Act 1993*', outlines relevant clauses of the draft Act that the Electoral and Administrative Review Commission (EARC) produced as a consolidation of existing constitutional provisions (published as Appendix A to EARC's *Report on Consolidation and Review of the Queensland Constitution*, August 1993). Blank areas in the column indicate areas not dealt with in EARC's draft Act.

Footnotes in the cells of the table are reproduced directly from the committee's draft Bill. Footnotes that were contained in EARC's draft Act (referring, for example, to the source of relocated provisions) have been deleted. See EARC's draft Act in EARC's consolidation report for the content of such footnotes.

For further information on the sources of the committee's Constitution Bill, see the notes to the committee's Constitution of Queensland Bill 1999 contained in Part II of this report.

This table had a predecessor which related to the *consultation draft* version of the Constitution Bill; that is, as the Bill was published in Part II of the committee's *Consolidation of the Queensland Constitution: Interim Report* (May 1998). That version of the table had been posted on the committee's web page on the Internet at <<http://www.parliament.qld.gov.au/committees/legalrev.htm>>. It has since been removed (and replaced by this version) but is available from the committee's secretariat.

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p style="text-align: center;"><b>CHAPTER 1—PRELIMINARY</b></p> <p><b>Short title</b></p> <p>1. This Act may be cited as the <i>Constitution of Queensland Act 1999</i>.</p> <hr/> <p><b>Commencement</b></p> <p>2. This Act commences on a day to be fixed by proclamation.</p> <hr/> <p><b>Object (~EARC reprint s 3(1) + (4))</b></p> <p>3. This Act declares, consolidates and modernises, to the extent practicable, the Constitution of Queensland.[~EARC reprint s 3(1)]</p> <hr/> <p><b>Status of particular provisions (new)</b></p> <p>4.(1) Sections 6, 7, 8 and 30 are—</p> <p>(a) restatements of the corresponding provisions of the <i>Constitution Act 1867</i>, namely, sections 1, 2, 2A and 11A and 11B of that Act;<sup>1</sup> and</p> <p>(b) not intended to affect in any way the meaning or effect of those corresponding provisions.</p> <p>(2) Section 16 is a restatement of the <i>Constitution Act Amendment Act 1890</i>, section 2<sup>2</sup> and is not intended to affect in any way the meaning or effect of the provision.</p> <p>(3) In restating the corresponding provisions mentioned, it is not intended to change the law stated in the provisions.</p> <p><sup>1</sup> <i>Constitution Act 1867</i>, sections 1 (Legislative Assembly), 2 (Legislative Assembly constituted), 2A (The Parliament), 11A (Office of Governor) and 11B (Definition of Royal Sign Manual)</p> <p>Attachment 1 sets out the <i>text</i> of these provisions as well as the text of</p>		<p style="text-align: center;"><b>PART 1—PRELIMINARY</b></p> <p><b>Short Title</b></p> <p>1. This Act may be cited as the <i>Queensland Constitution Act 1993</i>.</p> <hr/> <p><b>Commencement</b></p> <p>2.(1) Section 55 (Relocations) commences immediately after the commencement of section 1 (Short title).</p> <p>(2) Section 56 (Repeals etc.) commences immediately after the commencement of section 55.</p> <p>(3) Section 57 (Numbering and renumbering of Act) commences immediately after the commencement of section 56.</p> <hr/> <p><b>Object</b></p> <p>3.(1) This Act declares the Constitution of Queensland.</p> <p>(2) The existing legislation on the Constitution of Queensland is consolidated.</p> <p>(3) Constitutional provisions about the judiciary are reformed.</p> <p>(4) Constitutional provisions that may not be amended or repealed without a referendum are preserved.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>the <i>Constitution Act 1867</i>, section 53 (Certain measures to be supported by referendum).</p> <p><sup>2</sup> <i>Constitution Act Amendment Act 1890</i>, section 2 (Duration of Legislative Assembly to be 3 years only)</p> <p>Attachment 2 sets out the text of that provision as well as the text of the <i>Constitution Act Amendment Act 1934</i>, section 4 (Duration of Legislative Assembly not to be extended except in accordance with this section).</p>		
<p><b>References to the Sovereign (new)</b></p> <p>5. A reference in this Act to the Sovereign is a reference to the Queen or King for the time being, and, if necessary, includes the Queen's or King's heirs and successors.</p>		
<p><b>CHAPTER 2—PARLIAMENT</b></p> <p><b>PART 1—CONSTITUTION AND POWERS OF PARLIAMENT</b></p> <p><b>Legislative Assembly (CA s 1 + EARC reprint s 5)</b></p> <p>6. <sup>3</sup>There is to be within the State of Queensland a Legislative Assembly.</p> <p><sup>3</sup> This is merely a restatement of the <i>Constitution Act 1867</i>, section 1 (Legislative Assembly)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the <i>Constitution Act 1867</i>, section 1 and 53 which provides that a Bill that expressly or impliedly in any way affects section 1 of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.</p>	<p><b>Legislative Assembly [CA]</b></p> <p>1. There shall be within the said Colony of Queensland a Legislative Assembly.</p>	<p><b>PART 2—PARLIAMENT</b></p> <p><b>Legislative Assembly. Order in Council s.1.</b></p> <p>5. There shall be within the said State of Queensland a Legislative Assembly.</p>
<p><b>Law-making power (CA s 2 + EARC reprint s 6)</b></p> <p>7. <sup>4</sup>Within the State of Queensland, the Sovereign has power by and with the advice and consent of the Legislative Assembly to make laws for the peace, welfare and good government of the State in all cases.</p> <p><sup>4</sup> This is merely a restatement of the <i>Constitution Act 1867</i>, section 2 (Legislative Assembly constituted)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the <i>Constitution Act 1867</i>, section 2 and section 53 which provides that a Bill that expressly or impliedly in any way affects section 2 of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.</p>	<p><b>Legislative Assembly constituted [CA]</b></p> <p>2. Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace welfare and good government of the colony in all cases whatsoever.</p>	<p><b>Legislative Assembly constituted. Ord in Council s.2</b></p> <p>6. Within the said State of Queensland Her Majesty shall have power by and with the advice and consent of the said Assembly to make laws for the peace welfare and good government of the State in all cases whatsoever.</p>
<p><b>The Parliament (CA s 2A + EARC reprint s 4)</b></p> <p>8.(1) <sup>5</sup>The Parliament of Queensland consists of the Sovereign and the Legislative Assembly.</p> <p>(2) Every Bill, after its passage through the Legislative</p>	<p><b>The Parliament [CA]</b></p> <p>2A.(1) The Parliament of Queensland consists of the Queen and the Legislative Assembly referred to in sections 1 and 2.</p> <p>(2) Every Bill, after its passage through the Legislative</p>	<p><b>The Parliament</b></p> <p>4.(1) The Parliament of Queensland consists of the Queen and the Legislative Assembly referred to in sections 1 and 2.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>Assembly, must be presented to the Governor for assent by or in the name of the Sovereign and has no effect unless it has been duly assented to by or in the name of the Sovereign.</p> <p><sup>5</sup> This is merely a restatement of the <i>Constitution Act 1867</i>, section 2A (The Parliament)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the <i>Constitution Act 1867</i>, section 2A and section 53 which provides that a Bill that expressly or impliedly in any way affects section 2A of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.</p> <p>Also see attachment 3 which sets out the text of the <i>Constitution Act Amendment Act 1934</i>, section 3 (Parliament not to be altered in the direction of re-establishing the Legislative Council or other body except in accordance with this section).</p>	<p>Assembly, shall be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.</p>	<p>(2) Every Bill, after its passage through the Legislative Assembly, shall be presented to the Governor for assent by or in the name of the Queen and shall be of no effect unless it has been duly assented to by or in the name of the Queen.</p>
<p><b>Powers, rights and immunities of Legislative Assembly (CA s 40A)</b></p> <p>9.(1) The powers, rights and immunities of the Legislative Assembly and its members and committees are—</p> <p>(a) the powers, rights and immunities defined under Act; and</p> <p>(b) until defined under Act—the powers, rights and immunities, by custom, statute or otherwise, of the Commons House of Parliament of the United Kingdom and its members and committees at the establishment of the Commonwealth.<sup>6</sup> [CA s 40A]</p> <p>(2) In this section— “rights” include privileges.</p> <p><sup>6</sup> Date of establishment of the Commonwealth—1 January 1901</p>	<p><b>Powers, privileges and immunities of Legislative Assembly [CA]</b></p> <p>40A. The powers, privileges and immunities to be held, enjoyed and exercised by the Legislative Assembly and the members and committees thereof shall be such as are defined by any Act or Acts so far as those powers, privileges and immunities are not inconsistent with this Act or any other Act and until so defined shall be those powers, privileges and immunities held, enjoyed and exercised for the time being by the Commons House of Parliament of the United Kingdom and its members and committees so far as those powers, privileges and immunities are not inconsistent with this Act or any other Act, whether held, possessed or enjoyed by custom, statute or otherwise.</p>	<p><i>[Under Acts, by reference to House of Commons]</i></p> <p>4.(1) <i>The Legislative Assembly, a committee or a member has the powers, privileges and immunities conferred on the Legislative Assembly, committee or member, as the case may be, by an Act.</i></p> <p>(2) <i>Subject to any Act—</i></p> <p>(a) <i>the Legislative Assembly has the same powers, privileges and immunities as the House of Commons; and</i></p> <p>(b) <i>a committee has the same powers, privileges and immunities as a committee of the House of Commons; and</i></p> <p>(c) <i>a member has the same powers, privileges and immunities as a member of the House of Commons.</i></p> <p>from EARC's <u>Parliament Bill 1993</u> contained in Appendix G to EARC's October 1992 committees report.]</p>
<p><b>Members of Legislative Assembly (CA s 28)</b></p> <p>10. The Legislative Assembly is to consist of members who are eligible<sup>7</sup> to be elected by the inhabitants of the State who are eligible<sup>8</sup> to elect members.</p> <p><sup>7</sup> See the <i>Parliament of Queensland Bill</i>.</p> <p><sup>8</sup> See the <i>Electoral Act 1992</i>.</p>	<p><b>Members of Assembly [CA]</b></p> <p>28. The Legislative Assembly shall consist of members duly qualified according to the <i>Legislative Assembly Act 1867</i> for the time being to be elected by the inhabitants of the said State having any of the qualifications mentioned in the <i>Electoral Act</i> for the time being.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Division of State into electoral districts (new)</b></p> <p>11. The State is to be divided into the same number of electoral districts as there are members of the Legislative Assembly.<sup>9</sup></p> <p><sup>9</sup> The <i>Electoral Act 1992</i> sets out the process.</p>		
<p><b>1 member for each electoral district (LAA s 4 + EARC reprint s 8)</b></p> <p>12. Each member of the Legislative Assembly is to represent 1 of the electoral districts.</p>	<p><b>One member for each electoral district [LAA]</b></p> <p>4. Each member is to represent 1 of the 89 electoral districts provided for in the <i>Electoral Act 1992</i>.</p>	<p><b>1 member for each electoral district</b></p> <p>8. Each member of the Legislative Assembly is to represent 1 of the 89 electoral districts provided for in the <i>Electoral Act 1992</i></p>
<p><b>Number of members of Legislative Assembly (LAA s 3 + EARC reprint s 7)</b></p> <p>13. The Legislative Assembly is to consist of 89 members.</p>	<p><b>Number of members of Assembly [LAA]</b></p> <p>3. The Assembly is to consist of 89 members.</p>	<p><b>Numbers of members of Legislative Assembly</b></p> <p>7. The Legislative Assembly is to consist of 89 members.</p>
<p><b>Power to alter system of representation (CA 1867 s 10)</b></p> <p>14. The Parliament under an Act may—</p> <p>(a) vary the electoral districts of the State that are to be represented in the Legislative Assembly; and</p> <p>(b) establish new and other electoral districts; and</p> <p>(c) vary the number of members to be elected to the Legislative Assembly; and</p> <p>(d) vary and regulate the appointment of returning officers and make any new and other provision that it considers convenient for the issuing and return of writs for the election of members to the Legislative Assembly and the time and place of holding the elections.[CA s10]</p>	<p><b>Power to alter system of representation [CA]</b></p> <p>10. It shall be lawful for the legislature of the State by any Act or Acts to be hereafter passed—</p> <p>(a) to alter the divisions and extent of the several counties districts cities towns boroughs and hamlets which shall be represented in the Legislative Assembly; and</p> <p>(b) to establish new and other divisions of the same; and</p> <p>(c) to alter the apportionment of representatives to be chosen by the said counties districts cities towns boroughs and hamlets respectively; and</p> <p>(d) to alter the number of representatives to be chosen in and for the State and in and for the several electoral districts in the same; and</p> <p>(e) to alter and regulate the appointment of returning officers and make such new and other provision as they may deem expedient for the issuing and return of writs for the election of members to serve in the said Legislative Assembly and the time and place of holding such elections.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p align="center"><b>CH 2, PART 2—PROCEDURAL REQUIREMENTS FOR THE LEGISLATIVE ASSEMBLY</b></p> <p><b>Summoning, proroguing and dissolution of Legislative Assembly (CA s 27 + part of s 12)</b></p> <p>15.(1) The Governor may summon the Legislative Assembly in the Sovereign's name by instrument under the Public Seal of the State.[CA s 27]</p> <p>(2) The Governor may prorogue or dissolve the Legislative Assembly by proclamation or otherwise whenever the Governor considers it expedient.[CA s 12]</p>	<p><b>Constitution of Legislative Assembly [CA]</b></p> <p>27. For the purpose of constituting the Legislative Assembly it shall be lawful for the Governor from time to time as occasion shall require in Her Majesty's name by an instrument or instruments under the Great Seal of the State to summon and call together a Legislative Assembly in and for the said State.</p> <p>[CA s 12 (Place and time of holding Parliament) reproduced on p 7 of this table]</p>	<p><b>Proroguing and dissolution of Legislative Assembly</b></p> <p>15. The Governor may, in accordance with convention-</p> <p>(a) prorogue the Legislative Assembly; or</p> <p>(b) dissolve the Legislative Assembly.</p>
<p><b>Duration of Legislative Assembly to be 3 years only (CAAA 1890 s 2)</b></p> <p>16. <sup>10</sup>Every Legislative Assembly is to continue for 3 years from the day appointed for the return of the writs for choosing it, and no longer, unless it is dissolved earlier.</p> <p><sup>10</sup> This is merely a restatement of the <i>Constitution Act Amendment Act 1890</i>, section 2 (Duration of Legislative Assembly to be 3 years only)—see section 4 (Status of particular provisions). Also see attachment 2 for the text of the <i>Constitution Act Amendment Act 1890</i>, section 2 and the <i>Constitution Act Amendment Act 1934</i>, section 4 which provides that <i>Constitution Act Amendment Act 1890</i>, section 2 must not be amended to extend the 3 year period except in the way provided by section 4 which involves the approval of the relevant bill by a majority of electors at a referendum.</p>	<p><b>Duration of Legislative Assembly to be 3 years only [CAAA 1890]</b></p> <p>2. Every Legislative Assembly continues for 3 years from the day appointed for the return of the writs for choosing it, and no longer, unless it is dissolved earlier by the Governor.</p> <p><b>Duration of Legislative Assembly not to be extended except in accordance with this section [CAAA 1934]</b></p> <p>4.(1) The provisions of section two of "<i>The Constitution Act Amendment Act of 1890</i>" (referred to in the preamble to this Act) shall not be amended in the direction of extending the period of three years, which, as provided by the said section two, is the period for which any Legislative Assembly, now or hereafter summoned and chosen, shall continue from the day appointed for the return of the writs for choosing the same and no longer (subject, nevertheless, to be sooner dissolved by the Governor), nor shall any other Act or law relating to the Constitution be passed extending such period of three years as aforesaid, except in the manner provided by this section.</p> <p>(2) A Bill for any purpose within subsection (1) of this</p>	<p><b>Duration of Legislative Assembly to be three years only.</b></p> <p>10. Every Legislative Assembly hereafter to be summoned and chosen shall continue for three years from the day appointed for the return of the writs for choosing the same, and no longer; subject nevertheless to be sooner dissolved by the Governor.</p> <p align="center"><b>SCHEDULE 1 - ENTRENCHING PROVISIONS</b></p> <p align="center">...</p> <p><b>Duration of Legislative Assembly not to be extended except in accordance with this section</b></p> <p>3. (1)-(6) [WORDING VIRTUALLY IDENTICAL TO CAAA 1934, s 4 IN MIDDLE COLUMN]</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p>section shall not be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure, or for the Governor's Assent, or be in any other way assented to, until the Bill has been approved by the electors in accordance with this section.</p> <p>(3) On a day not sooner than two months after the passage of the Bill through the Legislative Assembly, the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of "The Elections Acts, 1915 to 1932," or any Act amending the same or in substitution therefor.</p> <p>Such day shall be appointed by the Governor in Council.</p> <p>(4) When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes.</p> <p>(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure.</p> <p>(6) The provisions of this section shall extend to any Bill for the repeal or amendment of this section.</p>	
<p><b>Time and place for sessions of Legislative Assembly (part of CA s 12)</b></p> <p>17.(1) The Governor may set the times and places in Queensland for sessions of the Legislative Assembly that the Governor considers appropriate.[CA s 12]</p> <p>(2) The Governor may change the times and places if the Governor considers change advisable and more consistent with general convenience and the public welfare.[CA s 12]</p> <p>(3) The Governor must give sufficient notice of a change.[CA s 12]</p>	<p><b>Place and time of holding Parliament [CA]</b></p> <p>12. It shall be lawful for the Governor to fix such place or places within any part of the State and such times for holding every session of the Legislative Assembly of the said State as the Governor may think fit such times and places to be afterwards changed or varied as the Governor may judge advisable and most consistent with general convenience and the public welfare giving sufficient notice thereof and also to prorogue the said Legislative Assembly from time to time and to dissolve the said Assembly by proclamation or otherwise whenever the Governor shall deem it expedient.</p>	<p><b>Time and place for sessions of Legislative Assembly.</b></p> <p>12. (1) The Legislative Assembly is to hold session within Queensland at times and places decided by the Governor.</p> <p>(2) In deciding the time and place, the Governor must have regard to the public interest and all relevant matters.</p>
<p><b>Minimum sitting requirement for Legislative Assembly (CA s 3 + EARC reprint s 11)</b></p> <p>18.(1) The Legislative Assembly must meet at least once in every calendar year.[CA s 3 + EARC reprint s 11(1)]</p> <p>(2) One year must not pass between a sitting of the</p>	<p><b>One session of Parliament to be held each year [CA]</b></p> <p>3. There shall be a session of the Legislative Assembly once at least in every year so that a period of 12 calendar months shall not intervene between the last sitting of the Legislative</p>	<p><b>Frequency of sessions of Legislative Assembly.</b></p> <p>11. (1) The Legislative Assembly must meet in session at least once in every year.</p> <p>(2) One year must not pass between the last sitting of the</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
Legislative Assembly and the next sitting of the Legislative Assembly.[CA s 3 + EARC reprint s 11(2)]	Assembly in one session and the first sitting of the Legislative Assembly in the next session.	Legislative Assembly in a session and its first sitting in the next session.
[ENTRENCHED PROVISION REMAINS IN CAAA 1934 BUT THE TEXT IS REPEATED IN ATTACHMENT 3 TO THE BILL]	<p><b>Parliament not to be altered in the direction of re-establishing the Legislative Council or other body except in accordance with this section [CAAA 1934]</b></p> <p><b>3.(1)</b> The Parliament of Queensland (or, as sometimes called, the Legislature of Queensland), constituted by His Majesty the King and the Legislative Assembly of Queensland in Parliament assembled shall not be altered in the direction of providing for the restoration and/or constitution and/or establishment of another legislative body (whether called the "Legislative Council," or by any other name or designation, in addition to the Legislative Assembly) except in the manner provided in this section.</p> <p><b>(2)</b> A Bill for any purpose within subsection one of this section shall not be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure, or for the Governor's Assent, or be in any other way assented to, until the Bill has been approved by the electors in accordance with this section.</p> <p><b>(3)</b> On a day not sooner than two months after the passage of the Bill through the Legislative Assembly, the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of "<i>The Elections Acts, 1915 to 1932,</i>" or any Act amending the same or in substitution therefor.</p> <p>Such day shall be appointed by the Governor in Council.</p> <p><b>(4)</b> When the Bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes.</p> <p><b>(5)</b> If a majority of the electors voting approve the Bill, it shall be presented to the Governor for the reservation thereof for the signification of His Majesty's pleasure.</p> <p><b>(6)</b> The provisions of this section shall extend to any Bill for the repeal or amendment of this section.</p>	<p><b>SCH 1 - ENTRENCHING PROVISIONS</b> <sup>CONT'D</sup></p> <p><b>Parliament not to be altered in the direction of re-establishing the Legislative Council or other body except in accordance with this section</b></p> <p><b>2. (1)-(6)</b> [WORDING VIRTUALLY IDENTICAL TO CAAA 1934, s 3 IN MIDDLE COLUMN]</p>



LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p><b>Abolition of Legislative Council [CAAA 1922]</b></p> <p>2.(1) The Legislative Council of Queensland is abolished.</p> <p>(2) The office of member of the said Legislative Council is abolished.</p> <p>(3) All offices constituted or created in or in connection with the said Legislative Council are abolished.</p> <p>(4) The Parliament of Queensland (or as sometimes called the Legislature of Queensland) shall be constituted by His Majesty the King and the Legislative Assembly of Queensland in Parliament assembled.</p> <p>(5) Any reference in any Act, rule, regulation, instrument, or writing whatsoever to the legislature, or to the Parliament, or to both Houses of Parliament, or other reference, which, if this Act had not been passed, would be deemed to include a reference to the Legislative Council, shall be construed to refer only to His Majesty the King and the Legislative Assembly of Queensland in Parliament assembled, or only to the said Legislative Assembly, as the context may require.</p> <p><b>Repeal etc. of certain enactments [CAAA 1922]</b></p> <p>4. All enactments or provisions contained in any Act or order in council relating to the Constitution of Queensland which are inconsistent with any of the provisions of this Act are hereby repealed to the extent of any such inconsistency.</p>	
<p><b>CH 2, PART 3—MEMBERS</b></p> <p><i>Division 1—Generally</i></p> <p><b>Eligibility to stand for election as a member (Electoral Act s 83(1) + part of s 83(2) + EARC reprint s 27)</b></p> <p>19.(1) <sup>11</sup>An adult who is an Australian citizen living in Queensland is eligible to stand for election as a member of the Legislative Assembly.[—Electoral Act s 83(1) + EARC reprint s 27(1)]</p> <p>(2) However, a person disqualified under an Act from standing for election is not eligible to stand for election.[part Electoral Act s 83(2) + EARC reprint s 27(2)]</p> <p>(3) Subsection (1) is subject to any conditions imposed by an Act.[EARC reprint s 27(3)]</p>	<p><b>Who may be nominated (Electoral Act 1992)</b></p> <p>83.(1) A person may be nominated as a candidate for election, and may be elected, as a member of the Legislative Assembly for an electoral district if the person is—</p> <p>(a) enrolled on an electoral roll for the electoral district or another electoral district; and</p> <p>(b) an Australian citizen; and</p> <p>(c) an adult; and</p> <p>(d) not a disqualified person under subsection (2).</p>	<p><b>PART 4 - MEMBERS OF THE LEGISLATIVE ASSEMBLY</b></p> <p><b>Eligibility to stand for election as a member</b></p> <p>27. (1)An adult who is an Australian citizen living in Queensland is eligible to stand for election as a member of the Legislative Assembly.</p> <p>(2) However, a person disqualified under an Act from standing for election is not eligible to stand for election.</p> <p>(3) Subsection (1) is subject to any conditions imposed by an Act.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><sup>11</sup> This section is a basic statement about eligibility. The <i>Parliament of Queensland Bill</i> contains specific provisions about the qualification of members.</p>	<p>(2) ... [RELOCATED TO PARLIAMENT OF QUEENSLAND BILL 1999]</p>	
<p><b>Disqualification of member (part of CA s 7 + EARC reprint s 29)</b></p> <p>20.(1) <sup>12</sup>No person who is disqualified under an Act from being a member of the Legislative Assembly is capable of becoming a candidate for election as a member or becoming a member.</p> <p>(2) A member of the Legislative Assembly who becomes disqualified under an Act from being a member stops being a member in accordance with that Act.</p> <p><sup>12</sup> This section is a basic statement about disqualification. The <i>Parliament of Queensland Bill</i> contains specific provisions about the disqualification of members and the effect of unduly qualified members on the validity of the operations of Parliament.</p>	<p><b>Election of disqualified persons void [CA]</b></p> <p>7.(1) If any person by this Act disabled or declared to be incapable to sit or vote in the Legislative Assembly shall nevertheless be elected and returned as a member to serve in the said Assembly for any electoral district such election and return shall and may be declared by the said Assembly to be void and thereupon the same shall become and be void to all intents and purposes whatsoever.</p>	<p><b>Disqualification of member</b></p> <p>29. (1) No person who is disqualified under an Act from being a member of the Legislative Assembly is capable of becoming a member.</p> <p>(2) A member of the Legislative Assembly who becomes disqualified under an Act from being a member stops being a member.</p>
<p><b>No member to sit or vote without first taking oath (CA s 4 + 5)</b></p> <p>21.(1) No member may sit or vote in the Legislative Assembly unless the member has made the oath or affirmation of allegiance in schedule 1. <sup>13</sup>[CA s 4 + 5]</p> <p>(2) The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.[CA s 4]</p> <p><sup>13</sup> Schedule 1 (Oaths and affirmations)</p>	<p><b>No member to sit or vote until the member has taken the following oath of allegiance [CA]</b></p> <p>4. No member of the Legislative Assembly shall be permitted to sit or vote therein until that member has taken and subscribed the following oath before the Governor or before some person or persons authorised by the Governor to administer the oath—</p> <p>'I, . . . (<i>name of member</i>) . . . do sincerely promise and swear that I will be faithful and bear true allegiance to Her (<i>or His</i>) Majesty . . . (<i>name of Sovereign</i>) . . . as lawful Sovereign of Australia and Her (<i>or His</i>) other realms and territories, and to Her (<i>or His</i>) heirs and successors, according to law. So help me God.'</p> <p><b>Affirmation may be made instead of oath [CA]</b></p> <p>5. Provided that every person authorised by law to make affirmation instead of taking an oath may make such affirmation in every case in which an oath is hereinbefore required to be taken.</p>	<p><b>No member to sit or vote without first taking oath</b></p> <p>28. No member may sit or vote in the Legislative Assembly unless the member has taken the oath or made the affirmation required by the <i>Oaths Act 1993</i>.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p style="text-align: center;"><b>CH 2, PART 3</b></p> <p style="text-align: center;"><i>Division 2—Members who are Ministers or Parliamentary Secretaries</i></p> <p><b>Ministers</b></p> <p>22. The law relating to the appointment of members as Ministers or Acting Ministers is set out in chapter 3, part 3.<sup>14</sup></p> <p><sup>14</sup> Chapter 3 (Governor and Executive Government), part 3 (Ministers of the State)</p>		
<p><b>Appointment of Parliamentary Secretaries (CA s 57)</b></p> <p>23.(1) The Governor in Council may appoint members of the Legislative Assembly as Parliamentary Secretaries.[CA s 57(1)]</p> <p>(2) However, a Minister may not be appointed as a Parliamentary Secretary.[CA s 57(2)]</p>	<p><b>Appointment of Parliamentary Secretaries [CA]</b></p> <p>57.(1) The Governor in Council may appoint members of the Legislative Assembly as Parliamentary Secretaries.</p> <p>(2) However, a Minister or member of the Executive Council may not be appointed as a Parliamentary Secretary.</p> <p><b>Parliamentary Secretary not officer liable to retire on political grounds etc. [OPA]</b></p> <p>6.(1) A Parliamentary Secretary is not an officer of the Crown liable to retire from office on political grounds.</p> <p>(2) Also, an appointment as Parliamentary Secretary is not an office or place of profit under the Crown. <i>[PROVIDED FOR IN THE PARLIAMENT OF QUEENSLAND BILL 1999]</i></p> <p>(3) This section applies for this Act and for other Acts and laws.</p>	
<p><b>Functions of Parliamentary Secretary (CA s 58)</b></p> <p>24. A Parliamentary Secretary has the functions decided by the Premier.[CA s 58]</p>	<p><b>Functions of Parliamentary Secretary [CA]</b></p> <p>58. A Parliamentary Secretary has the functions decided by the Premier.</p>	
<p><b>Duration of appointment as Parliamentary Secretary (CA s 59)</b></p> <p>25.(1) The appointment of a member of the Legislative Assembly as a Parliamentary Secretary ends on the polling day of the next election conducted of the members of the Legislative Assembly.[CA s 59(1)]</p>	<p><b>Duration of appointment as Parliamentary Secretary [CA]</b></p> <p>59.(1) The appointment of a member of the Legislative Assembly as a Parliamentary Secretary ends on the polling day of the next election conducted of the members of the Legislative Assembly.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>(2) However, the appointment ends before polling day if—</p> <p>(a) the member's seat becomes vacant otherwise than because the Legislative Assembly is dissolved or expires by the passage of time; or</p> <p>(b) the member resigns as Parliamentary Secretary by written notice of resignation given to the Premier; or</p> <p>(c) the member is appointed as a Minister; or</p> <p>(d) the appointment is ended by the Premier under subsection (3).[CA s 59(2)]</p> <p>(3) The Premier may, at any time, end the appointment for reasons the Premier considers sufficient.[CA s 59(3)]</p>	<p>(2) However, the appointment ends before polling day if—</p> <p>(a) the member's seat becomes vacant otherwise than because the Legislative Assembly is dissolved or expires by the passage of time; or</p> <p>(b) the member resigns as Parliamentary Secretary by written notice of resignation given to the Premier; or</p> <p>(c) the member is appointed as a Minister or member of the Executive Council; or</p> <p>(d) the appointment is ended by the Premier under subsection (3).</p> <p>(3) The Premier may, at any time, end the appointment for reasons that the Premier considers sufficient.</p>	
<p><b>Reimbursement of expenses (CA s 60)</b></p> <p>26.(1) A Parliamentary Secretary is entitled to be reimbursed the Parliamentary Secretary's reasonable expenses of office.[CA s 60(1)]</p> <p>(2) The consolidated fund is appropriated for the reimbursement.[CA s 60(2)]</p>	<p><b>Reimbursement of expenses [CA]</b></p> <p>60.(1) A Parliamentary Secretary is entitled to be reimbursed the Parliamentary Secretary's reasonable expenses of office.</p> <p>(2) The consolidated fund is appropriated for the reimbursement.</p>	
<p><b>CHAPTER 3—GOVERNOR AND EXECUTIVE GOVERNMENT</b></p> <p><b>PART 1—INTERPRETATION</b></p> <p><b>Governor (COGA s 12)</b></p> <p>27. "Governor" means—</p> <p>(a) generally—the person appointed for the time being to the office of Governor of the State; and</p> <p>(b) for sections 28, 35, 36, 40, 41, 47 and 49<sup>15</sup>—includes a person for the time being exercising the Governor's powers under a delegation as Deputy Governor under section 40 and a person for the time being administering the Government of the State as Acting Governor under section 41.</p> <p><sup>15</sup> Sections 28 (Governor in Council), 35 (Power of Governor—removal or suspension of officer), 36 (Power of Governor—relief for offender), 40 (Delegation by Governor to Deputy Governor), 41 (Administration of Government by Acting Governor), 47 (Executive Council) and 49 (Meetings of Executive Council)</p>	<p><b>Interpretation [COGA]</b></p> <p>12.(1) In this Part—</p> <p>"Governor" means the person appointed for the time being to the office of Governor in and over the State and, in sections 6, 7, 8, 9 and 10, includes a person for the time being administering the Government of the State pursuant to section 9(1) and a person for the time being appointed to be deputy of the Governor pursuant to section 10.</p> <p>(2) In section 9(4)—</p> <p>"Premier" includes a Minister of the Crown for the time being performing the duties of the Premier of the State.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Governor in Council (EARC reprint s 21)</b></p> <p>28. The Governor in Council is the Governor acting with the advice of Executive Council.[EARC reprint s 21]</p>	<p><b>Meaning of commonly used words and expressions [AIA s 36]</b></p> <p>...</p> <p><b>"Governor in Council" means—</b></p> <p>(a) for Queensland—the Governor acting with the advice of Executive Council; or</p> <p>(b) for another State (other than the Australian Capital Territory)—the State's Governor acting with the advice of the State's Executive Council.</p>	<p><b>Governor in Council</b></p> <p>21. The Governor in Council is the Governor acting with the advice of Executive Council</p>
<p><b>CH 3, PART 2—GOVERNOR</b></p> <p><b>Governor (COGA s 3(1) + 3(2)(a) + EARC reprint s 16)</b></p> <p>29.(1) There must be a Governor of Queensland.[COGA s 3(1) + EARC reprint s 16]</p> <p>(2) The Governor must be appointed by commission under the signature or royal hand of the Sovereign.[COGA s 3(2)(a) + EARC reprint s 16(2)]</p>	<p><b>Governor [COGA]</b></p> <p>3.(1) There shall be a Governor in and over the State.</p> <p>(2) The appointment of a person to the office of Governor in and over the State—</p> <p>(a) shall be during Her Majesty's pleasure by commission under Her Majesty's Sign Manual;</p> <p>(b) ...</p>	<p><b>Governor</b></p> <p>16. (1) There is to be a Governor of Queensland.</p> <p>(2) The Governor must be appointed by commission signed by the Sovereign.</p>
<p><b>Office of Governor (CA ss 11A-11B + EARC reprint ss 17-18)</b></p> <p>30.(1) <sup>16</sup>The Sovereign's representative in Queensland is the Governor who holds office during the Sovereign's pleasure.</p> <p>(2) Abolition of or alteration in the office of Governor may not be effected by an Act of the Parliament except under the <i>Constitution Act 1867</i>, section 53.<sup>17</sup></p> <p>(3) In this Act and in every other Act, a reference to the Governor is taken—</p> <p>(a) to be a reference to the person appointed for the time being by the Sovereign by commission under the Sovereign's Royal Sign Manual to the office of Governor of the State of Queensland; and</p> <p>(b) to include any other person appointed by dormant or other commission under the Royal Sign Manual to administer the Government of the State of Queensland.</p>	<p><b>Office of Governor [CA]</b></p> <p>11A.(1) The Queen's representative in Queensland is the Governor who shall hold office during Her Majesty's pleasure.</p> <p>(2) Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with section 53.</p> <p>(3) In this Act and in every other Act a reference to the Governor shall be taken—</p> <p>(a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty's Royal Sign Manual to the office of Governor of the State of Queensland; and</p> <p>(b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual to administer the Government of the State of Queensland.</p>	<p><b>Office of the Governor</b></p> <p>17. (1) The Queen's representative in Queensland is the Governor who shall hold office during Her Majesty's pleasure.</p> <p>(2) Abolition of or alteration in the office of Governor shall not be effected by an Act of the Parliament except in accordance with section 53.</p> <p>(3) In this Act and in every other Act a reference to the Governor shall be taken-</p> <p>(a) to be a reference to the person appointed for the time being by the Queen by Commission under Her Majesty's Royal Sign Manual to the office of Governor of the State of Queensland; and</p> <p>(b) to include any other person appointed by dormant or other Commission under the Royal Sign Manual to administer the Government of the State of Queensland.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>(4) In this section—  <b>"Royal Sign Manual"</b> means the signature or royal hand of the Sovereign.</p> <p><sup>16</sup> This is merely a restatement of the <i>Constitution Act 1867</i>, sections 11A (Office of Governor) and 11B (Definition of Royal Sign Manual)—see section 4 (Status of particular provisions). Also see attachment 1 for the text of the <i>Constitution Act 1867</i>, sections 11A and 11B and section 53 which provides that a Bill that expressly or impliedly in any way affects sections 11A and 11B of that Act must not be presented to the Governor for assent without the approval of a majority of electors at a referendum.</p> <p><sup>17</sup> <i>Constitution Act 1867</i>, section 53 (Certain measures to be supported by referendum)</p>	<p><b>Definition of Royal Sign Manual [CA]</b></p> <p><b>11B.</b> In section 11A the expression "Royal Sign Manual" means the signature or royal hand of the Sovereign.</p>	<p><b>Definition of Royal Sign Manual.</b></p> <p><b>18.</b> In section 11A the expression "Royal Sign Manual" means the signature or royal hand of the Sovereign.</p>
<p><b>Publication of commission, declaration of allegiance etc. (COGA s 5)</b></p> <p><b>31.(1)</b> Before undertaking any duties as Governor, a person appointed as Governor must, in the presence of the Chief Justice, or the next senior Judge of the State who is able to act, (the "<b>judicial officer</b>") and of at least 2 members of the Executive Council—</p> <p>(a) cause the commission appointing the person as Governor to be read and published at the seat of government of the State; and</p> <p>(b) make the oath or affirmation of allegiance and the oath or affirmation of office in schedule 1, subject to and in accordance with the law and practice of the State.[COGA s 5(1)]</p> <p>(2) The judicial officer must administer the oaths or affirmations.[COGA s 5(2)]</p>	<p><b>Publication of Governor's commission—declaration of Governor's allegiance [COGA]</b></p> <p><b>5.(1)</b> Every person appointed to the office of Governor in and over the State, before entering on any of the duties of the office and with all due solemnity—</p> <p>(a) shall cause the commission appointing the person to be Governor to be read and published at the seat of government in the State, in the presence of the Chief Justice or the next senior Judge of the State who is able to act and of at least 2 members of the Executive Council of the State; and</p> <p>(b) thereafter, then and there shall take in the presence of the persons referred to in paragraph (a) the oath of allegiance and the oath of office subject to and in accordance with the law and practice of the State.</p> <p>(2) The Chief Justice or next senior Judge of the State who is able to act shall administer the oaths referred to in subsection (1) or, as permitted by law, take affirmations in lieu of those oaths.</p>	
<p><b>Termination of appointment as Governor (COGA s 3(2)(b) + EARC reprint s 19)</b></p> <p><b>32.(1)</b> The appointment of a person as Governor may be terminated only by instrument signed by the Sovereign.[COGA s 3(2)(b) + EARC reprint s 19(1)]</p> <p>(2) The instrument takes effect on its publication in the gazette or at a later time stated in the instrument.[COGA s 3(2)(b) + EARC reprint s 19(2)]</p>	<p><b>Governor [COGA s 3]</b></p> <p>(2) The appointment of a person to the office of Governor in and over the State—</p> <p>(a) ...</p> <p>(b) may be terminated only by instrument under Her Majesty's Sign Manual taking effect upon publication thereof in the Government Gazette or at</p>	<p><b>Termination of appointment as Governor</b></p> <p><b>19. (1)</b> The appointment of a person as Governor may be terminated by instrument signed by the Sovereign.</p> <p>(2) The instrument takes effect on its publication in the Gazette or at a later time stated in the instrument.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>General power of Governor (COGA s 4(1) + EARC reprint s 20)</b></p> <p>33. The Governor is authorised and required to do all things that belong to the Governor's office under any law.[COGA s 4(1) + EARC reprint s 20]</p>	<p>a later time specified in the instrument in that behalf.</p> <p><b>Authorities and powers of Governor [COGA]</b></p> <p>4.(1) The Governor is authorised and required to do and execute all things that belong to the Governor's office according to the laws that are now or shall hereafter be in force in the State.</p> <p>(2) ...</p>	<p><b>General power of a Governor</b></p> <p>20. The Governor is authorised and required to do all things that belong to the Governor's office under any law.</p>
<p><b>Power of Governor—Ministers (CA s 14 + EARC reprint s 26)</b></p> <p>34. Ministers hold office at the pleasure of the Governor who in the exercise of the Governor's power to appoint and dismiss the Ministers is not subject to direction by any person and is not limited as to the Governor's sources of advice.</p>	<p><b>Office liable to retire from office on political grounds [CA s 14*]</b></p> <p>14. Officers liable to retire from office on political grounds shall hold office at the pleasure of the Governor who in the exercise of his power to appoint and dismiss such officers shall not be subject to direction by any person whatsoever nor be limited as to his sources of advice.</p> <p>* After the commencement of the <i>Public Service Act 1996</i>, s 146.</p>	<p><b>Appointment to offices under the Government of the State to be vested in the Governor in Council or alone.*</b></p> <p>26. (1)The appointment of all public offices under the Government of the State hereafter to become vacant or to be created whether such offices be salaried or not shall be vested in the Governor in Council with the exception of the appointments of the officers liable to retire from office on political grounds which appointments shall be vested in the Governor alone.</p> <p>Provided always that this enactment shall not extend to minor appointments which by Act of the Legislature or by order of the Governor in Council may be vested in heads of departments or other officers or persons within the State.</p> <p>(2) Officers liable to retire from office on political grounds shall hold office at the pleasure of the Governor who in the exercise of the Governor's power to appoint and dismiss such officers shall not be subject to direction by any person whatsoever nor be limited as to the Governor's sources of advice.</p> <p>* Based on CA s 14 as it previously stood.</p>
<p><b>Power of Governor—removal or suspension of officer (COGA s 8(a))</b></p> <p>35.(1) This section applies without prejudice to the operation of another Act.[COGA s 8(a)]</p> <p>(2) To the extent that it is within the Governor's power and if the Governor considers there is sufficient reason, the Governor may remove or suspend from office a person holding an office or place under an appointment made in the</p>	<p><b>Specific power of Governor [COGA]</b></p> <p>8. Without prejudice to the operation of any other Act, the Governor is authorised and empowered—</p> <p>(a) so far as it is within the powers of Her Majesty so to do, upon cause appearing to the Governor sufficient—to remove or suspend from office any</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>name or under the authority of the Sovereign.[COGA s 8(a)]</p> <p><b>Power of Governor—relief for offender (COGA s 8(b))</b></p> <p><b>36.(1)</b> This section applies without prejudice to the operation of another Act.[COGA s 8(b)]</p> <p><b>(2)</b> If an offender may be tried in the State for an offence (not being an offence against a Commonwealth law), the Governor may grant the offender, in the name and on behalf of the Sovereign—</p> <p>(a) a pardon, a commutation of sentence or a reprieve of execution of sentence for a period the Governor considers appropriate; or</p> <p>(b) a remission of a fine, penalty, forfeiture or other consequence of conviction of the offender.[COGA s 8(b)]</p> <p><b>(3)</b> The grant may be unconditional or subject to lawful conditions.[COGA s 8(b)]</p>	<p>person holding any office or place by virtue of any appointment made in the name or under the authority of Her Majesty;</p> <p>(b) as the Governor shall see occasion, where an offender may be tried in the State in respect of an offence (not being an offence against the laws of the Commonwealth)—to grant, in the name and on behalf of Her Majesty, to the offender, either free or subject to lawful conditions—</p> <p>(i) a pardon, a commutation of sentence or a reprieve of execution of sentence for such period as the Governor thinks fit; or</p> <p>(ii) a remission of any fine, penalty, forfeiture or other consequence of conviction of the offender. [COGA 8]</p>	
<p><b>Power of Governor—public seal (COGA s 4(2))</b></p> <p><b>37.</b> The Governor may keep and use the Public Seal of the State for sealing all public instruments made and passed in the Sovereign's name.[COGA s 4(2)]</p>	<p><b>Authorities and powers of Governor [COGA s 4]</b></p> <p>(1) ...</p> <p>(2) The Governor is authorised, and has always had authority, to keep and use the Public Seal of the State for sealing all public instruments made and passed in Her Majesty's name.</p>	
<p><b>Power of Governor—appointment of Lieutenant-Governor (~part COGA s 10(1))</b></p> <p><b>38.</b> The Governor may by an instrument under the Public Seal of the State appoint a Lieutenant-Governor.[~part COGA s 10(1)]</p>	<p>SEE COGA S 10(1) REPRINTED IN THIS COLUMN TWO CELLS BELOW</p>	
<p><b>Statutory powers when Sovereign personally in State (RPA s 2)</b></p> <p><b>39.(1)</b> When the Sovereign is personally present in the State, any power under an Act exercisable by the Governor may be exercised by the Sovereign.[RPA 2(1)]</p> <p><b>(2)</b> The Governor has the same powers in relation to an act done, or an instrument made, by the Sovereign under this section as the Governor has in relation to an act done, or an instrument made, by the Governor himself or herself.[RPA</p>	<p><b>Exercise of statutory powers by Her Majesty [RPA]</b></p> <p><b>2.(1)</b> At any time when Her Majesty is personally present in Queensland, any power under an Act exercisable by the Governor may be exercised by Her Majesty.</p> <p><b>(2)</b> The Governor has the same powers with respect to an act done, or an instrument made, granted, or issued, by Her Majesty by virtue of this section as the Governor has with respect of an act done or an instrument made, granted, or</p>	



LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>2(2)]</p> <p>(3) This section does not affect or prevent the exercise of any power under an Act by the Governor.[RPA 2(3)]</p> <p>(4) In this section, references to the Governor or to the Sovereign include references to the Governor, or to the Sovereign, acting by and with the advice of the Executive Council.[RPA 2(4)]</p>	<p>issued, by the Governor himself or herself.</p> <p>(3) Nothing in this section affects or prevents the exercise of any power under an Act by the Governor.</p> <p>(4) In this section, references to the Governor or to Her Majesty shall include references to the Governor, or to Her Majesty, acting by and with the advice of the Executive Council.</p>	
<p><b>Delegation by Governor to Deputy Governor</b> (~COGA 10(1) + (4))</p> <p><b>40.(1)</b> The Governor may delegate the Governor's powers to the person mentioned in subsection (2) only during—</p> <p>(a) any period, or all periods, the Governor is temporarily absent for a short period from the State or from the seat of government but not from the State, except when administering the Government of the Commonwealth; or</p> <p>(b) any period, or all periods, the Governor is ill if there are reasonable grounds for believing the illness will be of short duration.[COGA s 10(1)]</p> <p><b>(2)</b> The person to whom the Governor's powers may be delegated is—</p> <p>(a) the Lieutenant-Governor; or</p> <p>(b) if there is no Lieutenant-Governor in the State and able to act— the Chief Justice; or</p> <p>(c) if there is no Chief Justice in the State and able to act—the next most senior Judge of the State who is in the State and able to act.[~COGA s 10(1) + (4)]</p> <p><b>(3)</b> The delegation must be by an instrument under the Public Seal of the State and specify the power given to the delegate.[COGA s 10(1)]</p> <p><b>(4)</b> A person exercises the Governor's powers under a delegation as Deputy Governor.</p>	<p><b>Appointment of deputy for Governor [COGA]</b></p> <p><b>10.(1)</b> In the event of—</p> <p>(a) the Governor having occasion to be temporarily absent for a short period from the State or from the seat of government but not from the State, except for the purpose of administering the Government of the Commonwealth; or</p> <p>(b) the Governor considering it desirable so to do by reason of illness in relation to which there exist reasonable grounds for believing that it will be of short duration;</p> <p>the Governor may by an instrument under the Public Seal of the State constitute and appoint the Lieutenant-Governor or, if there be no such officer in the State and able to act, the Chief Justice of the State or, if there be no Chief Justice in the State and able to act, the next senior Judge of the Supreme Court of Queensland who is in the State and able to act to be the Governor's deputy during the Governor's temporary absence or illness and in that capacity to exercise, perform and execute for and on behalf of the Governor during the Governor's absence or illness, and no longer, all such authorities and powers vested in the Governor according to law as are specified in such instrument, and no other.</p> <p><b>(2)</b> Any appointment of a deputy made under subsection (1) may be revoked by the Governor at any time.</p> <p><b>(3)</b> The authority and power of the Governor of the State shall not be abridged, altered or in any way affected by the appointment of a deputy made under subsection (1).</p> <p><b>(4)</b> This section shall not be construed to require the Governor of the State to constitute and appoint a deputy upon an event referred to in subsection (1).</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Administration of Government by Acting Governor (~COGA s 9)</b></p> <p>41.(1) The person mentioned in subsection (2) must administer the government of the State during—</p> <p>(a) any vacancy, or all vacancies, in the office of Governor; or</p> <p>(b) any period the Governor assumes the administration of the Government of the Commonwealth; or</p> <p>(c) any period, or all periods, when the Governor is absent from duty, or cannot, for another reason, perform the functions of the office unless a Deputy Governor is exercising the Governor's powers under section 40.<sup>18</sup> [-COGA s 9(1)]</p> <p>(2) The person who must administer the government of the State is—</p> <p>(a) the Lieutenant-Governor; or</p> <p>(b) if there is no Lieutenant-Governor in the State and able to act— the Chief Justice; or</p> <p>(c) if there is no Chief Justice in the State and able to act—the next most senior Judge of the State who is in the State and able to act.[-COGA s 9(1)]</p> <p>(3) A person administering the government of the State under this section has all the functions and powers of the Governor and performs the functions and exercises the powers as Acting Governor.</p> <p>(4) Before, or as soon as is reasonably practicable after, assuming the administration of the State, the person must take the oaths or affirmations directed by section 31<sup>19</sup> to be taken by the Governor and in the way stated in section 31.[COGA s 9(1)]</p> <p>(5) The person must not continue to administer the government of the State after—</p> <p>(a) the Governor, by proclamation; or</p> <p>(b) some other person holding an office prior in title to administer the government of the State under subsections (1) and (2), by gazette notice on the advice of and signed by the Premier;</p> <p>has given notice that the Governor or other person has assumed or resumed or is about to assume or resume, the</p>	<p><b>Administration of Government in absence etc. of Governor [COGA]</b></p> <p>9.(1) In the event of—</p> <p>(a) the office of Governor in and over the State becoming vacant; or</p> <p>(b) the Governor assuming the administration of the Government of the Commonwealth; or</p> <p>(c) the Governor becoming incapable or being absent from the State, and a deputy not having been appointed pursuant to section 10;</p> <p>the Lieutenant-Governor or, if there be no such officer in the State and able to act, the Chief Justice of the State or, if there be no Chief Justice in the State and able to act, the next senior Judge of the Supreme Court of Queensland who is in the State and able to act shall administer the Government of the State, having previously to, or as soon as is reasonably practicable after, the happening of that event taken the oaths or affirmations directed by section 5 to be taken by the Governor in the manner prescribed by section 5(1)(b).</p> <p>(2) Where the Governor is beyond the boundaries of the State in the course of passage from one part of the State to another part of the State the Governor shall be deemed not to be absent from the State for the purposes of subsection(1).</p> <p>(3) Every person who duly assumes the administration of the Government of the State pursuant to subsection (1) is authorised and required to do and execute all things that the Governor might do and execute pursuant to this Act.</p> <p>(4) A person who by virtue of office has duly assumed the Administration of the Government of the State pursuant to subsection(1) shall not continue to administer the Government of the State after—</p> <p>(a) the Governor, by proclamation; or</p> <p>(b) some other person holding an office prior in title to administer the Government of the State under subsection (1), by notification published in the Gazette upon the advice and under the hand of the Premier of the State;</p> <p>has notified that the Governor or other person has assumed or</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>administration of government of the State.[COGA s 9(4)]</p> <p><sup>18</sup> Section 40 (Delegation by Governor to Deputy Governor)</p> <p><sup>19</sup> Section 31 (Publication of commission, declaration of allegiance etc.)</p>	<p>resumed or is about to assume or resume the administration thereof.</p>	
<p><b>CH 3, PART 3—MINISTERS OF THE STATE</b></p> <p><b>Appointment of Ministers of the State (~part OPA s 3(1) + ~EARC reprint s 25 + OPA s 8A)</b></p> <p><b>42.(1)</b> The Governor may appoint a person to be a Minister of the State.<sup>20</sup> [-part OPA s 3(1) + EARC reprint s 25 (1)]</p> <p><b>(2)</b> To remove any doubt, it is declared that the Attorney-General is a Minister.[OPA s 8A]</p> <p><b>(3)</b> The maximum number of Ministers at any time is 18.[part OPA s 3(1) + EARC reprint s 25(3)]</p> <p><b>(4)</b> A Minister must, before entering on the duties of the Minister's office, make an oath or affirmation of office in schedule 1.<sup>21</sup></p> <p><b>(5)</b> The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.</p> <p><sup>20</sup> This was previously a reference to 'officers of the Crown liable to retire from office on political grounds'.</p> <p><sup>21</sup> Schedule 1 (Oaths and affirmations)</p>	<p><b>Governor may declare what Ministers may sit in Legislative Assembly [OPA]</b></p> <p><b>3.(1)</b> The Governor may from time to time by proclamation declare any officers of the Crown, not exceeding 18 in all, and being officers liable to retire from office on political grounds, to be capable of being elected members of the Legislative Assembly and of sitting and voting therein at the same time.</p> <p><b>Attorney-General is a Minister [OPA]</b></p> <p><b>8A.</b> To remove any doubt, it is declared that the Attorney-General is an officer and a Minister within the meaning of this Act.</p> <p><b>Government officers not to sit in Legislative Assembly except as mentioned [OPA]</b></p> <p><b>5.(1)</b> Any person holding any office or place of profit under the Crown, or having a pension from the Crown during pleasure or for a term of years, and not being one of the officers named in a proclamation made under this Act and not being a member of the Executive Council who is also a member of the Legislative Assembly authorised and empowered by the Governor to act for the time being in lieu of any such officer as aforesaid pursuant to section 3(3) shall be incapable of being elected, or of sitting or voting, as a member of the Legislative Assembly; and the election of any such person to be a member of the Legislative Assembly shall be null and void, and a writ shall forthwith issue for the election of a member in the person's stead.</p> <p><b>(1A) ...</b></p> <p><b>Certain persons holding office or place of profit under the Crown may be elected to Parliament [OPA s 5 cont.]</b></p> <p><b>(2)</b> Subsection (1) shall not apply so as to prevent any person holding any office or place of profit under the Crown who is otherwise qualified from being nominated as a candidate and</p>	<p><b>Ministers of the State</b></p> <p><b>25. (1)</b> The Governor may appoint a person to be a Minister of the State.</p> <p><b>(2) ...</b></p> <p><b>(3)</b> The maximum number of Ministers at any time is 18.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p>being elected as a member of the Legislative Assembly; but if such person is so elected the person shall vacate and be deemed to vacate the person's office or place of profit under the Crown from the day appointed in the writ for taking the poll for the person's election.</p> <p>(3) ... (4) ...</p> <p><i>[OPA s 5 IS PROVIDED FOR IN THE PARLIAMENT OF QUEENSLAND BILL 1999 IN CHAPTER 5 ON ELIGIBILITY AND DISQUALIFICATION OF MLAs]</i></p>	
<p><b>Minister may act for another Minister (~OPA s 8)</b></p> <p>43.(1) The Governor or Premier may, in writing, appoint a Minister to perform all or any of the functions, and exercise all or any of the powers, of another Minister.[OPA s 8(1) + part of s 8(2)]</p> <p>(2) However, an appointment by the Premier may not be for a period of more than 14 days.[part of OPA s 8(2)]</p>	<p><b>Duties imposed by law on any Minister may be ordered to be performed by other Minister [OPA]</b></p> <p>8.(1) The Governor may from time to time authorise and empower any of such officers to perform and exercise all or any of the duties, powers, and authorities imposed or conferred upon any other of such officers by any Act, rule, practice, or ordinance, and the officer so authorised and empowered may perform and exercise any such duties, powers, and authorities accordingly.</p> <p>(2) The Premier may, in writing, from time to time authorise and empower any of such officers to perform and exercise temporarily for any period not longer than 14 days all or any of the duties, powers and authorities imposed or conferred upon the Premier, or any other of such officers by any Act, rule, practice or ordinance, and the officer so authorised and empowered may perform and exercise any such duties, powers and authorities accordingly.</p> <p>(2A) Notification of any such authority and power may be published in the gazette and judicial notice shall be taken of every such authority and power so notified.</p> <p>(3) In this section—</p> <p>“officer” includes any member of the Executive Council who, being a member of the Legislative Assembly, is authorised and empowered by the Governor, by proclamation, under section 3(3) to act for the time being in the office of any such officer.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Acting Ministers (~OPA s 3(3) + (4))</b></p> <p><b>44.(1)</b> The Governor may appoint a member of the Legislative Assembly to act as a Minister—</p> <p>(a) for any period the office of Minister is vacant; or</p> <p>(b) for any period, or all periods, when the Minister is absent from duty, or is, for another reason, unable to perform the duties of the office.[~OPA s 3(3)]</p> <p><b>(2)</b> The member may be appointed to perform all or part of a Minister's functions and exercise all or any of a Minister's powers.[OPA s 3(3)]</p> <p><b>(3)</b> If a member acts as a Minister for a continuous period of 30 days or more, then, in addition to the salary payable to the member as a member of the Legislative Assembly, the member must be paid additional salary at the rate applicable to the office of Minister.<sup>22</sup> [OPA s 3(4)]</p> <p><sup>22</sup> See the <i>Parliamentary Members' Salaries Act 1988</i>.</p>	<p><b>When member of Legislative Assembly may act as officer [OPA s 3]</b></p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) The Governor may, by proclamation, authorise and empower any member of the Executive Council who is not another such officer but who is for the time being a member of the Legislative Assembly to perform and exercise during the absence—</p> <p>(a) from the State of any such officer who is so absent in the course of the duties of office; or</p> <p>(b) from office of any such officer who is so absent on leave granted under subsection (2);</p> <p>all or any of the duties, powers, and authorities imposed or conferred upon the officer so absent or any other officer mentioned in subsection (1) by any Act, rule, practice, or ordinance, and the member so authorised and empowered may perform any such duties, powers, and authorities accordingly.</p> <p>(4) A member of the Executive Council who, being a member of the Legislative Assembly, is authorised and empowered under subsection (3) to act in the office of any officer mentioned in subsection (1) shall, in respect of any continuous period of 30 days or more during which the member so acts, be paid additional salary at the rate for the time being applicable to that office under the <i>Parliamentary Members' Salaries Act 1988</i> in addition to the salary payable to the member as a member of the Legislative Assembly.</p> <p>(5) The provisions of section 5 shall not apply to any member of the Executive Council who, being for the time being a member of the Legislative Assembly, holds, or held on or after 1 January 1939, an office or place of profit under the Crown when acting or purporting to act in lieu of any officer mentioned in subsection (1) during the absence from the State in the course of the duties of office or during the absence or purported absence on sick leave of any such officer, and such member is, and always has been, on and after 1 January 1939, capable of being elected, and of sitting and voting, as a member of the Legislative Assembly, and of receiving for any continuous period of 30 days or more during which the member so acts additional salary at the rate for the time being</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p>applicable to that office in addition to the salary payable to the member as a member of the Legislative Assembly.</p> <p>(6) This section shall not be so read and construed as to limit the provisions of section 8.</p> <p><b>Government officers not to sit in Legislative Assembly except as mentioned [OPA s 5(1)]</b></p> <p><b>5.(1) SEE OPA S 5(1) TWO CELLS ABOVE IN THIS COLUMN</b></p>	
<p><b>Administrative arrangements (~AIA s 33(14) + ~ EARC reprint s 25(2))</b></p> <p>45. The Governor in Council may make administrative arrangements—</p> <p>(a) distributing the public business, or any of that business, among the several departments of government or any of those departments; or</p> <p>(b) showing—</p> <p>(i) the offices or any of the offices placed under the control of each Minister respectively, or of any Minister; or</p> <p>(ii) the Acts, or any of the Acts administered by, each Minister respectively, or by any Minister.[~AIA s 33(14) + ~ EARC reprint s 25(2)]</p>	<p><b>Acts Interpretation Act (AIA): s 33(14)</b></p> <p>...</p> <p>(14) Any notification of administrative arrangements by the Governor in Council distributing the public business, or any of that business, amongst the several departments of government or any of those departments, or showing the offices or any of the offices placed under the control of, or the Acts or any of the Acts administered by, each Minister respectively, or by any Minister, shall upon publication in the gazette be judicially noticed.</p>	<p><b>Ministers of the State</b></p> <p>25. (1) ...</p> <p>(2) The Governor, by regulation, may declare a particular area of the government's activities for which a Minister is responsible.</p> <p>(3) ...</p>
<p><b>Sick leave (OPA s 3(2))</b></p> <p>46. The Governor may, by proclamation, give a Minister who is ill leave of absence with pay for a period of not more than 6 months.</p>	<p><b>Sick leave [OPA s 3]</b></p> <p>(2) In the case of illness of any such officer the Governor may by proclamation grant to the officer leave of absence with pay for a period not exceeding 6 calendar months.</p>	
<p><b>CH 3, PART 4—EXECUTIVE COUNCIL</b></p> <p><b>Executive Council (part of COGA s 6 + EARC reprint s 22)</b></p> <p>47.(1) There must be an Executive Council for the State.[COGA s 6 + EARC reprint s 22(1)]</p> <p>(2) Executive Council consists of the persons appointed as members of the Executive Council by the Governor under the Public Seal of the State.[EARC reprint s 22(2)]</p> <p>(3) A member of the Executive Council must, before entering on the duties of the member's office, make an oath or affirmation of office and of secrecy in schedule 1.<sup>23</sup></p>	<p><b>Executive Council [COGA]</b></p> <p>6. There shall be an Executive Council for the State, which shall consist of—</p> <p>(a) the persons who immediately before the passing of this Act are members of the Executive Council; and</p> <p>(b) persons who may at any time be members of the Executive Council in accordance with any Act in force; and</p>	<p><i>Division 2 - Executive Council</i></p> <p><b>Executive Council</b></p> <p>22. (1) Executive Council is established.</p> <p>(2) Executive Council consists of persons appointed to be Ministers of the State.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>(4) The oath or affirmation must be made before the Governor or a person authorised by the Governor to administer the oath or affirmation.</p> <p><sup>23</sup> Schedule 1 (Oaths and affirmations)</p> <p><b>Duration of appointment as members of Executive Council (part of COGA s 6)</b></p> <p>48. The appointment of a person as a member of Executive Council ends only on the happening of either of the following—</p> <p>(a) the person's resignation as a member of Executive Council;</p> <p>(b) the person's removal from Executive Council by the Governor.</p>	<p>(c) such other persons as the Governor shall, from time to time in the name and on behalf of Her Majesty and subject to any Act in force, appoint under the Public Seal of the State to be members of the Executive Council;</p> <p>until their membership thereof be terminated by death, their resignation therefrom or their removal therefrom by the Governor.</p>	
		<p><b>Function and power of Executive Council</b></p> <p>23. (1) The function of Executive Council is to exercise the executive power of the State.</p> <p>(2) Executive Council may do all things necessary or convenient to be done for or in connection with the performance of its function.</p>
<p><b>Meetings of Executive Council (COGA s 7 + EARC reprint s 24)</b></p> <p>49.(1) The Governor must preside over a meeting of Executive Council.[COGA s 7(1) + EARC reprint s 24(1)]</p> <p>(2) However, if for good reason, the Governor cannot preside, Executive Council must be presided over by—</p> <p>(a) if the Governor has appointed a member of Executive Council to preside—the member; or</p> <p>(b) if the Governor does not appoint a person to preside—the member who is taken to be the most senior member present.[COGA s 7(1) + EARC reprint s 24(2)]</p> <p>(3) Executive Council must not deal with any business at a meeting unless—</p> <p>(a) it has been properly summoned to meet by the</p>	<p><b>Meetings of Executive Council [COGA]</b></p> <p>7.(1) The Governor shall attend and preside at all meetings of the Executive Council unless the Governor is prevented by some good and sufficient cause and, in the Governor's absence, such member of the Executive Council as the Governor may appoint in that behalf or, in the absence of such an appointee, the member of the Executive Council who is for the time being taken to be the most senior of the members thereof present at the meeting shall preside.</p> <p>(2) The Executive Council shall not proceed to dispatch business unless—</p> <p>(a) it has been duly summoned by authority of the</p>	<p><b>Meetings of Executive Council</b></p> <p>24. (1) The Governor must preside over a meeting of Executive Council.</p> <p>(2) However, if for good reason, the Governor cannot preside, Executive Council must be presided over by—</p> <p>(a) if the Governor has appointed a member of Executive Council to preside—the member; or</p> <p>(b) if the Governor does not appoint a person to preside—the person selected by the members present.</p> <p>(3) Executive Council must not deal with any business at a meeting unless—</p> <p>(a) it as been properly summoned to meet by the</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>Governor; and</p> <p>(b) at least 2 members, other than any presiding member, are present for the entire meeting.[COGA s 7(2) + EARC reprint s 24(3)]</p>	<p>Governor; and</p> <p>(b) 2 members thereof, at the least, exclusive of the Governor or member thereof presiding, are present and assisting throughout the whole of the meeting at which the business is dispatched.</p>	<p>Governor; and</p> <p>(b) at least 2 members, other than any presiding member, are present for the entire meeting.</p>
<p><b>CH 3, PART 5—POWERS OF THE STATE</b></p> <p><i>Division 1—General</i></p> <p><b>Powers of the State (AIA s 47A + 47B)</b></p> <p>50.(1) The Executive Government of the State of Queensland (the “State”) has all the powers, and the legal capacity, of an individual.[AIA s 47A + s 47B(1)]</p> <p>(2) The State may exercise its powers—</p> <p>(a) inside and outside Queensland; and</p> <p>(b) inside and outside Australia.[AIA s 47B(2)]</p> <p>(3) This part does not limit the State’s powers.</p> <p><i>Example—</i></p> <p>This part does not affect any power a Minister has apart from this part to bind the State by contract.[AIA s 47B(3)]</p>	<p><b>PART 12—THE EXECUTIVE GOVERNMENT OF THE STATE</b></p> <p><b>Purpose of part [AIA]</b></p> <p>47.(1) This part declares certain matters.</p> <p>(2) A declaration about a matter is intended to remove any doubt about the matter.</p> <p><b>Meaning of “State” in part [AIA]</b></p> <p>47A. In this part—</p> <p>“the State” means the Executive Government of the State of Queensland.</p> <p><b>Powers of State [AIA]</b></p> <p>47B.(1) The State has all the powers, and the legal capacity, of an individual.</p> <p>(2) The State may exercise its powers—</p> <p>(a) inside and outside Queensland; and</p> <p>(b) inside and outside Australia.</p> <p>(3) This part does not limit the State’s powers.</p> <p><i>Example—</i></p> <p>This part does not affect any power a Minister has apart from this part to bind the State by contract.</p>	
<p><i>Division 2—Commercial activities</i></p> <p><b>Definitions for div 2 (AIA s 47C)</b></p> <p>51. In this division—</p> <p>“commercial activities” includes—</p> <p>(a) commercial activities that are not within the ordinary functions of the State; and</p> <p>(b) commercial activities of a competitive nature; and</p>	<p><b>Commercial activities by State [AIA]</b></p> <p>s 47C</p> <p>...</p> <p>(5) In this section—</p> <p>“commercial activities” includes—</p> <p>(a) commercial activities that are not within the ordinary functions of the State; and</p> <p>(b) commercial activities of a competitive nature; and</p>	



LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>(c) activities declared under regulation to be commercial activities;</p> <p>but does not include activities declared by regulation not to be commercial activities.</p> <p>“State” includes—</p> <p>(a) a department of government of the State; and</p> <p>(b) a part of a department of government of the State. [AIA s 47C(5)].</p>	<p>(c) activities declared by a regulation to be commercial activities;</p> <p>but does not include activities declared by a regulation not to be commercial activities.</p> <p>“State” includes—</p> <p>(a) a department of government of the State; and</p> <p>(b) a part of a department of government of the State.</p>	
<p><b>Commercial activities by State (AIA s 47C)</b></p> <p>52.(1) The State may carry out commercial activities. [AIA s 47C(1)].</p> <p>(2) This section is sufficient statutory authority for the State to carry out a commercial activity. [AIA s 47C(2)].</p> <p>(3) Commercial activities may be carried out—</p> <p>(a) without further statutory authority; and</p> <p>(b) without prior appropriation from the public accounts for the purpose. [AIA s 47C(3)]</p> <p>(4) Commercial activities may be carried out—</p> <p>(a) inside and outside Queensland; and</p> <p>(b) inside and outside Australia. [AIA s 47C(4)]</p>	<p><b>Commercial activities by State [AIA]</b></p> <p>47C.(1) The State may carry out commercial activities.</p> <p>(2) This section is sufficient statutory authority for the State to carry out a commercial activity.</p> <p>(3) Commercial activities may be carried out—</p> <p>(a) without further statutory authority; and</p> <p>(b) without prior appropriation from the public accounts for the purpose.</p> <p>(4) Commercial activities may be carried out—</p> <p>(a) inside and outside Queensland; and</p> <p>(b) inside and outside Australia.</p> <p>(5) ...</p>	
<p><b>Commercial activities by Minister (AIA s 47D)</b></p> <p>53. A Minister may carry out commercial activities for the State.[AIA s 47D]</p>	<p><b>Commercial activities by Minister [AIA]</b></p> <p>47D. A Minister may carry out commercial activities for the State.</p>	
<p><b>Delegation by Minister (AIA s 47E)</b></p> <p>54.(1) A Minister may delegate the State's powers to an appropriately qualified officer of the State.[AIA s 47E(1)]</p> <p>(2) An officer of the State may subdelegate delegated powers to another appropriately qualified officer of the State.[AIA s 47E(2)]</p> <p>(3) In this section—</p> <p>“appropriately qualified” includes having the qualifications, experience or standing appropriate to exercise the power.</p>	<p><b>Delegation by Minister [AIA]</b></p> <p>47E.(1) A Minister may delegate the State's powers to an officer of the State.</p> <p>(2) An officer of the State may subdelegate delegated powers to another officer of the State.</p> <p>(3) In this section—</p> <p>“officer of the State” means—</p> <p>(a) a chief executive, or employee, of a unit of the public sector; or</p> <p>(b) an officer of the public service.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><i>Example of standing—</i></p> <p>A person's level of employment in the entity in which the person is employed.</p> <p><b>“officer of the State”</b> means—</p> <p>(a) a chief executive, or employee, of a public sector unit; or</p> <p>(b) an officer of the public service.[AIA s 47E(3)]</p>		
<p><b>Regulation-making power (AIA s 47F)</b></p> <p>55. The Governor in Council may make regulations under this part.</p>	<p><b>Regulation making power [AIA]</b></p> <p>47F. The Governor in Council may make regulations under this part.</p>	
<p style="text-align: center;"><b>CHAPTER 4—COURTS</b></p> <p><b>Supreme Court and District Court (SCQA 1991 s 7 + DCA 1967 s 4 + EARC reprint s 32)</b></p> <p>56. There must be a Supreme Court of Queensland and a District Court.[SCQA 1991 s 7 + DCA 1967 s 4 + EARC reprint s 32]</p>	<p><b>Continuance [SCQA]</b></p> <p>7. The Supreme Court of Queensland, as formerly established as the superior court of record in Queensland, is continued in existence.</p>	<p style="text-align: center;"><b>PART 5 - COURTS</b></p> <p><b>Supreme Court</b></p> <p>32. The Supreme Court of Queensland is established.</p>
<p><b>Supreme Court's superior jurisdiction (SCQA 1991 s 8 + EARC reprint s 33)</b></p> <p>57.(1) The Supreme Court has all jurisdiction necessary for the administration of justice in Queensland.[SCQA 1991 s 8 (1) + EARC reprint s 33(1)]</p> <p>(2) Without limiting subsection (1), the court—</p> <p>(a) is the superior court of record in Queensland and the supreme court of general jurisdiction in and for the State; and</p> <p>(b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.[SCQA 1991 s 8(2) + EARC reprint s 33(2)]</p>	<p><b>Jurisdiction generally [SCQA]</b></p> <p>8.(1) The court has all jurisdiction that is necessary for the administration of justice in Queensland.</p> <p>(2) Without limiting subsection (1), the court—</p> <p>(a) is the supreme court of general jurisdiction in and for the State; and</p> <p>(b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.</p>	<p><b>Supreme Court's superior jurisdiction</b></p> <p>33. (1)The Court has all jurisdiction that is necessary for the administration of justice in Queensland.</p> <p>(2) Without limiting subsection (1), the Court -</p> <p>(a) is the supreme court of general jurisdiction in and for the State: and</p> <p>(b) has, subject to the Commonwealth Constitution, unlimited jurisdiction at law, in equity and otherwise.</p>
<p><b>Appointment of judges (SCQA 1991 s 12 + DCA s 9)</b></p> <p>58. The Governor in Council may, by commission, appoint a barrister or solicitor of the Supreme Court of at least 5 years standing to be a judge of the Supreme Court or District Court.[SCQA 1991 s 12 + DCA s 9]</p>	<p><b>Appointment of judges [SCQA]</b></p> <p>12. The Governor in Council may, by commission, appoint a barrister or solicitor of the court of at least 5 years standing to be a judge.</p>	<p><b>Appointment of Judge</b></p> <p>34. A Judge of the Supreme Court or a Judge of the District Courts is to be appointed by the Governor in Council by commission in the Sovereign's name.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p><b>Appointment and qualification of Judges [DCA]</b></p> <p>9. The Governor in Council may, by commissions in Her Majesty's name, appoint judges of District Courts, each of whom shall be a barrister or solicitor of the Supreme Court of Queensland of not less than 5 years standing.</p>	
<p><b>Length of judge's appointment (CA s 15 + SCQA 1991 s 23 + SCA 1995 s 195(1) + DCA s 14(1) + (2) + EARC reprint s 35)</b></p> <p>59.(1) A judge holds office indefinitely during good behaviour.[CA s 15 + SCA 1995 s 195(1) + EARC reprint s 35(1)]</p> <p>(2) However, a judge must retire at 70 years.[SCQA 1991 s 23(1) + DCA s 14(1) + EARC reprint s 35(2)]</p> <p>(3) Despite subsection (2), a judge who, before reaching 70 years, starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.[SCQA 1991 s 23(2) + DCA s 14(2)]</p> <p>(4) A judge's appointment is unaffected by the end of the Sovereign's reign.[CA s 15 + SCA 1995 s 195(1) + EARC reprint s 35(3)]</p> <p>(5) In this section—  <b>"judge"</b> means a Supreme Court judge or a District Court judge.</p>	<p><b>Judges continued in the enjoyment of their offices during their good behaviour notwithstanding any demise of the Crown [CA]</b></p> <p>15. The commissions of the present judges of the Supreme Court of the said State and all future judges thereof shall be continued and remain in full force during their good behaviour notwithstanding the demise of Her Majesty (whom may God long preserve) or of Her heirs and successors any law usage or practice to the contrary thereof in anywise notwithstanding.</p> <p><b>Commission of judges [SCA]</b></p> <p>195.(1) The commissions of the present and any future judges of the said Supreme Court shall be continue and remain in full force during his, her or their good behaviour notwithstanding the demise of Her Majesty or of her heirs and successors any law usage or practice hereof in anywise notwithstanding.</p> <p>(2) ...</p> <p><b>Retirement of judges [SCQA]</b></p> <p>23.(1) A judge must retire on reaching 70 years of age.</p> <p>(2) Despite subsection (1), a judge who, before attaining 70 years of age, starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.</p> <p><b>Retirement of judges [DCA s 14]</b></p> <p>14.(1) A judge must retire on reaching 70 years of age.</p> <p>(2) Despite subsection (1), a judge who, before attaining 70 years of age, starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.</p> <p>(3) Subsection (2) does not prevent the filling of the judge's</p>	<p><b>Length of Judge's appointment</b></p> <p>35. (1)A Judge of the Supreme Court or a Judge of District Courts holds office indefinitely during good behaviour.</p> <p>(2) However, a Judge must retire at 70, subject to arrangements under an Act for finishing remaining duties.</p> <p>(3) A Judge's appointment is unaffected by the end of the Sovereign's reign.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Removal of judge for misbehaviour or incapacity (CA s 16 + SCA 1995 s 195(2) + DCA s 15 + EARC reprint s 36 with PCEAR pars 47, 52, 58, 60, 67 and 69)</b></p> <p>60.(1) A Supreme Court judge or a District Court judge may be removed from office only by the Sovereign on the address of the Legislative Assembly for proved misbehaviour or proved incapacity.[CA s 16 + SCA 1995 s 195(2) + DCA s 15 + EARC reprint s 36(1) with PCEAR par 47]</p> <p>(2) The address may only be made after a tribunal has found that, on the balance of probabilities, the person to be removed has misbehaved, or is incapable of performing the duties of office, and the person's removal is justified.[EARC reprint s 36(2) + PCEAR pars 58 + 60]</p> <p>(3) The tribunal is to consist of at least 3 persons.[part PCEAR par 69]</p> <p>(4) A tribunal member must—</p> <p>(a) be a former judge or former justice of a State or Federal superior court in Australia; and</p> <p>(b) not be a former judge of the court of which the person who may be removed is a judge. [part -PCEAR par 69]</p> <p>(5) The tribunal members are to be appointed by resolution of the Legislative Assembly.[PCEAR par 67]</p> <p>(6) The tribunal has the functions, powers, protection and immunity given by an Act.<sup>24</sup> [partly PCEAR par 52]</p> <p><sup>24</sup> The Legal, Constitutional and Administrative Review Committee agrees with the Parliamentary Committee for Electoral and Administrative Review's <i>Report on Consolidation and Review of the Queensland Constitution</i> (1994), para 52, that the functions and powers of the tribunal can be specified in another Act such as the <i>Parliamentary (Judges) Commission of Inquiry Act 1988</i>.</p>	<p>office from any time after the judge attains 70 years of age and, for that purpose, the judge's office is taken to be vacant from that time.</p> <p><b>But they may be removed by the Crown on the address of Parliament [CA]</b></p> <p>16. It shall be lawful nevertheless for Her Majesty Her heirs or successors to remove any such judge or judges upon the address of the Legislative Assembly.</p> <p><b>Commission of judges [SCA s 195]</b></p> <p>(1) ...</p> <p>(2) However, it shall be lawful for Her Majesty her heirs and successors to remove any such judge or judges upon the address of the Legislative Assembly.</p> <p><b>Removal from Office [DCA s 15]</b></p> <p>15. The Governor may remove a judge for incapacity of misbehaviour on the address of the Legislative Assembly.</p>	<p><b>Removal of Judge for misbehaviour or incapacity</b></p> <p>36. (1)A Judge of the Supreme Court or a Judge of District Courts may be removed from office by the Governor on the address of the Legislative Assembly in support of a finding mentioned in subsection (2).</p> <p>(2) The address may only be made after a tribunal has found that the person to be removed has been guilty of misconduct justifying removal or is incapable of performing the duties of office.</p> <p>(3) The tribunal is to-</p> <p>(a) be independent; and</p> <p>(b) consist of at least 3 persons each of whom is a Judge or retired Judge of the Supreme Court or the High Court.</p>
<p><b>Judge's salary (CA s 17 + SCA 1995 s 196 + EARC reprint s 37(1) with PCEAR par 79)</b></p> <p>61.(1) A judge must be paid a salary at the rate applicable to the judge's office.[CA s 17 + SCA 1995 s 196]</p>	<p><b>Their salaries secured during the continuance of their commissions [CA]</b></p> <p>17. Such salaries as are settled upon the judges for the time being by Act of Parliament or otherwise and all such salaries</p>	<p><b>Judge's salary</b></p> <p>37. (1) The amount of the salary of a Judge of the Supreme Court or a Judge of District Courts may not be</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>(2) This Act authorises payment of the amount for judges' salaries from the consolidated fund.</p> <p>(3) The amount of a judge's salary may not be decreased.[CA s 17 + SCA 1995 s 196 + EARC reprint s 37(1)]</p> <p>(4) In this section—  <b>"judge"</b> means a Supreme Court judge or a District Court judge.</p>	<p>as shall or may be in future granted by Her Majesty Her heirs and successors or otherwise to any future judge or judges of the said Supreme Court shall in all time coming be paid and payable to every such judge and judges for the time being so long as the patents or commissions of them or any of them respectively shall continue and remain in force.</p> <p><b>Judges' salaries [SCA]</b></p> <p><b>196.</b> Such salaries as shall be settled upon such judges for the time being by Act of Parliament or otherwise and all such salaries as may in future be granted by Her Majesty or otherwise to any future judge of the Supreme Court shall in all time coming be paid and payable to every such judge for the time being so long as the judge's patent or commission shall continue or remain in force.</p> <p><b>Salary and allowance of District Court judges [Judges (Salaries and Allowances) Act 1967 s 3(2)]</b></p> <p><b>3(2).</b> However, the total of the annual rates of salary and allowances payable to a District court judge must not be reduced by a determination.</p>	<p>decreased.</p> <p>(2) A Judge of the Supreme Court or a Judge of District Courts is entitled to have the amount of the salary increased at reasonable intervals to ensure that its amount continues to be at least equivalent to its original value.</p>
<p><b>Protection if judicial office abolished (new)</b></p> <p><b>62.(1)</b> This section applies if a judicial office held by a Supreme Court judge or a District Court judge is abolished either directly or by abolition of a court or part of a court.</p> <p>(2) The judge is entitled at least, without loss of salary, to be appointed to, and to hold, another judicial office of equivalent or higher status in the same court in which the judge held the abolished judicial office or in another court, unless the judge already holds that type of judicial office.</p> <p>(3) The right mentioned in subsection (2)—</p> <p>(a) continues for the period during which the judge would have been entitled to hold the abolished judicial office, subject to removal under section 60; and</p> <p>(b) lapses if the judge fails to take up an appointment to the other judicial office or resigns from it.</p>		

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p style="text-align: center;"><b>CHAPTER 5—REVENUE</b></p> <p><b>Consolidated fund (CA s 34)</b></p> <p>63. All taxes, imposts, rates and duties and other revenues of the State are to form one consolidated fund to be appropriated for the public service of the State in the way, and subject to the charges, specified by this Act.[CA s 34]</p>	<p><b>All duties and revenues to form consolidated revenue fund [CA]</b></p> <p>34. All taxes imposts rates and duties and all territorial casual and other revenues of the Crown (including royalties) from whatever source arising within this State and over which the present or future legislature has or may have power of appropriation shall form one consolidated revenue fund to be appropriated for the public service of this State in the manner and subject to the charges hereinafter mentioned.</p>	<p style="text-align: center;"><b>PART 6-REVENUE</b></p> <p><b>Consolidated Fund</b></p> <p>38. There is to be a consolidated revenue fund called the Consolidated Fund.</p> <p><b>Payment to Consolidated Fund</b></p> <p>39. All taxes, imposts, rates and duties and other revenues of the State must be paid to the Consolidated Fund.</p>
<p><b>Requirement to pay tax etc. (Bill Rts art 4)</b></p> <p>64. A requirement to pay a tax, impost, rate or duty of the State must be authorised by Act. [Article 4 of the Bill of Rights (Imp)].</p>	<p><b>Bill of Rights 1688 (Imp)</b></p> <p>...</p> <p>4. That levying money for or to the use of the Crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same shall be granted, is illegal.</p>	
<p><b>Payment from consolidated fund (CA s 39(1))</b></p> <p>65.(1) The payment of an amount from the consolidated fund must be authorised by Act.[CA s 39(1)]</p> <p>(2) Further, the Act authorising the payment must specify the purpose for which the payment is made.[CA s 39(1)]</p> <p>(3) This section does not apply in relation to the costs, charges and expenses relating to the collection and management of the fund.[CA s 39(1)]</p>	<p><b>Consolidated fund to be appropriated by Act of the legislature [CA]</b></p> <p>39.(1) After and subject to the payments to be made under the provisions hereinbefore contained all the consolidated fund hereinbefore mentioned shall be subject to be appropriated to such specific purposes as by any Act of the legislature of the State shall be prescribed in that behalf.</p> <p>(2) However, the consolidation of the revenues of this State shall not affect the payment of the annual interest or the principal sums mentioned in any outstanding debentures or other charge upon the territorial revenue as such interest principal or other charge severally becomes due nor shall such consolidation affect the payment of any sum or sums heretofore charged upon the taxes duties rates and imposts now raised levied and collected or to be raised levied and collected to and for the use of this State for such time as shall have been appointed by any Acts of the said legislature by which any such charge was authorised.</p>	<p><b>Payment from Consolidated Fund</b></p> <p>40. The payment of-</p> <p>(a) an amount from the Consolidated Fund; or</p> <p>(b) an amount required to be paid to the Consolidated Fund;</p> <p>(c) must be authorised by an Act.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Charges on consolidated fund (CA s 35 + 39(1) + EARC reprint s 41)</b></p> <p>66.(1) The consolidated fund is permanently charged with all the costs, charges and expenses relating to the collection and management of the fund.[CA s 35 + EARC reprint s 41(1)]</p> <p>(2) The costs, charges and expenses are the first charge on the consolidated fund.[CA s 39(1) + EARC reprint s 41(2)]</p> <p>(3) However, the costs, charges and expenses may be reviewed and audited under an Act.[CA s 35 + EARC reprint s 41(3)]</p>	<p><b>Such fund permanently charged with expenses of collection [CA]</b></p> <p>35. The consolidated fund of this State shall be permanently charged with all the costs charges and expenses incidental to the collection management and receipt thereof such costs charges and expenses being subject nevertheless to be reviewed and audited in such manner as shall be directed by any Act of the legislature.</p> <p>[See CA s 39(1) in previous cell.]</p>	<p><b>Charges on Consolidated Fund</b></p> <p>41. (1)The Consolidated Fund is permanently charged with all the costs, charges and expenses incidental to the collection and management of the fund.</p> <p>(2) The costs, charges and expenses are the first charge on the Consolidated Fund.</p> <p>(3) However, the costs, charges and expenses may be reviewed and audited under an Act.</p>
<p><b>Governor's recommendation required for appropriation (CA s 18 + EARC reprint s 42)</b></p> <p>67.(1) The Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of—</p> <p>(a) an amount from the consolidated fund; or</p> <p>(b) an amount required to be paid to the consolidated fund;</p> <p>that has not first been recommended by a message of the Governor.[CA s18 + EARC reprint s 42(1)]</p> <p>(2) The message must be given to the Legislative Assembly during the session in which the vote, resolution or Bill will be passed.[CA s 18 + EARC reprint s 42(2)]</p>	<p><b>No money vote or Bill lawful unless recommended by Governor [CA]</b></p> <p>18. It shall not be lawful for the Legislative Assembly to originate or pass any vote resolution or Bill for the appropriation of any part of the said consolidated fund or of any other tax or impost to any purpose which shall not first have been recommended by a message of the Governor to the said Legislative Assembly during the session in which such vote resolution or Bill shall be passed.</p>	<p><b>Governor's recommendation required for appropriation</b></p> <p>42. (1)The Legislative Assembly must not originate or pass a vote, resolution or Bill for the appropriation of-</p> <p>(a) an amount from the Consolidated Fund; or</p> <p>(b) an amount required to be paid to the Consolidated Fund;</p> <p>that has not been recommended by message of the Governor.</p> <p>(2) The message must be given to the Legislative Assembly during the session in which the vote, resolution or Bill will be passed.</p>
<p style="text-align: center;"><b>CHAPTER 6—LANDS</b></p> <p><b>Lands (CA ss 30 + 40 + EARC reprint s 9)</b></p> <p>68.(1) Parliament may make laws for regulating the sale, letting, disposal and occupation of the waste lands of the Crown in Queensland.</p> <p>(2) The entire management and control of the waste lands belonging of the Crown in Queensland and also the appropriation of the gross proceeds of the sales of the lands and all other proceeds and revenues of the lands from any source including all royalties mines and minerals vest in the Parliament.</p>	<p><b>Legislature empowered to make laws regulating sale and other disposal of waste land [CA]</b></p> <p>30. Subject to the provisions contained in the Imperial Act of the 18th and 19th Victoria chapter 54 and of an Act of the 18th and 19th years of Her Majesty entitled <i>An Act to repeal the Acts of Parliament now in force respecting the Disposal of the Waste Lands of the Crown in Her Majesty's Australian Colonies and to make other provisions in lieu thereof</i> which concern the maintenance of existing contracts it shall be lawful for the legislature of this State to make laws for regulating the sale letting disposal and occupation of the waste lands of the Crown within the said State.</p>	<p><b>Lands</b></p> <p>9. (1) Parliament may make laws for regulating the sale letting disposal and occupation of the waste lands of the Crown.</p> <p>(2) The entire management and control of the waste lands belonging to the Crown in Queensland and also the appropriation of the gross proceeds of the sales of such lands and of all other proceeds and revenues of the same from whatever source arising within Queensland including all royalties mines and minerals shall be vested in the Legislature.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Requirements for a local government (CA s 54 + EARC reprint s 44)</b></p> <p><b>70.(1)</b> A local government is an elected body that is charged with the good rule and local government of a part of Queensland allocated to the body.[CA s 54(1) + EARC reprint s 44(1)]</p> <p><b>(2)</b> Other legislation (whenever made) decides the way in which a local government is constituted and the nature and extent of its functions and powers.[CA s 54(2) + EARC reprint s 44(2) + (4)]</p> <p><b>(3)</b> Despite subsection (1), if a local government is dissolved or is unable to be properly elected, other legislation (whenever made) may provide for all or any of the local government's functions to be performed and all or any of the local government's powers to be exercised by 1 or more appointed bodies or persons until the local government has been properly elected.[CA s 54(3) + (4)]</p> <p><b>(4)</b> In subsection (3)—</p> <p><b>"local government"</b> includes a joint local government and a person or persons appointed to perform the functions and exercise the powers of the local government as an administrator.</p>	<p><b>(2)</b> The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions are as determined by and in accordance with the laws of the Parliament.</p> <p><b>(3)</b> Nothing in this section affects the operation of laws of the Parliament with respect to the carrying out of the powers, authorities, duties and functions of a local government body by a person or persons appointed where—</p> <p>(a) the council of the local government body has been dissolved; or</p> <p>(b) the council of a local government body is unable to be duly elected;</p> <p>until such time as the council of a local government body has been duly elected.</p> <p><b>(4)</b> The reference in subsections (2) and (3) to the laws of the Parliament is a reference to the laws enacted by that Parliament, before or after the passing of the <i>Constitution Act Amendment Act 1989</i>, and for the time being in force.</p> <p><b>(5)</b> For the purposes of this section a joint local government and any person or persons appointed to carry out the powers, authorities, duties and functions of a council of a local government body as an administrator are deemed to be the council of a local government body.</p>	<p><b>Requirements for a local authority</b></p> <p><b>44. (1)</b> A local authority is an elected body that is charged with the good rule and local government of a part of Queensland allocated to the authority.</p> <p><b>(2)</b> Other legislation decides the way in which a local authority is constituted and the nature and extent of its functions and powers.</p> <p><b>Arrangements covering local authority's functions and powers</b></p> <p><b>45. (1)</b> Despite section 44(1) (Requirements for a local authority), other legislation may provide for-</p> <p>(a) the performance of a function of a local authority; or</p> <p>(b) the exercise of a power of a local authority;</p> <p>by another person or body in circumstances incidental to the reasonable operation of a system of local government.</p> <p><b>(2)</b> For example, other legislation may provide-</p> <p>(a) for the performance of a local authority's functions or the exercise of its powers by a person appointed under legislation until a local authority's council has been properly elected if-</p> <p>(i) the local authority's council has been dissolved; or</p> <p>(ii) a council of the local authority cannot be properly elected; or</p> <p>(b) for-</p> <p>(i) the performance of a function of a local authority; or</p> <p>(ii) the exercise of a power of a local authority;</p> <p>by a Joint Board or another person for the efficient operation of a system of local government; or</p> <p>(c) that a person or body mentioned in paragraph (a) or (b) is taken to be the council of a local</p>



LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>CH 6, PART 2—PROCEDURE RESTRICTING DISSOLUTION OF LOCAL GOVERNMENT AND INTERIM ARRANGEMENT</b></p> <p><b>Dissolution of local government must be tabled (part of CA s 55(2) + EARC reprint s 46(1))</b></p> <p>71. A copy of an instrument purporting to dissolve a local government must be tabled in the Legislative Assembly within 14 sitting days after the instrument is made.[CA s 55(2) + EARC reprint s 46(1)]</p> <p><b>Suspension until dissolution ratified (CA s 55(2) + (5) + EARC reprint s 47)</b></p> <p>72.(1) From the time an instrument purporting to dissolve a local government is made until it is ratified under section 73 or its effect ends under section 74, it has the effect only of suspending the local government's councillors from office.[CA s 55(2) + EARC reprint s 47]</p> <p>(2) During the suspension, 1 or more bodies or persons appointed by law to perform the functions and exercise the powers of a local government because of its purported dissolution may be taken to be the local government and to perform its functions and exercise its powers.[CA s 55(5)]</p> <p><b>Ratification of dissolution (CA s 55(2) + (3) + EARC reprint s 48)</b></p> <p>73.(1) The Legislative Assembly may, on the motion of the Minister responsible for local government, ratify the dissolution of a local government within 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled.[CA s 55(2) + EARC reprint s 48(1)]</p> <p>(2) If the Legislative Assembly ratifies the dissolution, the local government is dissolved in accordance with the instrument from the time of ratification.[CA s 55(3) + EARC reprint s 48(2)]</p>	<p><b>Manner of appointing persons to exercise powers, authorities, duties and functions of local government [CA]</b></p> <p>55.(1) A body constituted or deemed to be constituted by 1 or more persons appointed (but not duly elected) after the commencement of the <i>Constitution Act Amendment Act 1989</i> to carry out the powers, authorities, duties and functions of a council of a local government body is not a council of a local government body appointed in accordance with section 54(3)(a) and, notwithstanding the provisions of any Act, such person or persons is or are not authorised to carry out powers, authorities, duties and functions of a council of a local government body unless the power conferred by law to dissolve the council of a local government body constituted or deemed to be constituted by such person or persons has been exercised in accordance with this section.</p> <p>(2) The instrument that purports to dissolve the council of a local government body or a copy of the instrument must be tabled in the Legislative Assembly within 14 sitting days after the instrument has been made and, to the extent that it so purports, the instrument takes effect merely as a suspension from office of the duly elected members of the council of the local government body concerned until the Legislative Assembly, on the motion of the member of the Assembly for the time being responsible for local government in the State, within a period of 14 sitting days from such tabling confirms the dissolution of the council of the local government body.</p> <p>(3) Where the Legislative Assembly confirms the dissolution of the council of a local government body, the instrument takes effect according to its terms as a dissolution of the council of the local government body concerned.</p>	<p>authority whose functions are being performed or whose powers are being exercised.</p> <p><i>Division 2-Procedure restricting dissolution of local authority's council</i></p> <p><b>Dissolution of local authority's council must be tabled</b></p> <p>46. (1) A copy of an instrument dissolving a local authority's council must be tabled in the Legislative Assembly within 14 sitting days after the instrument is made.</p> <p>(2) If a copy of a dissolution instrument is not tabled in accordance with subsection (1), the instrument's effect ends.</p> <p><b>Suspension until dissolution ratified</b></p> <p>47. Despite any other Act, until an instrument dissolving a council is ratified by the Legislative Assembly, the instrument only has the effect of suspending the elected members of the council from office.</p> <p><b>Ratification of dissolution</b></p> <p>48. (1) The Legislative Assembly may, on the motion of the Minister responsible for local government, ratify the dissolution of a local authority's council within 14 sitting days after a copy of the instrument dissolving the council is tabled.</p> <p>(2) On ratification, the local authority's council is dissolved.</p> <p>(3) For the purpose of calculating the number of sitting days, it does not matter whether the days are within the same or different Parliaments or sessions of Parliament.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>No tabling or ratification of dissolution (CA s 55(4) + EARC reprint s 49)</b></p> <p>74.(1) This section applies if—</p> <p>(a) a copy of the instrument purporting to dissolve the local government is not tabled under section 71;<sup>25</sup> or</p> <p>(b) the Legislative Assembly refuses to ratify a dissolution of a local government moved by the Minister responsible for local government; or</p> <p>(c) at the end of 14 sitting days after a copy of the instrument purporting to dissolve the local government is tabled—</p> <p>(i) the Minister has not moved that the dissolution be ratified; or</p> <p>(ii) the Legislative Assembly has not ratified the dissolution, even though the Minister has moved that it be ratified.[CA s 55(4) + EARC reprint s 49(1) other than (b)(i)]</p> <p>(2) The effect of the instrument purporting to dissolve the local government ends.[CA s 55(4) + EARC reprint s 49(2)]</p> <p>(3) The suspension from office of the local government's councillors ends and they are reinstated in their respective offices.[CA s 55(4)(c) + EARC reprint s 49(3) + (4)]</p> <p>(4) The appointment of a body or person appointed to perform the functions and exercise the powers of the local government because of its purported dissolution ends.[CA s 55(4)(d) + EARC reprint s 49(5)]</p> <p><sup>25</sup> Section 71 (Dissolution of local government must be tabled)</p>	<p>(4) Where the Legislative Assembly—</p> <p>(a) refuses to affirm the motion referred to in subsection (2); or</p> <p>(b) fails, within the period of 14 sitting days, to affirm the motion referred to in subsection (2);</p> <p>the instrument to dissolve the council of the local government body thereupon ceases to have effect and—</p> <p>(c) the suspension from office of the duly elected members of the council of the local government body thereupon ceases and they are reinstated in their respective offices; and</p> <p>(d) the appointment of the person or persons appointed to exercise the powers, authorities, duties and functions of the council of the local government body thereupon terminates.</p> <p>(5) Any person or persons appointed (but not duly elected) according to law to carry out the powers, authorities, duties and functions of a council of a local government body whose members are, pursuant to this section, suspended from office is or are authorised to carry out those powers, authorities, duties and functions during the period of suspension.</p> <p>(6) In this section—</p> <p><b>"local government body"</b> means a body constituted by duly elected members and charged with carrying on the functions of local government.</p>	<p><b>No ratification of dissolution</b></p> <p>49. (1) The following results happen if-</p> <p>(a) the Legislative Assembly refuses to ratify a dissolution of a local authority's council moved by the Minister responsible for local government; or</p> <p>(b) at the end of 14 sitting days after a copy of the dissolution instrument is tabled-</p> <p>(i) the Minister has not moved that the dissolution be ratified; or</p> <p>(ii) the Legislative Assembly has not ratified the dissolution even though the Minister has moved that it be ratified.</p> <p>(2) The effect of the dissolution instrument ends.</p> <p>(3) The suspension from office of the elected members of the council ends.</p> <p>(4) The elected members of the council are reinstated in their respective offices.</p> <p>(5) The appointment of any person appointed to exercise the functions and powers of the council during the suspension ends.</p>
<p><b>CH 6, PART 3—SPECIAL PROCEDURES FOR CERTAIN LOCAL GOVERNMENT BILLS</b></p> <p><b>Procedure for Bill affecting a local government (CA s 56(1) + EARC reprint s 50)</b></p> <p>75.(1) This section applies for a Bill for an Act that would—</p> <p>(a) be administered by the Minister responsible for local government; and</p>	<p><b>Procedure on Bills affecting local government [CA]</b></p> <p>56.(1) A member of the Legislative Assembly who is to be in charge of the passage in the Assembly of a Bill that is the responsibility of the member of the Assembly for the time being responsible for local government in the State and that,</p>	<p><i>Division 3-Special procedures for certain local government Bills</i></p> <p><b>Procedure for Bill affecting local government authority</b></p> <p>50. (1) The following procedure must be used for a Bill for an Act that would-</p> <p>(a) be administered by the Minister responsible for</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p>(b) affect local governments generally or any of them.[CA s 56(1) + EARC reprint s 50(1)]</p> <p>(2) The member of the Legislative Assembly who is to be in charge of the passage of the Bill in the Legislative Assembly must, if the member considers it practicable, arrange for a summary of the Bill to be given to a body representing local governments in the State a reasonable time before the Bill is introduced in the Legislative Assembly.[CA s 56(1) + EARC reprint s 50(2) + (3)]</p>	<p>if enacted by the Parliament, would affect local government bodies generally, or any of them, if the member considers compliance with this subsection is practicable in the particular case, must cause a summary of the Bill to be given to an association that represents local government bodies in that State a reasonable time before the member (or a member on the member's behalf) moves for leave of the Assembly to bring in the Bill.</p> <p>(2) - (6) ...</p>	<p>local government; and</p> <p>(b) affect a local government authority.</p> <p>(2) The member of the Legislative Assembly who is to be in charge of the passage of the Bill in the Legislative Assembly must, if the member considers it practicable, arrange for a summary of the Bill to be given to a body representing local government authorities in the State (the "representative body").</p> <p>(3) The summary must be given to the representative body a reasonable time before the Bill is introduced in the Legislative Assembly.</p>
<p><b>Procedure for Bill ending system of local government (CA s 56(2)-(6)+ EARC reprint s 51-53)</b></p> <p><b>76.(1)</b> This section applies for a Bill for an Act ending the system of local government in Queensland.[CA s 56(2) + EARC reprint s 51(1)]</p> <p>(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.[CA s 56(2) + EARC reprint s 51(2) + (5)]</p> <p>(3) The Bill has no effect as an Act if assented to after presentation in contravention of subsection (2).[CA s 56(3) + EARC reprint s 52]</p> <p>(4) The vote about the proposal must be taken on a day prescribed under a regulation that is more than 1 month but less than 6 months before the Bill is introduced in the Legislative Assembly.[CA s 56(2) + EARC reprint s 51(3)]</p> <p>(5) The vote must be taken in the way prescribed by an Act.[CA s 56(4) + EARC reprint s 51(4)]</p> <p>(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.[CA s 56(5) + EARC reprint s 53(1) + (2)]</p> <p>(7) In this section—</p> <p>"elector" means a person entitled to vote at a general election of members of the Legislative Assembly.[CA s 56(6) + EARC reprint s 51(6)]</p>	<p><b>Procedure on Bills affecting local government [CA s 56 cont'd]</b></p> <p>(1) ...</p> <p>(2) A Bill for an Act whereby the whole of the State would cease to have a system of local government that conforms to that prescribed by section 54(1) must not be presented to Her Majesty or the Governor for assent unless, on a day, appointed by order in council, no earlier than 6 months and no later than 1 month before the Bill is introduced in the Assembly, a proposal that the State should cease to have such a system of local government has been approved by majority vote of the electors of the State voting on the proposal.</p> <p>(3) A Bill assented to consequent upon its presentation in contravention of subsection (2) is of no effect as an Act.</p> <p>(4) When such proposal is submitted to the electors of the State the vote must be taken in such manner as the Parliament prescribes.</p> <p>(5) Any of the electors of the State is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of subsection (2) either before or after a Bill of a kind referred to in subsection (2) is presented for assent.</p> <p>(6) In subsections (2) to (5)—</p> <p>"electors of the State" means the persons qualified to vote at a general election of members of the Assembly according to</p>	<p><b>Procedure for Bill ending system of local government</b></p> <p><b>51. (1)</b> The following procedure must be used before a Bill for an Act ending the system of local government in Queensland is presented for assent.</p> <p>(2) The proposal that the system of local government should end must be submitted to a referendum of electors.</p> <p>(3) The referendum must be held on a day—</p> <p>(a) more than 1 month but less than 6 months before the Bill is introduced in the Legislative Assembly; and</p> <p>(b) fixed by regulation.</p> <p>(4) The vote in referendum must be taken in the way prescribed by an Act.</p> <p>(5) The Bill may only be presented for assent if the proposal is approved by a majority vote of the electors voting on the proposal.</p> <p>(6) In this section—</p> <p>"elector" means a person entitled to vote at a general election of members of the Legislative Assembly.</p> <p><b>Result of contravention of s.51</b></p> <p><b>52.</b> If a Bill is presented and assented to in contravention of section 51 (Procedure for Bill ending system of local government), the Bill has no effect as an Act.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p>the provisions of the <i>Electoral Act 1992</i>.</p>	<p><b>Elector may enforce s.51</b></p> <p>53. (1) A person who is entitled to vote at a referendum under section 51 (Procedure for Bill ending system of local government) may bring a proceeding in the Supreme Court for a declaration, injunction or other remedy to enforce the section.</p> <p>(2) The proceeding may be begun either before or after the Bill is presented for assent.</p>
<p>[CA s 53 REMAINS IN CA 1867 BUT IS REPRODUCED IN ATTACHMENT 1 TO THE BILL]</p>	<p><b>Certain measures to be supported by referendum [CA]</b></p> <p>53.(1) A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely—</p> <p style="padding-left: 40px;">sections 1, 2, 2A, 11A, 11B; and</p> <p style="padding-left: 40px;">this section 53</p> <p>shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.</p> <p>(2) On a day not sooner than two months after the passage through the Legislative Assembly of a Bill of a kind referred to in subsection (1) the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the <i>Elections Act 1915-1973</i> and of any Act amending the same or of any Act in substitution therefor.</p> <p>Such day shall be appointed by the Governor in Council by Order in Council.</p>	<p style="text-align: center;"><b>SCHEDULE 1—ENTRENCHING PROVISIONS</b></p> <p><b>Certain measures to be supported by referendum</b></p> <p>1. (1) A Bill that expressly or impliedly provides for the abolition of or alteration in the officer of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely-</p> <p style="padding-left: 40px;">sections 1*, 2*, 2A*, 11A*, 11B*, 14#*; and</p> <p style="padding-left: 40px;">this section 53*</p> <p>shall not be presented for assent by or in the name of the Queen unless it has first been approved by the electors in accordance with this section and a Bill so assented to consequent upon its presentation in contravention of this subsection shall be of no effect as an Act.</p> <p>(2) On a day not sooner than two months after the passage through the Legislative Assembly of a Bill of a kind referred to in subsection (1) the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the <i>Elections Act 1915-1973</i> and of any Act amending the same or of any Act in substitution therefor.</p> <p>Such day shall be appointed by the Governor in Council by Order in Council.</p>

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	<p>(3) When the Bill is submitted to the electors the vote shall be taken in such manner as the Parliament of Queensland prescribes.</p> <p>(4) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for reservation thereof for the signification of the Queen's pleasure.</p> <p>(5) Any person entitled to vote at a general election of members of the Legislative Assembly is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this section either before or after a Bill of a kind referred to in subsection (1) is presented for assent by or in the name of the Queen.</p> <p>(6) <b>Act 24 Geo. 5 No. 35 preserved.</b> The provisions of this section shall in no way affect the operation of <i>The Constitution Act Amendment Act of 1934</i>.</p>	<p>(3) When the bill is submitted to the electors the vote shall be taken in such manner as the Parliament of Queensland prescribes.</p> <p>(4) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for reservation thereof for the signification of the Queen's pleasure.</p> <p>(5) Any person entitled to vote at a general election of members of the Legislative Assembly is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this section either before or after a Bill of a kind referred to in subsection (1) is presented for <b>assent</b> by or in the name of the Queen.</p> <p>(6) <b>Act 24 Geo. 5 No. 35 preserved.</b> The provisions of this section shall in no way affect the operation of <i>The Constitution Act Amendment Act of 1934</i>.</p> <p># Based on CA s 53 as it previously stood.</p> <p>[ * These section numbers were footnoted to refer to the clause numbers of EARC's Consolidated Bill to which the sections were relocated]</p> <p>...</p>
<p><b>CHAPTER 8—MISCELLANEOUS</b></p> <p><b>Issue of compliance not justiciable (COGA s 11)</b></p> <p>77. Without affecting the justiciability of any other issue under this Act, it is declared that the issue of compliance with section 31, 40, 41, 47 or 49<sup>26</sup> is not justiciable in any court.[COGA s 11]</p> <p><sup>26</sup> Section 31 (Publication of commission. declaration of allegiance etc.), 40 (Delegation by Governor to Deputy Governor), 41 (Administration of Government by Acting Governor), 47 (Executive Council) or 49 (Meetings of Executive Council)</p>	<p><b>Issue of compliance not justiciable [COGA]</b></p> <p>11. The issue of compliance with section 5, 6, 7, 9 or 10 shall not be justiciable in any court.</p>	
	<p><b>Suspension of letters patent [COGA]</b></p> <p>13. For as long as the provisions of this Part are in force the provisions of the letters patent constituting the Office of the Governor of Queensland made by Her Majesty Queen Elizabeth II on 14 February 1986 and proclaimed in the State</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
	by His Excellency the Governor on 6 March 1986 are suspended in their operation.	
<p><b>CHAPTER 9—TRANSITIONAL PROVISIONS</b></p>		<p><b>Regulations</b></p> <p>54. The Governor in Council may make regulations under this Act.</p>
<p>CLAUSES 78 - 87 ARE TRANSITIONAL PROVISIONS.</p>	NOT APPLICABLE	<p>SEE EARC'S TRANSITIONAL PROVISIONS IN PART 9 OF ITS BILL AT APPENDIX B OF ITS REPORT ON CONSOLIDATION AND REVIEW OF THE QUEENSLAND CONSTITUTION, AUGUST 1993.</p>
<p><b>CHAPTER 10—CONSEQUENTIAL AMENDMENTS AND REPEALS</b></p> <p>CLAUSE 88 (AMENDMENTS) AMENDS CERTAIN ACTS AS SET OUT IN SCHEDULE 2.</p> <p>CLAUSE 89 (REPEALS ETC) REPEALS THE ACTS SET OUT IN SCHEDULE 3 AND DECLARES THE IMPERIAL LAWS SET OUT IN SCHEDULE 4 TO HAVE NO FORCE IN QUEENSLAND.</p>	NOT APPLICABLE	
<p><b>SCHEDULE 1—OATHS AND AFFIRMATIONS</b></p> <p>(sections 21, 31, 42 and 47<sup>38</sup>)</p> <p><b>Oath or affirmation of allegiance</b></p> <p>'I, <i>(name)</i>.., do sincerely promise and swear (<i>or, for an affirmation—do solemnly and sincerely affirm and declare</i>) that I will be faithful and bear true Allegiance to Her (<i>or His</i>) Majesty..<i>(name of Sovereign)</i>.. as lawful Sovereign of the United Kingdom, Australia and her (<i>or his</i>) other realms and territories and to Her (<i>or His</i>) heirs and successors, according to law.</p> <p>So help me God! (<i>or omitted for an affirmation</i>).'</p> <p><sup>38</sup> Sections 21 (No member to sit or vote without first taking oath), 31 (Publication of commission, declaration of allegiance etc.), 42 (Appointment of Ministers of the State) and 47 (Executive Council)</p>	<p><b>Oath of Allegiance of Governor [CA s 4; Oaths Act 1867 ss 1 &amp; 5A]</b></p> <p>I, <i>(name)</i>, do sincerely promise and swear that I will be faithful and bear true allegiance to Her (<i>or His</i>) Majesty..<i>(name of Sovereign)</i>.. as lawful Sovereign of Australia and Her (<i>or His</i>) other realms and territories, and to Her (<i>or His</i>) heirs and successors, according to Law.</p> <p>So help me God.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p><b>Oath or affirmation of office—Governor</b></p> <p>'I,..(name).., do swear (<i>or, for an affirmation—do solemnly and sincerely affirm and declare</i>) that I will well and truly serve Her (<i>or His</i>) Majesty..(name of Sovereign).. in the office of Governor of Queensland and its Dependencies, in the Commonwealth of Australia, and will duly carry out the office according to the best of my ability, skill and knowledge and that I will, in all things associated with the office, duly and impartially administer justice in Queensland.</p> <p>So help me God! (<i>or omitted for an affirmation</i>).'</p>	<p><b>Oath of Office as Governor in and over the State and its dependencies, in the Commonwealth of Australia</b></p> <p>I, (name), do swear that I will well and truly serve Her (<i>or His</i>) Majesty.. (name of Sovereign)..in the office of Governor in and over the State of Queensland and its Dependencies, in the Commonwealth of Australia, and will duly execute the said office accordingly to the best of my skill and ability, and that I will, in all things appertaining to me in my said office, duly and impartially administer justice in the said State.</p> <p>So help me God.</p>	
<p><b>Oath or affirmation of office—Premier or other Minister of the State</b></p> <p>'I,..(name).., do swear (<i>or, for an affirmation—do solemnly and sincerely affirm and declare</i>) that I will, according to the best of my ability, skill and knowledge, well and faithfully carry out the office and trust of Premier (<i>or Minister for (name of portfolio)</i>) of the State of Queensland in the Commonwealth of Australia, and that I will in all things honestly, zealously, and impartially discharge and exercise the duties, powers and authorities belonging to me in the office.</p> <p>So help me God! (<i>or omitted for an affirmation</i>).'</p>	<p><b>Oath of Office of Minister</b></p> <p>I, (name), do swear that I will, according to the best of my ability, skill and knowledge, well and faithfully execute the Office and Trust of Minister for (<i>portfolio title</i>) of the State of Queensland in the Commonwealth of Australia, and that I will in all things honestly, zealously, and impartially discharge and exercise the duties, powers and authorities appertaining to me in the said Office.</p> <p>So help me God.</p>	
<p><b>Oath or affirmation of office and of secrecy—Member of Executive Council</b></p> <p>'I,..(name).., do swear (<i>or, for an affirmation—do solemnly and sincerely affirm and declare</i>) that I will, to the best of my ability, skill and knowledge, faithfully advise and assist the Governor or other officer exercising a function or power of the Governor as Deputy Governor or Acting Governor, in all matters that are brought under my consideration as a Member of the Executive Council of Queensland.</p> <p>And I do swear (<i>or, for an affirmation—do solemnly and sincerely affirm and declare</i>) that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I become aware by reason of my membership of the Executive Council of Queensland.</p> <p>So help me God! (<i>or omitted for an affirmation</i>).'</p>	<p><b>Oath of Office and of secrecy - Member of Executive Council</b></p> <p>I, (name), do swear that I will, to the best of my judgement and ability, faithfully advise and assist the Governor or other Officer Administering the Government of the State of Queensland in the Commonwealth of Australia, in all such matters as shall be brought under my consideration as a Member of the Executive Council of the said State. And I do swear and that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be so brought under my consideration, or shall become known to me, as a Member of the said Council, and which shall by the Governor or other Officer Administering the Government be directed to be kept secret.</p> <p>So help me God.</p>	

LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p style="text-align: center;"><b>SCHEDULE 2</b> <b>GENERAL AMENDMENTS</b></p> <p style="text-align: center;">[s 88]</p> <p>VARIOUS PROVISIONS OF THE FOLLOWINGS ACTS ARE AMENDED [SEE SCH 2]:</p> <ul style="list-style-type: none"> <li>• <i>Acts Interpretation Act 1954</i></li> <li>• <i>Constitution Act 1867</i></li> <li>• <i>Constitution Act Amendment Act 1890</i></li> <li>• <i>Constitution Act Amendment Act 1934</i></li> <li>• <i>District Court Act 1967</i></li> <li>• <i>Electoral Act 1992</i></li> <li>• <i>Supreme Court Act 1995</i></li> <li>• <i>Supreme Court of Queensland Act 1991</i></li> </ul>		
<p style="text-align: center;"><b>SCHEDULE 3</b> <b>REPEALED LAWS</b></p> <p style="text-align: center;">[s 89(1)]</p> <p><i>Legislative Assembly Act 1867</i><sup>41</sup></p> <p>Proclamation declaring transfer of certain islands dated 22 August 1872 and published in the gazette on 24 August 1872 at page 1325</p> <p><i>Officials in Parliament Act 1896</i><sup>41</sup></p> <p><i>Constitution Act Amendment Act 1922</i></p> <p><i>Royal Powers Act 1953</i></p> <p><i>Australia Acts (Request) Act 1985</i></p> <p>Proclamation of Letters Patent for Governor dated 6 March 1986 and published in the gazette on 8 March 1986 at pages 903-6</p> <p><i>Constitution (Office of Governor) Act 1987</i><sup>42</sup></p> <p><sup>41</sup> It is proposed that the provisions of this Act will be dealt with by this Act and the <i>Parliament of Queensland Bill</i>.</p> <p><sup>42</sup> It is also proposed that the <i>Parliament of Queensland Bill</i> will repeal the <i>Constitution Act Amendment Act 1896</i>.</p>		



LCARC'S CONSTITUTION BILL 1999	EXISTING PROVISIONS	EARC'S DRAFT CONSTITUTION BILL 1993
<p style="text-align: center;"><b>SCHEDULE 4</b></p> <p style="text-align: center;"><b>IMPERIAL LAWS NO LONGER IN FORCE</b></p> <p style="text-align: center;">[s 89(2)]</p> <p><i>Australian Constitutions Act 1850</i> (Amending Act)</p> <p><i>New South Wales Constitution Act 1855</i> (Amending Acts)</p> <p>Order in Council dated 6 June 1859 mentioned in the preamble to the <i>Constitution Act 1867</i></p> <p><i>Australian Constitutions Act 1862</i> (Amending Acts)</p> <p><i>Colonial Letters Patent Act 1863</i> (Amending Acts)</p>		
<p style="text-align: center;"><b>ATTACHMENT 1</b></p> <p style="text-align: center;">[s 4]</p> <p>ATTACHMENT 1 SETS OF THE TEXT OF THE <i>CONSTITUTION ACT 1867</i>, ss 1, 2, 2A, 11A, 11B AND 53.</p>		
<p style="text-align: center;"><b>ATTACHMENT 2</b></p> <p style="text-align: center;">[s 4]</p> <p>ATTACHMENT 2 SETS OF THE TEXT OF THE <i>CONSTITUTION ACT AMENDMENT ACT 1890</i>, s 2 AND THE <i>CONSTITUTION ACT AMENDMENT ACT 1934</i>, s 4.</p>		
<p style="text-align: center;"><b>ATTACHMENT 3</b></p> <p style="text-align: center;">[s 8]</p> <p>ATTACHMENT 3 SETS OF THE TEXT OF THE <i>CONSTITUTION ACT AMENDMENT ACT 1934</i>, s 3.</p>		

APART FROM EXISTING SECTIONS NOTED ABOVE THAT ARE TO BE REPEALED BY THE COMMITTEE'S PROPOSED LEGISLATION, THE FOLLOWING EXTENSIVE PREAMBLES TO THE *CONSTITUTION ACT 1867* AND THE *CONSTITUTION ACT AMENDMENT ACT 1934* WILL ALSO BE REPEALED:

### **Preamble [*Constitution Act 1867*]**

#### **Power of alteration of constitution**

WHEREAS by an order in council empowering the Government of Queensland to make laws and to provide for the administration of justice in the colony dated at the court at Buckingham Palace 6 June 1859 it was declared and ordered by the Queen's Most Excellent Majesty in Council that the legislature of the colony should have full power and authority from time to time to make laws altering or repealing all or any of the provisions of the said order in council in the same manner as any other laws for the good government of the colony except so much of the same as incorporates the enactments of the 14th year of Her Majesty chapter 59 and of the sixth year of Her Majesty chapter 76 relating to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty.

However, every Bill by which any alteration should be made in the constitution of the Legislative Council so as to render the whole or any portion thereof elective should be reserved for the signification of Her Majesty's pleasure thereon and a copy of such Bill should be laid before both Houses of the Imperial Parliament for the period of 30 days at least before Her Majesty's pleasure thereon should be signified.

#### **Giving or withholding assent to Bills**

And whereas by clause 31 of an Act of the sixth year of Her Majesty chapter 76 entitled *An Act for the government of New South Wales and Van Diemen's Land* it was enacted as follows—'That every Bill which has been passed by the said Council and also every law proposed by the Governor which shall have been passed by the said Council whether with or without amendments shall be presented for Her Majesty's assent to the Governor of the said colony and that the Governor shall declare according to his discretion but subject nevertheless to the provisions contained in this Act and to such instructions as may from time to time be given in that behalf by Her Majesty her heirs or successors that he assents to such Bill in Her Majesty's name or that he withholds Her Majesty's assent or that he reserves such Bill for the signification of Her Majesty's pleasure thereon and all Bills altering or affecting the divisions and extent of the several districts and towns which shall be represented in the Legislative Council or establishing new and other divisions of the same or altering the number of the members of the Council to be chosen by the said districts and towns respectively or increasing the whole number of the Legislative Council or altering the salaries of the Governor superintendent or judges or any of them and also all Bills altering or affecting the duties of customs upon any goods wares or merchandise imported to or exported from the said colony shall in every case be so reserved except such Bills for temporary laws as the Governor shall expressly declare necessary to be forthwith assented to by reason of some public and pressing emergency'.

#### **Disallowance of Bills assented to**

And by clause 32 of the said lastmentioned Act it was enacted as follows—'That whenever any bill which shall have been presented for Her Majesty's assent to the Governor of the said colony shall by such Governor have been assented to in Her Majesty's name the Governor shall by the first convenient opportunity transmit to one of Her Majesty's Principal Secretaries of State an authentic copy of such Bill so assented to and that it shall be lawful at any time within two years after such Bill shall have been so received by the Secretary of State for Her Majesty by Order in Council to declare her disallowance of such Bill and that such disallowance together with a certificate under the hand and seal of the Secretary of State certifying the day on which such Bill was received as aforesaid being signified by the Governor to the Legislative Council of the said colony by speech or message to the said Council or by proclamation in the *New South Wales Government Gazette* shall make void and annul the same from and after the day of such signification'.

### **Assent to Bills reserved**

And by clause 33 of the same Act it was enacted as follows—‘That no Bill which shall be so reserved for the signification of Her Majesty’s pleasure thereon shall have any force or authority within the colony of New South Wales until the Governor of the said colony shall signify either by speech or message to the Legislative Council of the said colony or by proclamation as aforesaid that such Bill has been laid before Her Majesty in Council and that Her Majesty has been pleased to assent to the same and that an entry shall be made in the journals of the said Legislative Council of every such speech message or proclamation and a duplicate thereof duly attested shall be delivered to the registrar of the Supreme Court or other proper officer to be kept among the records of the said colony and that no Bill which shall be so reserved as aforesaid shall have any force or authority in the said colony unless Her Majesty’s assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such Bill shall have been presented for Her Majesty’s assent to the Governor as aforesaid’.

### **Governor to conform to instructions**

And by clause 40 of the same Act it was declared and enacted as follows—‘That it shall be lawful for Her said Majesty with the advice of Her Privy Council or under Her Majesty’s signet and sign manual or through one of Her Principal Secretaries of State from time to time to convey to the Governor of the said Colony of New South Wales such instructions as to Her Majesty shall seem meet for the guidance of such Governor for the exercise of the powers hereby vested in him of assenting to or dissenting from or for reserving for the signification of Her Majesty’s pleasure Bills to be passed by the said Council and it shall be the duty of such Governor to act in obedience to such instructions’.

### **Extending the Governor’s powers as to giving or withholding the royal assent**

And whereas by the Act of the eighth year of Her Majesty chapter 74 entitled *An Act to explain and amend the Act for the government of New South Wales and Van Diemen’s Land* and by section 7 thereof after reciting that by the said recited Act (to wit the said hereinbefore mentioned Act of the sixth year of Her Majesty chapter 76) ‘it is provided that certain Bills shall in every case be reserved by the Governor for the signification of Her Majesty’s pleasure thereon and the intent of such provision was to ensure that such Bills as aforesaid should not be assented to by the Governor without due consideration’ it was enacted ‘That it shall not be necessary for the Governor to reserve any such Bill for the signification of Her Majesty’s pleasure thereon from which in the exercise of his discretion as limited in the said recited Act he shall declare that he withholds Her Majesty’s assent or to which he shall have previously received instructions on the part of Her Majesty to assent and to which he shall assent accordingly’.

### **Reservation of Bills**

And whereas by the Act of the 14th year of Her Majesty chapter 59 intituled *An Act for better government of Her Majesty’s Australian Colonies* it was provided and enacted that the provisions of the said Act of the sixth year of the reign of Her Majesty as explained and amended by the said Act of the eighth year of the reign of Her Majesty concerning Bills reserved for the signification of Her Majesty’s pleasure thereon shall be applicable to every Bill so reserved under the provisions of the said Act of the 14th year of Her Majesty chapter 59.

And whereas it is expedient to consolidate the laws relating to the constitution of Her Majesty’s said Colony of Queensland.

[END OF PREAMBLE TO CA 1867]

**Long title [*Constitution Act Amendment Act 1934*]**

**An Act to amend the Constitution of Queensland by providing that a Legislative Council (or other similar legislative body) shall not be restored, constituted, or established, and that the duration of the Legislative Assembly (as now by law provided) shall not be extended unless or until a referendum of the electors of the State shall so approve, in either case; and for other purposes**

**Preamble [*Constitution Act Amendment Act 1934*]**

WHEREAS, a Bill intituled The Constitution Act Amendment Bill of 1921 was, during the session of the Parliament holden in the year 1921, passed by the legislature, and which Bill was, pursuant to the provisions of the *Australian States Constitution Act 1907* reserved for the signification of His Majesty's pleasure.

And whereas the assent of His Majesty (whom God may long preserve!) to the said Bill was proclaimed on the 12th year of His Majesty's reign on 23 March 1922, and on the Bill becoming an Act by virtue of such assent, such Act was intituled the *Constitution Act Amendment Act 1922*, and was numbered No. 32 of such 12th year of His Majesty's reign, and which Act is and forms part of the Constitution of Queensland.

And whereas, pursuant to such Act, the Legislative Council was abolished.

And whereas the Parliament of Queensland (or, as sometimes called, the Legislature of Queensland), has since the year 1922 been constituted by His Majesty the King and the Legislative Assembly in Parliament assembled, and is so presently constituted.

And whereas it is desirable that no other legislative body (whether called the 'Legislative Council,' or by any other name or designation, in addition to the Legislative Assembly) should be restored, or constituted, or established, except subject to the provisions hereinafter set forth.

And whereas, pursuant to an Act of the Parliament called the *Constitution Act Amendment Act 1890* (which was passed in the 54th year of the reign of Her late Majesty Queen Victoria and numbered No. 3), it is provided that every Legislative Assembly hereafter (i.e., after 29 September 1890—being the date of the assent of such Act), to be summoned and chosen shall continue for 3 years from the day appointed for the return of the writs for choosing the same, and no longer (subject, nevertheless, to be sooner dissolved by the Governor), and which Act is and forms part of the Constitution of Queensland.

And whereas it is also desirable that the provisions of the *Constitution Act Amendment Act 1890*, hereinbefore referred to, or any other Act or law of the Constitution, shall not be amended in the direction of extending the said period of time—namely, 3 years—for the duration of the present Legislative Assembly or any Legislative Assembly to be hereafter summoned and chosen, except subject to the provisions hereinafter set forth.

## KEY

AIA	<i>Acts Interpretation Act 1954</i>
Bill Rts	Bill of Rights (1 William and Mary Sess.2.c.2 (Imp))
CA	<i>Constitution Act 1867</i>
CAAA 1890	<i>Constitution Act Amendment Act 1890</i>
CAAA 1896	<i>Constitution Act Amendment Act 1896</i>
CAAA 1922	<i>Constitution Act Amendment Act 1922</i>
CAAA 1934	<i>Constitution Act Amendment Act 1934</i>
COGA	<i>Constitution (Office of Governor) Act 1987</i>
DCA	<i>District Court Act 1967</i>
EARC	Electoral and Administrative Review Commission
EARC Bill	<i>Queensland Constitution Bill 1993</i> in Appendix B to EARC's <i>Report on Consolidation and Review of the Queensland Constitution</i> (1993)
EARC reprint	<i>Queensland Constitution Bill 1993</i> in Appendix A to EARC's <i>Report on Consolidation and Review of the Queensland Constitution</i> (1993) Appendix A shows the Bill as reprinted to include amendments up to the Queensland Constitution Amendment Act 1993
Electoral Act	<i>Electoral Act 1992</i>
LAA	<i>Legislative Assembly Act 1867</i>
OPA	<i>Officials in Parliament Act 1896</i>
PCA	<i>Parliamentary Committees Act 1995</i>
PCEAR	Parliamentary Committee for Electoral and Administrative Review's <i>Report on Consolidation and Review of the Queensland Constitution</i> (1994)
PPA	<i>Parliamentary Papers Act 1992</i>
RPA	<i>Royal Powers Act 1953</i>
SCA 1995	<i>Supreme Court Act 1995</i>
SCQA 1991	<i>Supreme Court of Queensland Act 1991</i>

# **PART III**

## **PARLIAMENT OF QUEENSLAND BILL 1999**

**PARLIAMENT OF QUEENSLAND BILL 1999 (FINAL DRAFT)**

**NOTES TO THE BILL**

Queensland



**PARLIAMENT OF  
QUEENSLAND BILL 1999**

Queensland



# PARLIAMENT OF QUEENSLAND BILL 1999

## TABLE OF PROVISIONS

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
1	Short title .....	10
2	Commencement .....	10
3	Dictionary .....	10
4	Object [new] .....	10
5	Relationship between this Act and some other Acts about Parliament [new] .....	10
6	Act does not limit power, right or immunity [PPA s 13] .....	11
7	When does a member “take” a seat [new] .....	11
<b>CHAPTER 2—PROCEEDINGS IN THE ASSEMBLY</b>		
8	Assembly proceedings can not be impeached or questioned [Bill Rts art 9] .....	11
9	Meaning of “proceedings in the Assembly” [PPA s 3 + EARC QPB s 7+ new] .....	12
<b>CHAPTER 3—PROCEDURES AND POWERS</b>		
<b>PART 1—MISCELLANEOUS</b>		
10	Assembly may proceed to business although not more than 5 writs have not been returned [LAA s 14] .....	13
11	Standing rules and orders may be made [CA s 8] .....	13
12	Quorum [LAA s 13] .....	14
13	Voting [LAA s 13] .....	14
<b>PART 2—THE SPEAKER</b>		
14	The Speaker [LAA s 12] .....	15
15	Speaker continues to hold office on Assembly’s dissolution for election [new] .....	15



16	Deputy Speaker in particular circumstances [CAAA 1896 s 3(4) + new] .....	15
<b>PART 3—CHAIRPERSON OF COMMITTEES</b>		
17	Chairperson of Committees [new] .....	16
18	Chairperson of Committees continues to hold office on Assembly's dissolution for election [new] .....	16
<b>PART 4—PROXY VOTING</b>		
19	Member who may give proxy [LAA s 15] .....	17
20	How the proxy votes [LAA s 15] .....	18
21	How a proxy is substituted [LAA s 15] .....	18
22	End of certificate, notification or declaration on last day of session [LAA s 15] .....	19
23	End of proxy [LAA s 16] .....	19
24	Part does not affect vacation of seat provisions [LAA s 18] .....	20
<b>CHAPTER 4—POWERS, RIGHTS AND IMMUNITIES</b>		
<b>PART 1—POWERS TO REQUIRE ATTENDANCE AND PRODUCTION</b>		
25	Power to order attendance or production of document or other thing [CA s 41 + PCA s 25] .....	20
26	Summons to non-member to attend or produce documents or other things [CA s 42(1)-(3) + EARC QPB cl 9] .....	21
27	Attendance expenses [CA s 42(4) + EARC QPB cl 15] .....	21
28	Member required to attend without summons [CA s 43] [EARC QPB cl 10] .....	22
29	Examination under oath or affirmation [EARC QPB cl 11] .....	22
30	Obligation to attend [EARC QPB cl 12 + new] .....	22
31	Obligation to be sworn or to respond [EARC QPB cl 13 + new] .....	22
32	Objecting to answering questions or production [CA s 44 + PCA s 26(3)] .....	23
33	Procedure on objection to answering questions etc. of Assembly [CA s 44 + PCA s 26] .....	24
34	Procedure on objection to answering questions etc. of authorised committee [CA s 44 + PCA s 26] .....	24
35	Assembly to have regard to particular things when considering objection [PCA s 26(6)] .....	25

36	Inadmissibility of particular events before a committee [PCA s 26(9) and (10) + new] .....	25
----	--	----

#### **PART 2—CONTEMPTS**

37	Meaning of “contempt” of the Assembly [PPVA s 3(3), 4] .....	26
38	Decisions on contempt [new] .....	27
39	Assembly’s power to deal with contempt [new] .....	28
40	Assembly proceedings on contempt [CA s 45 + EARC QPB cl 17] .....	28
41	Speaker’s warrant for contempt [CA s 46 + EARC QPB cl 18] .....	29
42	Arrest pending warrant in certain cases [CA s 47 + EARC QPB cl 19] ...	29
43	Form of warrant [CA s 48 + EARC QPB cl 20] .....	29
44	Duty to assist in execution of Speaker’s order or warrant [CA s 49(1), 50 + EARC QPB cl 21] .....	29
45	Warrant to be given effect [CA s 49(2) + EARC QPB cl 22] .....	30
46	Treasurer’s power to retain allowances to pay fine [LAA s 7E) .....	30
47	Other proceedings [CA s 52 + EARC QPB cl 23(3)] .....	30

#### **PART 3—PARLIAMENTARY PAPERS**

48	Meaning of “authorising person” [PPA s 2] .....	31
49	Assembly or committee may authorise publication [PPA s 4] .....	31
50	Authority for government printer to publish [PPA s 5] .....	32
51	Assembly taken to have authorised certain publications [PPA s 6] .....	32
52	Tabled, unprinted documents may be read etc. [PPA s 7] .....	33
53	Particular documents are taken to be printed when tabled or taken to be tabled in the Assembly [new] .....	33
54	Publication of fair report of tabled document [PPA s 8] .....	34
55	Certificates relating to proceedings [PPA s 9 + new] .....	34
56	No liability for publishing under authority of Assembly or committee [PPA s 10] .....	35
57	Reports of debates taken to be true and correct record [PPA s 11] .....	36
58	Application of part [PPA s 12] .....	36

#### **PART 4—TABLING OF REPORTS OUTSIDE SITTINGS**

59	Tabling of report when Assembly not sitting [AIA s 29A + new] .....	36
----	---	----

#### **PART 5—CUSTODY OF ASSEMBLY DOCUMENTS [NEW]**

60	Application of pt 5 [new] .....	37
61	Clerk has custody of Assembly documents [new] .....	37

62	Instrument requiring access or production must be addressed to Clerk [new] .....	37
63	Assembly controls release [new] .....	38
<b>CHAPTER 5—CANDIDATES AND MEMBERS</b>		
<b>PART 1—QUALIFICATIONS</b>		
64	Qualifications to be a candidate and be elected a member [LAA s 7 + EA s 83(1)–(2) + DCA s 13 + new] .....	39
<b>PART 2—CANDIDATES AND MEMBERS HOLDING PAID PUBLIC APPOINTMENT</b>		
65	Meaning of “paid public appointment” and related appointment [OPA s 5 + LAA s 7A + new] .....	41
66	Effect of paid State appointment on candidate’s election [LAA s 7A + OPA s 5 + new] .....	43
67	Resignation of particular office holders on becoming candidates [new] . . .	44
68	Effect of election on particular candidates [new] .....	45
69	Appointment to paid State appointment is of no effect [OPA s 5 + LAA s 7A] .....	45
<b>PART 3—RESTRICTIONS ON DEALINGS WITH THE STATE</b>		
70	Meaning of “transacts business” [CA ss 6–7A] [LAA s 7B] .....	46
71	Restrictions on member transacting business with an entity of the State [CA ss 6–7A + LAA s 7B] .....	48
<b>PART 4—AUTOMATIC VACATION OF MEMBER’S SEAT</b>		
72	Vacating seats of members in particular circumstances [LAA s 7 + LGA s 224] .....	49
73	Assembly may disregard disqualifying events [new] .....	51
74	Effect of appeals against conviction or sentence [new] .....	52
<b>PART 5—VACATION OF SEAT BY MEMBER</b>		
75	Resignation of seat in the Assembly [LAA s 8] .....	52
76	Vacancy because of resignation to contest Commonwealth election [LAA s 8A] .....	53
<b>PART 6—GENERAL</b>		
77	Particular matters not to affect function or power [EARC QCA ss 30–31 + new] .....	54

**CHAPTER 6—STATUTORY COMMITTEES OF THE  
ASSEMBLY**

**PART 1—OBJECTS AND DEFINITIONS**

78	Main object of ch 6 and its achievement [PCA s 2] .....	55
79	Definitions for ch 6 [PCA Dictn] .....	55

**PART 2—ESTABLISHMENT**

80	Establishment of statutory committees [PCA s 4] .....	57
81	Membership of statutory committees [PCA s 4A] .....	57
82	Quorum and voting at meetings of statutory committees [PCA s 4B] .....	58

**PART 3—ROLE OF STATUTORY COMMITTEES**

83	Purpose of pts 3 and 4 [PCA s 7] .....	58
84	Role of statutory committees [PCA s 8] .....	58

**PART 4—AREAS OF RESPONSIBILITY OF STATUTORY  
COMMITTEES**

*Division 1—Legal, Constitutional and Administrative Review  
Committee*

85	Areas of responsibility of Legal, Constitutional and Administrative Review Committee [PCA s 9] .....	59
86	Administrative review reform [PCA s 10] .....	59
87	Constitutional reform [PCA s 11] .....	60
88	Electoral reform [PCA s 12] .....	60
89	Legal reform [PCA s 13] .....	60

*Division 2—Members' Ethics and Parliamentary Privileges  
Committee*

90	Areas of responsibility of Members' Ethics and Parliamentary Privileges Committee [PCA s 14] .....	61
91	Ethical conduct—registration of interests [PCA s 15] .....	61
92	Ethical conduct—code of conduct [PCA s 16] .....	61
93	Parliamentary powers, rights and immunities [PCA s 17] .....	62

*Division 3—Public Accounts Committee*

94	Area of responsibility of Public Accounts Committee [PCA s 18] .....	63
95	Reference of issues to auditor-general [PCA s 19] .....	63

*Division 4—Public Works Committee*

96	Areas of responsibility of Public Works Committee [PCA s 20] .....	63
----	--	----

97	Meaning of "constructing authority" for works [PCA s 21] .....	64
98	Issues to which committee may have regard [PCA s 27] .....	65
99	Entry and inspection of places [PCA s 28] .....	65
100	Restriction on procurement of capital works project [PCA s 29] .....	66
101	Dealing with commercially sensitive information in private session [PCA s 30] .....	67
102	Reporting commercially sensitive information to Assembly [PCA s 31] ..	67
	<i>Division 5—Scrutiny of Legislation Committee</i>	
103	Area of responsibility of Scrutiny of Legislation Committee [PCA s 22] ..	67
	<i>Division 6—Standing Orders Committee</i>	
104	Area of responsibility of Standing Orders Committee [PCA s 23] .....	68
	<b>PART 5—CHANGE IN COMPOSITION OF STATUTORY COMMITTEE</b>	
105	Issues dealt with by previously constituted committees [PCA s 32] .....	69
	<b>CHAPTER 7—OTHER PROVISIONS ABOUT COMMITTEES</b>	
106	Act does not limit Assembly's powers [PCA s 5] .....	69
107	Ministerial response to committee report [PCA s 24] .....	69
108	Annual report of committee [PCA s 33] .....	71
	<b>CHAPTER 8—APPROPRIATION FOR ASSEMBLY</b>	
109	Separate appropriation for Assembly [EARC QPB s 200] .....	72
	<b>CHAPTER 9—REPEALS, AMENDMENTS AND TRANSITIONAL</b>	
	<b>PART 1—REPEALS</b>	
110	Repeals .....	72
	<b>PART 2—AMENDMENT OF ACTS INTERPRETATION ACT 1954</b>	
111	Act amended in pt 2 .....	73
112	Omission of s 29A (Tabling of reports when Legislative Assembly not sitting) .....	73
	<b>PART 3—AMENDMENT OF THE DISTRICT COURT ACT 1967</b>	
113	Act amended in pt 3 .....	73
114	Amendment of s 13 (Judges not to practise or sit in Parliament) .....	73
	<b>PART 4—AMENDMENT OF ELECTORAL ACT 1992</b>	
115	Act amended in pt 4 .....	74

116	Replacement of s 83 (Who may be nominated) .....	74
83	Who may be nominated .....	74
<b>PART 5—AMENDMENT OF LOCAL GOVERNMENT ACT 1993</b>		
117	Act amended in pt 5 .....	74
118	Omission of s 224 (Termination of membership of Legislative Assembly on becoming councillor) .....	74
<b>PART 6—AMENDMENT OF PARLIAMENTARY MEMBERS' SALARIES ACT 1988</b>		
119	Act amended in pt 6 .....	75
120	Amendment of s 2 (Salary entitlement of Legislative Assembly members) .....	75
121	Insertion of new ss 6A and 6B .....	75
6A	Additional salary of Deputy Speaker [CAAA 1896 s 3] .....	75
6B	Additional salary of temporary Chairperson of Committees [CAAA 1896 s 3] .....	75
122	Renumbering of pt 6 .....	76
123	Renumbering of s 12 .....	76
124	Insertion of new pt 6 .....	76
<b>PART 6—WHEN SALARIES ARE PAID</b>		
12	Salary when to be paid [CAAA 1896 s 6] .....	76
13	Apparent vacation of seat when Assembly not sitting .....	77
14	Annual reversion to treasury of undrawn moneys .....	78
<b>PART 7—TRANSITIONAL PROVISIONS</b>		
125	Continuation of existing statutory committees .....	78
126	Continuation of the Speaker .....	78
127	Continuation of the Chairperson of Committees .....	78
128	Saving of standing rules and orders .....	79
<b>SCHEDULE</b> .....		80
<b>DICTIONARY</b>		

**1999**

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**A BILL**

**FOR**

**An Act to provide for the powers, rights and immunities of the Legislative Assembly, appointment of its officers and committees, continuation of particular committees, qualification for membership of the Legislative Assembly, matters affecting continuation of membership and capacity of members, matters incidental to its existence and for other matters**

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**The Parliament of Queensland enacts—** 1

**CHAPTER 1—PRELIMINARY** 2

**Short title** 3

1. This Act may be cited as the *Parliament of Queensland Act 1999*. 4

**Commencement** 5

2. This Act commences on a day to be fixed by proclamation. 6

**Dictionary** 7

3. The dictionary in the schedule defines particular words used in this Act. 8  
9

**Object [new]** 10

4.(1) This Act generally consolidates existing laws incidental to the operation of the Assembly. 11  
12

(2) However, particular laws have been reformed, including, for example, the following— 13  
14

(a) laws relating to the qualifications of a person to be a candidate for election as a member; 15  
16

(b) laws affecting a person's continued membership of the Assembly; 17  
18

(c) laws affecting a person's capacity because of membership of the Assembly. 19  
20

**Relationship between this Act and some other Acts about Parliament [new]** 21  
22

5.(1) This Act contains laws incidental to the operation of the Assembly. 23



*Parliament of Queensland*

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(2) The <i>Constitution of Queensland Act 1999</i> establishes the Parliament of Queensland and its provisions contain basic statements about procedural requirements for the Assembly and about membership and powers of the Assembly.	1 2 3 4
(3) The <i>Parliamentary Service Act 1988</i> contains laws about administrative and support services for the Assembly, including the administrative powers of the Speaker, the office and powers of the Clerk and the establishment of the parliamentary service.	5 6 7 8
(4) The <i>Parliamentary Members' Salaries Act 1988</i> contains laws about the salaries of members.	9 10
<b>Act does not limit power, right or immunity [PPA s 13]</b>	11
6. Nothing in this Act derogates from any power, right or immunity of the Assembly or its members or committees.	12 13
<b>When does a member "take" a seat [new]</b>	14
7. A member "takes" the member's seat on taking the oath or affirmation mentioned in the <i>Constitution of Queensland Act 1999</i> , section 21.	15 16 17
<b>CHAPTER 2—PROCEEDINGS IN THE ASSEMBLY</b>	18 19
<b>Assembly proceedings can not be impeached or questioned [Bill Rts art 9]</b>	20 21
8.(1) The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.	22 23 24
(2) To prevent doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had immediately before the commencement of the subsection.	25 26 27

<b>Meaning of “proceedings in the Assembly” [PPA s 3 + EARC QPB s 7+ new]</b>	1
	2
<b>9.(1) “Proceedings in the Assembly”</b> include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.	3
	4
	5
<b>(2)</b> Without limiting subsection (1), <b>“proceedings in the Assembly”</b> include—	6
	7
(a) giving evidence before the Assembly, a committee or an inquiry; and	8
	9
(b) evidence given before the Assembly, a committee or an inquiry; and	10
	11
(c) presenting or submitting a document to the Assembly, a committee or an inquiry; and	12
	13
(d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry; and	14
	15
(e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and	16
	17
(f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and	18
	19
(g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee.	20
	21
<b>(3)</b> Despite subsection (2)(d), section 8 does not apply to a document mentioned in the subsection—	22
	23
(a) in relation to a purpose for which it was brought into existence other than for the purpose of being tabled in, or presented or submitted to, the Assembly or a committee or an inquiry; and	24
	25
	26
(b) if the document has been authorised by the Assembly or the committee to be published.	27
	28
<i>Example—</i>	29
A document evidencing fraud in a department tabled at a Public Accounts Committee inquiry can be used in a criminal prosecution for the fraud if the document was not created for the committee’s inquiry and the committee has authorised the document to be published.	30
	31
	32
	33

(4) If the way in which a document is dealt with has the effect that—	1
(a) under an Act; or	2
(b) under the rules, orders, directions or practices of the Assembly;	3
the document is treated, or accepted, as having been tabled in the Assembly	4
for any purpose, then, for the purposes of this Act, the document is taken to	5
be tabled in the Assembly.	6

## CHAPTER 3—PROCEDURES AND POWERS 7

### PART 1—MISCELLANEOUS 8

#### **Assembly may proceed to business although not more than 5 writs have not been returned [LAA s 14] 9**

10. On a general election the Assembly may proceed to the transaction of business at the time appointed by the Governor for the purpose even though— 11

(a) any of the writs of election, not more than 5, have not been returned; or 12

(b) in not more than 5 of the electoral districts, the electors have failed to elect a member to the Assembly. 13

#### **Standing rules and orders may be made [CA s 8] 18**

11.(1) The Assembly may prepare and adopt standing rules and orders that appear to the Assembly best adapted to conduct its business and proceedings. 19

(2) Without limiting subsection (1), the standing rules and orders may provide for the following— 20

(a) the orderly conduct of the Assembly; 21

(b) the way the Assembly must be presided over in the absence of the Speaker; 22

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*Parliament of Queensland*

(c) the way its powers, rights and immunities may be exercised and upheld;	1 2
(d) the way notices of Bills, resolutions and other business intended to be submitted to the Assembly at any session may be published for general information;	3 4 5
(e) publication of the proceedings of the Assembly and its committees, whether the Assembly is sitting, adjourned, prorogued or dissolved;	6 7 8
(f) the proper passing, entitling and numbering of the Bills to be introduced into and passed by the Assembly;	9 10
(g) the proper presentation of Bills to the Governor for royal assent.	11
(3) A standing rule or order becomes binding and of force on adoption by the Assembly or at another time decided by the Assembly.	12 13
<b>Quorum [LAA s 13]</b>	14
12. At a meeting of the Assembly, 16 members of the Assembly exclusive of the Speaker are a quorum.	15 16
<b>Voting [LAA s 13]</b>	17
13. At a meeting of the Assembly or a Committee of the Whole House—	18 19
(a) a question is decided by a majority of the members present and voting; and	20 21
(b) the Speaker or Chairperson of Committees presiding—	22
(i) has no deliberative vote; but	23
(ii) if the votes are equal, has the casting vote.	24

**PART 2—THE SPEAKER****The Speaker [LAA s 12]**

**14.(1)** The members of the Assembly must immediately on sitting after every general election proceed to elect a member to be Speaker.

**(2)** The Speaker must preside at all meetings of the Assembly, unless otherwise provided by the standing rules and orders.

**(3)** The Speaker stops holding office on his or her resignation or removal by a vote of the Assembly.

**(4)** On the Speaker's death, resignation or removal by a vote of the Assembly, the members must proceed to elect another member to be the Speaker before proceeding to any other business.

**Speaker continues to hold office on Assembly's dissolution for election [new]**

**15.** The Speaker holding office on the dissolution of the Assembly for the holding of a general election continues to hold office until the end of the day before the first sitting day of the Assembly after the election.

**Deputy Speaker in particular circumstances [CAAA 1896 s 3(4) + new]**

**16.(1)** This section does not affect the way in which the Assembly is presided over when it is sitting in the absence of the Speaker.

**(2)** The way in which the Assembly is presided over when it is sitting in the absence of the Speaker is decided under the standing rules and orders and any resolution of the Assembly.

**(3)** Subject to subsections (1) and (2), the Chairperson of Committees may act as the Speaker—

(a) during a vacancy in the Speaker's office; or

(b) during a period when the Speaker is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

(4) If the Chairperson of Committees is for any reason unable to act as Speaker at a time mentioned in subsection (3)(a) or (b), the most senior temporary Chairperson of Committees appointed by the Speaker, who is able to act as Speaker, may act as the Speaker. 1  
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(5) For subsection (4), as between temporary Chairpersons of Committees the most senior temporary Chairperson of Committees is the one who has continually served longest as a member. 5  
6  
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(6) A person acting as the Speaker may be referred to as the Deputy Speaker. 8  
9

### **PART 3—CHAIRPERSON OF COMMITTEES** 10

#### **Chairperson of Committees [new]** 11

17.(1) The members of the Assembly must as soon as practicable on sitting after every general election proceed to appoint a member to be Chairperson of Committees. 12  
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14

(2) The Chairperson of Committees must preside at all meetings of a Committee of the Whole House of the Assembly, subject to the standing rules and orders. 15  
16  
17

(3) The Chairperson of Committees stops holding office on his or her resignation or removal by a vote of the Assembly. 18  
19

(4) On the Chairperson of Committees' death, resignation or removal by a vote of the Assembly, the members must proceed to appoint another member to be the Chairperson of Committees before proceeding to any other business. 20  
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#### **Chairperson of Committees continues to hold office on Assembly's dissolution for election [new]** 24 25

18. The Chairperson of Committees holding office on the dissolution of the Assembly for the holding of a general election continues to hold office until the end of the day before the first sitting day of the Assembly after the election. 26  
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## PART 4—PROXY VOTING

### Member who may give proxy [LAA s 15]

19.(1) This section applies if, because of justified medical emergency, evidenced by at least 2 medical certificates, a member (the “**absent member**”) stated in the certificates is in a state of ill health through no fault on the member’s part that prevents the member, during a period stated in the certificates, to attend any sittings of the Assembly.

(2) The absent member may notify the Speaker in writing that the member desires to vote as a member at every sittings of the Assembly and of every Committee of the Whole House—

- (a) by way of a named proxy who is also a member (the “**first proxy**”); or
- (b) if the first proxy is not present, by another named proxy, who is also a member (the “**second proxy**”).

(3) The absent member or, if the member is unable to do so through ill health, another member on the member’s behalf, must present the certificates and notification to the Speaker.

(4) The Speaker must read the certificates and notification to the Assembly—

- (a) if the Assembly is sitting on the day the Speaker receives them—on that day; or
- (b) if the Assembly is not sitting on that day—on the day of the first sittings of the Assembly afterwards.

(5) If the Speaker declares that the Speaker is satisfied that the matters stated in the certificates are true, at any division at any sittings of the Assembly or any Committee of the Whole House during the period stated in the certificate, subject to section 23,<sup>1</sup> the proxy may vote as and for the absent member.

(6) Under subsection (5), the first proxy may vote, or, if the first proxy is absent, the second proxy may vote.

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<sup>1</sup> Section 23 (End of proxy)

(7) The proxy may vote as and for the absent member either without voting in the proxy's own right or in addition to voting in the proxy's own right. 1  
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(8) In this section— 4

“division” means any voting of the Assembly or any Committee of the Whole House for which a division is called on any question. 5  
6

#### **How the proxy votes [LAA s 15]** 7

20.(1) The proxy is to vote by declaring to the Speaker or the Chairperson of Committees, as the case may be, during the taking of the votes on the division, that the proxy votes as and for the absent member for the ‘ayes’ or for the ‘noes’. 8  
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(2) If the vote is for the ‘ayes’, the tellers for the ‘ayes’ must count it accordingly, and if the vote is for the ‘noes’, the tellers for the ‘noes’ must count it accordingly. 12  
13  
14

(3) A vote so declared is as effectual as if the absent member had been personally present in the Assembly on the taking of the votes on the division and had voted on the side of the question for which the member's vote has been so declared by proxy. 15  
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(4) A member who, as a proxy, votes as and for the absent member, and does not vote in the member's own right, must declare the vote as and for the absent member from outside the bar of the Assembly. 19  
20  
21

(5) If the member declares the vote as and for the absent member within the bar, the member must be taken to vote also in the member's own right on the side of the question which the member's place in the division indicates. 22  
23  
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#### **How a proxy is substituted [LAA s 15]** 26

21.(1) This section applies if during the period stated in the certificates, the absent member notifies the Speaker in writing that the member desires to substitute as the member's first proxy and second proxy or either of them 2 other named members or 1 other named member, as the case may be. 27  
28  
29  
30  
31

(2) The Speaker must read the notification to the Assembly— 32



*Parliament of Queensland*

(a) if the Assembly is sitting on the day the Speaker receives the notification—on that day; or	1 2
(b) if the Assembly is not sitting on that day—on the day of the first sittings of the Assembly afterwards.	3 4
(3) On the notification under subsection (2) being read to the Assembly by the Speaker, the other members or member named in the notification—	5 6
(a) becomes the first proxy and the second proxy or the first proxy or the second proxy, as the case may be, in substitution for the members or member who had been authorised to vote as and for the absent member; and	7 8 9 10
(b) as the proxies or proxy, may vote as and for the absent member as provided under section 20.	11 12
<b>End of certificate, notification or declaration on last day of session</b>	13
<b>[LAA s 15]</b>	14
22.(1) No certificate or notification and no declaration by the Speaker under this part is effective beyond the last day of the session of the Assembly in which the certificate, notification or declaration was received or made.	15 16 17 18
(2) However, if the ill health of the absent member and the absent member's inability to attend any sittings of the Assembly continue or are likely to continue beyond the period stated in the certificate, the certificate, notification, and declaration may be renewed whenever necessary.	19 20 21 22
<b>End of proxy [LAA s 16]</b>	23
23.(1) No further vote of the absent member may be declared by proxy, if during the period stated in the certificates, and after any declaration made by the Speaker in relation to the member—	24 25 26
(a) the member attends any sittings of the Assembly or any Committee of the Whole House; or	27 28
(b) the Speaker declares to the Assembly that the Speaker is satisfied that the member is able to attend the sittings; or	29 30

*Parliament of Queensland*

(c) the Speaker reads to the Assembly a notification by the member that the member desires that the member's vote is to be no longer declared by proxy.	1 2 3
(2) When the absent member notifies the Speaker in writing that the member desires that the member's vote be no longer declared by proxy, the Speaker must read the notification to the Assembly—	4 5 6
(a) if the Assembly is sitting on the day the Speaker receives the notification—on that day; or	7 8
(b) if the Assembly is not sitting on that day—on the day of the first sittings of the Assembly afterwards.	9 10
<b>Part does not affect vacation of seat provisions [LAA s 18]</b>	11
24. This part does not affect section 72. <sup>2</sup>	12
<b>CHAPTER 4—POWERS, RIGHTS AND IMMUNITIES</b>	13 14
<b>PART 1—POWERS TO REQUIRE ATTENDANCE AND PRODUCTION</b>	15 16
<b>Power to order attendance or production of document or other thing [CA s 41 + PCA s 25]</b>	17 18
25.(1) The Assembly may order a person to attend before the Assembly and also to produce to the Assembly any document or thing in the person's possession.	19 20 21

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<sup>2</sup> Section 72 (Vacating seats of members in particular circumstances)

(2) A committee of the Assembly authorised by the Assembly or an Act to call for persons, documents and other things (an “ <b>authorised committee</b> ”), may order a person to attend before the committee and also to produce to the committee any document or thing in the person’s possession.	1 2 3 4 5
(3) A statutory committee may call for persons, documents and other things. <sup>3</sup>	6 7
(4) Any committee of the Assembly may receive testimonial and documentary evidence voluntarily given.	8 9
<b>Summons to non-member to attend or produce documents or other things [CA s 42(1)-(3) + EARC QPB cl 9]</b>	10 11
26.(1) Subject to section 28, <sup>4</sup> a person who is ordered to attend must be given a summons issued by—	12 13
(a) if ordered to attend by the Assembly—the Speaker; or	14
(b) if ordered to attend by a committee—the Clerk on notification by the committee’s chairperson.	15 16
(2) The summons must state—	17
(a) a reasonable time and place for the attendance; and	18
(b) if a document or other thing is ordered to be produced—reasonable particulars of the document or other thing.	19 20
<b>Attendance expenses [CA s 42(4) + EARC QPB cl 15]</b>	21
27. A person, other than a member, ordered to attend the Assembly or an authorised committee is entitled to be paid a reasonable amount for expenses of attendance as decided by the Speaker.	22 23 24

<sup>3</sup> For establishment of statutory committees, see section 80.

<sup>4</sup> Section 28 (Member required to attend without summons)

<b>Member required to attend without summons [CA s 43] [EARC QPB cl 10]</b>	1 2
<b>28.</b> A member may be ordered by the Assembly to attend the Assembly or an authorised committee without being given a summons.	3 4
<b>Examination under oath or affirmation [EARC QPB cl 11]</b>	5
<b>29.(1)</b> The Assembly or an authorised committee before which a person attends may require the person to answer questions under oath or affirmation.	6 7 8
<b>(2)</b> The oath or affirmation may be administered by—	9
(a) if the person attends before the Assembly—the Speaker or the Clerk; or	10 11
(b) if the person attends before a committee—the committee’s chairperson or the Clerk, or Clerk’s delegate, attending the committee.	12 13 14
<b>Obligation to attend [EARC QPB cl 12 + new]</b>	15
<b>30.(1)</b> A person ordered to attend must not—	16
(a) fail to attend before the Assembly or the committee as ordered; or	17
(b) fail to attend from time to time as required by the Speaker or the committee’s chairperson in the course of the Assembly’s or the committee’s proceedings in relation to the matter on which the person was ordered to attend.	18 19 20 21
<b>(2)</b> A person may be excused from a failure mentioned in subsection (1)—	22 23
(a) if ordered to attend by the committee—by the committee; or	24
(b) in any case—by the Assembly.	25
<b>Obligation to be sworn or to respond [EARC QPB cl 13 + new]</b>	26
<b>31.(1)</b> A person ordered to attend must not—	27

*Parliament of Queensland*

(a) fail to be sworn or to make an affirmation if required under section 29; <sup>5</sup> or	1 2
(b) fail to answer a question that the person is required to answer by the Speaker or the committee chairperson; or	3 4
(c) fail to produce a document or other thing that the person was ordered to produce.	5 6
(2) A person may be excused from a failure mentioned in subsection (1)—	7 8
(a) if ordered to attend by the committee—by the committee; or	9
(b) in any case—by the Assembly.	10
<b>Objecting to answering questions or production [CA s 44 + PCA s 26(3)]</b>	11 12
32. A person may object to answering a question or producing a document or other thing under sections 25 and 31 <sup>6</sup> on the following grounds—	13 14 15
(a) the answer, document or thing is of a private nature and does not affect the subject of inquiry;	16 17
(b) giving the answer or producing the document or thing might tend to incriminate the person and the person would have a claim of privilege against self-incrimination in a Supreme Court action if the person were asked in the action to give the answer or produce the document or thing.	18 19 20 21 22

<sup>5</sup> Section 29 (Examination under oath or affirmation)

<sup>6</sup> Sections 25 (Power to order attendance or production of document or thing) and 31 (Obligation to be sworn or to respond)

*Parliament of Queensland*

<b>Procedure on objection to answering questions etc. of Assembly [CA s 44 + PCA s 26]</b>	1
	2
<b>33.(1)</b> This section applies if a person ordered by the Assembly to attend before the Assembly or to produce to the Assembly any document, information or thing objects to answering any question that may be asked by the Assembly, or to producing any document or thing to the Assembly, under section 32.	3
	4
	5
	6
	7
<b>(2)</b> The Speaker must report the refusal and the grounds to the Assembly.	8
	9
<b>(3)</b> The Assembly may order the person to answer any or particular questions, or produce any or particular documents or other things to the Assembly.	10
	11
	12
<b>(4)</b> A person to whom an order under subsection (3) is directed must comply with the order despite section 32.	13
	14
<b>Procedure on objection to answering questions etc. of authorised committee [CA s 44 + PCA s 26]</b>	15
	16
<b>34.(1)</b> This section applies to an authorised committee.	17
<b>(2)</b> If a person attending before the committee does not—	18
(a) answer a question asked by the committee; or	19
(b) produce a document or thing the committee asked the person to produce to it;	20
	21
the chairperson of the committee may require the person to comply with the request.	22
	23
<b>(3)</b> However, the person need not comply with the requirement if the person objects to answering the question or producing the document or thing under section 32. <sup>7</sup>	24
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	26
<b>(4)</b> The objection must be made directly to the committee or in writing and must state the grounds of the objection.	27
	28

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<sup>7</sup> Section 32 (Objecting to answering questions or production)

(5) If a person does not comply with an order to appear before the committee or a requirement to answer a question or produce a document, the committee may report the failure to comply to the Assembly. 1  
2  
3

(6) The Assembly may order a person to appear before a committee and answer any or particular questions, or produce any or particular documents or other things. 4  
5  
6

(7) A person to whom an order under subsection (6) is directed must comply with the order despite section 32. 7  
8

(8) An order may be made under subsection (6) for a class of persons, including persons who have not appeared, or been asked to appear, before a committee. 9  
10  
11

**Assembly to have regard to particular things when considering objection [PCA s 26(6)]** 12  
13

**35.** In deciding whether to make an order under section 33 or 34,<sup>8</sup> the Assembly must have regard to— 14  
15

(a) the public interest in having the questions answered before the Assembly or committee or the documents or other things produced to the Assembly or committee; and 16  
17  
18

(b) the public interest in providing appropriate protection to individuals against invasions of privacy or against self-incrimination. 19  
20  
21

**Inadmissibility of particular events before a committee [PCA s 26(9) and (10) + new]** 22  
23

**36.(1)** Evidence may not be given in any proceeding of an answer given by a person or before a committee, or of the fact the person produced a document or other thing to a committee. 24  
25  
26

(2) However, subsection (1) does not apply to— 27

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<sup>8</sup> Section 33 (Procedure on objection to answering questions etc. of Assembly) or 34 (Procedure on objection to answering questions etc. of authorised committee)

*Parliament of Queensland*

- (a) a proceeding before the Assembly or a committee of the Assembly; or 1  
2
- (b) a criminal proceeding brought against the person about the falsity, or the misleading, threatening or offensive nature, of the evidence, document, information or other thing;<sup>9</sup> or 3  
4  
5
- (c) a criminal proceeding brought against the person about the person's failure to produce a document or thing to, or refusal to answer a question before, the Assembly or a committee.<sup>10</sup> 6  
7  
8  
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- (3) Subsection (2) applies despite sections 8 and 9.<sup>11</sup>

**PART 2—CONTEMPTS** 10**Meaning of "contempt" of the Assembly [PPVA s 3(3), 4]** 11

37.(1) "Contempt" of the Assembly means a breach or disobedience of the powers, rights or immunities, or a contempt, of the Assembly or its members or committees. 12  
13  
14

(2) Conduct, including words, is not contempt of the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with— 15  
16  
17

- (a) the free exercise by the Assembly or a committee of its authority or functions; or 18  
19
- (b) the free performance by a member of the member's duties as a member. 20  
21

*Examples—* 22

1. Assaulting, obstructing or insulting a member— 23

<sup>9</sup> For example, see the Criminal Code, section 57 (False evidence before Parliament).

<sup>10</sup> For example, see the Criminal Code, section 58 (Witnesses refusing to attend or give evidence before Parliament or parliamentary committee).

<sup>11</sup> Sections 8 (Assembly proceedings generally privileged) and 9 (Meaning of "proceedings in the Assembly")



*Parliament of Queensland*

(a) in the member's coming to or going from the Assembly or a meeting of a committee; or	1 2
(b) anywhere else because of the member's performance of his or her parliamentary duties.	3 4
2. Attempting to compel a member by force, insult or menace to take a particular position in relation to a proposition or matter pending, or expected to be brought, before the Assembly or a committee.	5 6 7
3. Sending a threat to a member because of the member's performance of his or her parliamentary duties.	8 9
4. Sending a challenge to fight a member.	10
5. The offering of a bribe to or attempting to bribe a member.	11
6. Creating or joining in any disturbance in the Assembly or before a committee or in the Assembly's or a committee's vicinity while it is sitting that may interrupt its proceedings.	12 13 14
7. Contravention of sections 30, 31, 33(4) and 34(7). <sup>12</sup>	15
8. Preventing or attempting to prevent a person from complying with sections 30, 31, 33(4) and 34(7).	16 17
9. Improperly influencing, or attempting to improperly influence, a person, in relation to any evidence to be given by the person to the Assembly or a committee.	18 19
10. Treating a person adversely and without lawful authority, or attempting to do so, because of evidence given by the person to the Assembly or a committee or because of a belief or suspicion about that evidence.	20 21 22
<b>Decisions on contempt [new]</b>	23
<b>38. Whether particular conduct is contempt of the Assembly as defined under section 37 is a matter for the Assembly to decide, acting on any advice it considers appropriate.</b>	24 25 26

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<sup>12</sup> Sections 30 (Obligation to attend), 31 (Obligation to be sworn or to respond), 33 (Procedure on objection to answering questions etc. of Assembly) and 34 (Procedure on objection to answering questions etc. of authorised committee)

*Parliament of Queensland*

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<b>Assembly's power to deal with contempt [new]</b>	1
<b>39.(1)</b> The Assembly has the same power to deal with a person for contempt of the Assembly as the Commons House of the Parliament of the United Kingdom had at the establishment of the Commonwealth <sup>13</sup> to deal with contempt of the Commons House.	2 3 4 5
<b>(2)</b> To remove doubt, it is declared the power includes the power to fine the person, and impose imprisonment on the person in default of the payment of the fine, as provided for under sections 40 to 45.	6 7 8
 <b>Assembly proceedings on contempt [CA s 45 + EARC QPB cl 17]</b>	 9
<b>40.(1)</b> Subject to section 38, proceedings for punishment by the Assembly of contempt are to be taken in the way stated in the standing rules and orders.	10 11 12
<b>(2)</b> The Assembly may order that a person found by it to have committed a contempt—	13 14
<b>(a)</b> pay a fine of an amount not more than an amount stated in the standing rules and orders; and	15 16
<b>(b)</b> if the fine is not paid within a reasonable time stated by the Assembly, be imprisoned as directed by it—	17 18
<b>(i)</b> until the fine is paid; or	19
<b>(ii)</b> until the end of the session of the Assembly or a part of the session.	20 21
<b>(3)</b> For subsection (2)(b), the Assembly may order a person to be imprisoned—	22 23
<b>(a)</b> in the custody of an officer of the Assembly; or	24
<b>(b)</b> in a prison under the <i>Corrective Services Act 1988</i> .	25

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<sup>13</sup> Date of establishment of the Commonwealth—1 January 1901

<b>Speaker's warrant for contempt [CA s 46 + EARC QPB cl 18]</b>	1
41. 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.	2 3 4
<b>Arrest pending warrant in certain cases [CA s 47 + EARC QPB cl 19]</b>	5
42.(1) A person who commits a contempt by creating or joining in any disturbance in the Assembly or before a committee or in the Assembly's or a committee's vicinity while it is sitting that may interrupt its proceedings may be apprehended without warrant on the Speaker's order, oral or written.	6 7 8 9 10
(2) The person may be kept in the custody of an officer of the Assembly pending the person being dealt with by the Assembly under section 39.	11 12
<b>Form of warrant [CA s 48 + EARC QPB cl 20]</b>	13
43. A warrant issued under section 41 <sup>14</sup> need not be in any particular form, but it must state in effect that the person has been found by the Assembly to have committed a contempt of the Assembly.	14 15 16
<b>Duty to assist in execution of Speaker's order or warrant [CA s 49(1), 50 + EARC QPB cl 21]</b>	17 18
44.(1) The commissioner of the police service, all police officers and other persons are required to assist in the apprehension and detention of any person who is required to be apprehended under the order or warrant of the Speaker.	19 20 21 22
(2) For the purpose of searching for and apprehending a person under the Speaker's warrant, a person may enter any place using force that may be reasonably necessary.	23 24 25

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<sup>14</sup> Section 41 (Speaker's warrant for contempt)

<b>Warrant to be given effect [CA s 49(2) + EARC QPB cl 22]</b>	1
45. The person in charge of a prison to whom is delivered a person apprehended under the Speaker's warrant must take the person into custody and detain the person in accordance with the warrant's terms.	2 3 4
<b>Treasurer's power to retain allowances to pay fine [LAA s 7E)</b>	5
46.(1) This section applies if—	6
(a) a member has been found guilty under section 39 of contempt by the Assembly; and	7 8
(b) the member has been summarily dealt with by the Assembly and ordered to pay a fine; and	9 10
(c) any amount of the fine is not paid by the member as required by the Assembly's order.	11 12
(2) The Speaker must deliver a signed certificate countersigned by the Clerk to the Treasurer notifying the Treasurer that the amount has not been paid as required by the Assembly.	13 14 15
(3) On receiving the certificate, the Treasurer may order that there be set aside and retained by the Treasurer amounts the Treasurer considers proper out of the salary to which the member is entitled as a member until the full amount of the fine has been paid.	16 17 18 19
(4) The Treasurer may act under subsection (3), even though the session in which the fine was imposed has ended.	20 21
(5) The Treasurer may at any time amend the order.	22
(6) All amounts set aside and retained by the Treasurer are part of the consolidated fund.	23 24
<b>Other proceedings [CA s 52 + EARC QPB cl 23(3)]</b>	25
47.(1) If a person's conduct is both a contempt of the Assembly and an offence against another Act, the person may be proceeded against for the contempt or for the offence against the other Act, but the person is not liable to be punished twice for the same conduct.	26 27 28 29

- (2) The Assembly may, by resolution, direct the Attorney-General to prosecute the person for the offence against the other Act. 1  
2

### **PART 3—PARLIAMENTARY PAPERS** 3

#### **Meaning of “authorising person” [PPA s 2]** 4

48. In this part— 5

“authorising person” means— 6

- (a) the Speaker; or 7
- (b) the chairperson of a committee; or 8
- (c) the Clerk; or 9
- (d) the chief reporter. 10

#### **Assembly or committee may authorise publication [PPA s 4]** 11

49.(1) The Assembly may authorise the publication of a document relating to proceedings in the Assembly. 12  
13

(2) A committee may authorise publication of— 14

- (a) evidence given before the committee; or 15
- (b) a document presented or submitted to the committee; or 16
- (c) a document (including a report) prepared or made by the committee. 17  
18

(3) This section does not limit by implication any other power the Assembly may have to authorise the publication of a document. 19  
20

<b>Authority for government printer to publish [PPA s 5]</b>	1
<b>50.</b> If the Assembly or a committee orders or otherwise authorises evidence or a document to be printed, then, unless the order or other authority otherwise expressly provides, the Assembly or the committee is taken to have authorised the government printer to publish the evidence or document.	2 3 4 5 6
<b>Assembly taken to have authorised certain publications [PPA s 6]</b>	7
<b>51.(1)</b> The Assembly is taken to have authorised a person to whom this section applies to publish parliamentary documents.	8 9
<b>(2)</b> The authority conferred by subsection (1) extends to—	10
<b>(a)</b> the doing of all acts preparatory to, and for the purposes of, publication; and	11 12
<b>(b)</b> all forms of publication.	13
<b>(3)</b> For this part, a document that purports to be a parliamentary document is taken to be a parliamentary document unless the contrary is proved.	14 15 16
<b>(4)</b> In this section—	17
<b>“document”</b> includes—	18
<b>(a)</b> a copy of a document; and	19
<b>(b)</b> a part of a document; and	20
<b>(c)</b> an abstract of, or extract from, a document;	21
if the copy, part, abstract or extract is published with the authority of an authorising person.	22 23
<b>“parliamentary document”</b> means—	24
<b>(a)</b> the Votes and Proceedings; or	25
<b>(b)</b> the Notices of Motion and Orders of the Day; or	26
<b>(c)</b> the Questions on Notice and answers to questions on notice; or	27
<b>(d)</b> Hansard reports of proceedings in the Assembly, a committee or an inquiry; or	28 29

*Parliament of Queensland*

(e) another document that is published with the authority of an authorising person.	1 2
<b>“person to whom this section applies” means—</b>	3
(a) a member or a person acting on behalf of a member; or	4
(b) the Clerk; or	5
(c) an officer or employee of the parliamentary service acting in the course of the person’s duties; or	6 7
(d) the government printer; or	8
(e) an officer or employee of the government printer acting in the course of the person’s duties.	9 10
 <b>Tabled, unprinted documents may be read etc. [PPA s 7]</b>	11
52.(1) A person may read any document that is tabled in the Assembly by a member, but is not ordered or otherwise authorised by the Assembly to be printed.	12 13 14
(2) The person may make a copy of, take an extract from, or take notes of, the document.	15 16
(3) A person does not incur any civil or criminal liability for the doing by the person or another person of an act permitted to be done under this section.	17 18 19
 <b>Particular documents are taken to be printed when tabled or taken to be tabled in the Assembly [new]</b>	20 21
53. The following documents are taken to be printed when tabled or taken to be tabled in the Assembly—	22 23
(a) a report of a committee or an inquiry;	24
(b) a Bill presented to the Assembly and the explanatory note for the Bill;	25 26
(c) a report that, under an Act—	27
(i) is received by a Minister or the Speaker; and	28
(ii) is required or permitted to be tabled in the Assembly.	29

<b>Publication of fair report of tabled document [PPA s 8]</b>	1
<b>54.(1)</b> A person does not incur any civil or criminal liability for the publication of a fair report of a document that is tabled in the Assembly by a member with—	2 3 4
(a) the express permission of the Speaker; or	5
(b) the leave of the Assembly.	6
<b>(2)</b> Subsection (1) applies to a document whether or not the Assembly orders or otherwise authorises the document to be printed.	7 8
<b>Certificates relating to proceedings [PPA s 9 + new]</b>	9
<b>55.(1)</b> A certificate purporting to be signed by an authorising person and stating any 1 or more of the matters mentioned in subsection (2) is evidence of those matters.	10 11 12
<b>(2)</b> The matters are—	13
(a) that evidence was given before the Assembly, a committee or an inquiry; and	14 15
(b) that a document was presented or submitted to the Assembly, a committee or an inquiry; and	16 17
(c) that a document was tabled in, or presented or submitted to, the Assembly, a committee or inquiry; and	18 19
(d) that a document was prepared for the purposes of, or incidental to, transacting business mentioned in section 9(2)(a) or (c); <sup>15</sup> and	20 21
(e) that a document (including a report) was prepared, made or published under the authority of the Assembly, a committee or inquiry; and	22 23 24
(f) that a committee authorised publication of evidence; and	25
(g) that the Assembly or a committee authorised the government printer to publish evidence or a document; and	26 27
(h) that a person is a person to whom section 51 <sup>16</sup> applies; and	28

<sup>15</sup> Section 9 (Meaning of “proceedings in the Assembly”)

<sup>16</sup> Section 51 (Assembly taken to have authorised certain publications)



(i) that a thing is a document, or a parliamentary document, for the purposes of section 51; and	1 2
(j) that an act was preparatory to, or for the purposes of, publication of a thing that is a parliamentary document for the purposes of section 51; and	3 4 5
(k) that a document was tabled in the Assembly by a member, but was not—	6 7
(i) ordered or otherwise authorised, by the Assembly to be printed; or	8 9
(ii) taken to be printed by the Assembly; and	10
(l) that a document was tabled in the Assembly by a member with—	11
(i) the express permission of the Speaker; or	12
(ii) the leave of the Assembly; and	13
(m) that a person is an authorising person; and	14
(n) that a person is the government printer.	15
<b>No liability for publishing under authority of Assembly or committee</b>	16
<b>[PPA s 10]</b>	17
<b>56.(1)</b> A person does not incur any civil or criminal liability for publishing evidence or a document by order or under the authority of the Assembly or a committee.	18 19 20
<b>(2)</b> If a proceeding is brought for a publication to which subsection (1) applies, the defendant may produce to the court a certificate—	21 22
(a) signed by an authorising person; and	23
(b) stating that the publication is a publication to which that subsection applies.	24 25
<b>(3)</b> Before producing the certificate, the defendant must give the plaintiff or prosecutor and any other defendant 24 hours notice of the defendant's intention to produce the certificate.	26 27 28
<b>(4)</b> On production of the certificate, the court must dismiss the proceeding and may order the plaintiff or prosecutor to pay the defendant's costs.	29 30 31

(5) This section does not affect any other defence available to the defendant. 1  
2

**Reports of debates taken to be true and correct record [PPA s 11]** 3

57.(1) Reports of the debates in the Assembly published by order or under the authority of the Assembly may be received in evidence as an accurate record of what happened in the Assembly. 4  
5  
6

(2) Evidence must not be admitted contradicting, adding to or otherwise impugning the accuracy of the reports. 7  
8

**Application of part [PPA s 12]** 9

58. This part applies to evidence given and documents tabled, printed or published at any time whether before or after the commencement of the part. 10  
11  
12

**PART 4—TABLING OF REPORTS OUTSIDE SITTINGS** 13  
14

**Tabling of report when Assembly not sitting [AIA s 29A + new]** 15

59.(1) This section applies to a report that, under an Act— 16

(a) is received by a Minister or the Speaker; and 17

(b) is required or permitted to be tabled in the Assembly. 18

(2) If the Minister or Speaker wants to table the report when the Assembly is not sitting, the Minister or Speaker may give a copy of it to the Clerk. 19  
20  
21

(3) The report is taken to have been tabled on the day a copy of the report is received by the Clerk. 22  
23

(4) The receipt of the report by the Clerk, and the day of the receipt, must be recorded in the Assembly's votes and proceedings for the next sitting day after the day of receipt. 24  
25  
26

- (5) For subsection (1)(b), if a report is required or permitted to be tabled in the Assembly, a part of the report or a document accompanying the report is also taken to be required or permitted to be tabled in the Assembly. 1  
2  
3
- (6) A report tabled under subsection (3) is a report tabled in and printed by order of the Assembly. 4  
5
- (7) This section does not limit the Assembly's power by resolution or order to provide for the tabling of reports and other documents when the Assembly is not sitting. 6  
7  
8
- (8) In this section— 9
- “report” includes— 10
- (a) part of a report; and 11
- (b) a document accompanying a report. 12

## **PART 5—CUSTODY OF ASSEMBLY DOCUMENTS** 13

### **[NEW]** 14

#### **Application of pt 5 [new]** 15

**60.** This part applies despite any other law. 16

#### **Clerk has custody of Assembly documents [new]** 17

**61.** For this part, the Clerk is taken to have custody of all documents in the possession of, the Assembly, a committee or an inquiry. 18  
19

#### **Instrument requiring access or production must be addressed to Clerk [new]** 20 21

**62. (1)** An instrument requiring access to or production of a document mentioned in section 61 must be addressed to the Clerk. 22  
23

**(2)** If the instrument is not addressed to the Clerk, it is of no effect. 24

<b>Assembly controls release [new]</b>	1
<b>63. (1)</b> The Clerk may not allow access to, or produce, a document as required under an instrument mentioned in section 62 unless—	2 3
(a) for a document in the possession of a committee that has not been tabled in the Assembly—the committee or the Assembly by resolution has given leave; or	4 5 6
(b) for a document in the possession of an inquiry that has not been tabled in the Assembly—the inquiry or the Assembly by resolution has given leave; or	7 8 9
(c) for a document in the possession of the Assembly that has not been tabled in the Assembly—the Assembly by resolution has given leave; or	10 11 12
(d) for a document that has been tabled in the Assembly and prohibited by the Assembly from being published—the Assembly by resolution has given leave.	13 14 15
<b>(2)</b> However, if—	16
(a) an instrument requires access to or production of a document in the possession of the Assembly; and	17 18
(b) the Assembly is dissolved, prorogued or adjourned for more than 7 days;	19 20
the Speaker may give leave for the document to be accessed or produced as required under the instrument.	21 22

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**CHAPTER 5—CANDIDATES AND MEMBERS** 1

**PART 1—QUALIFICATIONS** 2

**Qualifications to be a candidate and be elected a member [LAA s 7 +  
EA s 83(1)–(2) + DCA s 13 + new]** 3  
4

**64.(1)** A person may be nominated as a candidate for election, and may be elected, as a member of the Assembly for an electoral district only if the person is— 5  
6  
7

(a) enrolled on an electoral roll for the electoral district or another electoral district; and<sup>17</sup> 8  
9

(b) an Australian citizen; and 10

(c) an adult; and 11

(d) not a disqualified person under subsection (2) or (3). 12

**(2)** A person is a disqualified person if— 13

(a) the person— 14

(i) is subject to a term of imprisonment or detention, periodic or otherwise; or 15  
16

(ii) within 2 years before the day of nomination, has been convicted of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than 1 year's imprisonment; or 17  
18  
19  
20

(iii) has been convicted within 3 years before the day of nomination of an offence against the *Electoral Act 1992*, section 154, 168 or 170(a) or (b);<sup>18</sup> or 21  
22  
23

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<sup>17</sup> See *Electoral Act 1992*, section 64 (Entitlement to enrolment) and *Electoral Act 1918 (Commonwealth)*, section 93 (Persons entitlement to enrolment and to vote).

<sup>18</sup> *Electoral Act 1992*, sections 154 (False, misleading or incomplete documents), 168 (Influencing voting) and 170 (Voting if not entitled etc.)

*Parliament of Queensland*

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(iv) has been convicted within 7 years before the day of nomination of an offence against the Criminal Code, section 59 or 60; <sup>19</sup> or	1 2 3
(v) has been convicted, and not pardoned, of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth; or	4 5 6
(b) the person—	7
(i) is an undischarged bankrupt under the <i>Bankruptcy Act 1966</i> (Cwlth); or	8 9
(ii) has executed a deed of arrangement as debtor under the <i>Bankruptcy Act 1966</i> (Cwlth), part X and the terms of the deed have not been fully complied with; or	10 11 12
(c) the person's creditors have accepted a composition under the <i>Bankruptcy Act 1966</i> (Cwlth), part X and a final payment has not been made under that composition; or	13 14 15
(d) the person is not entitled to be a candidate for election, or to be elected as a member of the Assembly, under another law.	16 17
(3) Also, the following persons are disqualified persons—	18
(a) the Governor-General, Administrator or head of government of the Commonwealth or the Governor, Administrator or head of government of a State;	19 20 21
(b) the holder of a judicial office of any jurisdiction of a State or the Commonwealth.	22 23
(4) For subsection (2)(a)(i), the circumstances in which a person is subject to a term of imprisonment or detention—	24 25
(a) include circumstances in which the person is released from the term of imprisonment or detention on parole, home detention, leave of absence or otherwise without being discharged from all liability to serve all or part of the term; but	26 27 28 29

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<sup>19</sup> Criminal Code, section 59 (Member of Parliament receiving bribes) or 60 (Bribery of member of Parliament)

(b)	do not include circumstances in which a person is subject to a term of imprisonment but is at liberty because the term of imprisonment has been suspended.	1 2 3
(5)	For subsection (2)(a)(ii), the following apply—	4
(a)	if the sentence of imprisonment is suspended, the provision does not apply;	5 6
(b)	however, if the person is ordered at any time to actually serve more than 1 year of the suspended term of imprisonment, the provision applies.	7 8 9
 <b>PART 2—CANDIDATES AND MEMBERS HOLDING PAID PUBLIC APPOINTMENT</b>		 10 11
 <b>Meaning of “paid public appointment” and related appointment</b>		 12
[OPA s 5 + LAA s 7A + new]		13
65.(1)	A person holds a “paid public appointment” if the person, for reward—	14 15
(a)	holds an office under, or is employed by, the State, another State or the Commonwealth; or	16 17
(b)	holds an appointment to or in or is employed by or in—	18
(i)	an entity of the State, another State or the Commonwealth; or	19 20
(ii)	the parliamentary service of the Assembly or an administrative office or service attached to the legislature of another State or the Commonwealth; or	21 22 23
(iii)	a court or tribunal or a registry or other administrative office of a court or tribunal, of the State, another State or the Commonwealth; or	24 25 26
(iv)	a local government of the State, another State or the Commonwealth.	27 28

*Parliament of Queensland*

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(2) For subsection (1)(b), an entity of the State, another State or the Commonwealth includes an entity a majority or more of members of which, or of the governing body of which, are appointed by—	1 2 3
(a) an entity of the State, the other State or the Commonwealth; or	4
(b) a Minister of, or a person holding a paid public appointment under, the State, the other State or the Commonwealth.	5 6
(3) A “paid State appointment” held by a person, is a paid public appointment the person holds in connection with the State because of an office or appointment or employment mentioned in subsection (1)(a) or (b). <sup>20</sup>	7 8 9 10
(4) However, a member does not hold a paid public appointment if—	11
(a) an Act requires or expressly permits that the appointment be held by a member of the Assembly, however described; or	12 13
(b) when the appointment is held by a member of the Assembly, neither the member nor any other person is entitled to or is entitled to and receives any reward on account of the member holding the appointment.	14 15 16 17
(5) For subsection (4)(b), a member is not taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward.	18 19 20
(6) For a waiver under subsection (5), the member must, as soon as practicable after becoming aware of the entitlement—	21 22
(a) waive the entitlement in writing; and	23
(b) give a copy of the waiver to the Speaker.	24
(7) In this section—	25
“reward” does not include—	26
(a) an amount decided under the <i>Parliamentary Members’ Salaries Act 1988</i> or the <i>Parliamentary Contributory Superannuation Act 1970</i> ; or	27 28 29
(b) reasonable expenses actually incurred by or for the member for any 1 or more of the following—	30 31

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<sup>20</sup> For the effect of this definition, see sections 66, 69 and 72(e).



(i) accommodation;	1
(ii) meals;	2
(iii) domestic air travel;	3
(iv) taxi fares or public transport charges;	4
(v) motor vehicle hire; or	5
(c) an amount (other than an amount paid at the pleasure of the State, another State or the Commonwealth) paid as a pension, entitlement, remuneration, allowance or otherwise for—	6
(i) past service in a paid public appointment; or	7
(ii) past or existing service as a member of the Commonwealth's military reserve forces.	8
	9
	10
	11
<b>Effect of paid State appointment on candidate's election [LAA s 7A + OPA s 5 + new]</b>	12
	13
<b>66.(1)</b> If a person who holds a paid State appointment nominates as a candidate for election to the Assembly, the person must be absent on leave from the appointment for the election period.	14
	15
	16
<b>(2)</b> To comply with subsection (1), the person is entitled to take any accrued leave or leave without reward, despite any other law.	17
	18
<b>(3)</b> If the person fails to comply with subsection (1), the person is taken to be on unpaid leave and is not entitled to any reward from anyone for service in the paid State appointment during the election period.	19
	20
	21
<b>(4)</b> If the person is elected as a member, the person's paid State appointment ends on the day the person is elected, despite any other law.	22
	23
<b>(5)</b> Subsection (4) applies whether or not the person complies with subsection (1).	24
	25
<b>(6)</b> In this section—	26
<b>“election period”</b> means the period starting on the day the person is nominated for election to an electoral district and ending on the day of the election of the candidate who is elected for the electoral district.	27
	28
	29

<b>Resignation of particular office holders on becoming candidates [new]</b>	1
67.(1) A person who holds any of the following offices, or who is a deputy of anyone holding any of the following offices, must resign office immediately on the person being nominated under the <i>Electoral Act 1992</i> , section 84 as a candidate for election—	2 3 4 5
(a) anti-discrimination commissioner;	6
(b) auditor-general;	7
(c) the Clerk;	8
(d) chairperson or commissioner of the Criminal Justice Commission or director of any of its organisational units;	9 10
(e) children's commissioner;	11
(f) commissioner of the police service;	12
(g) crime commissioner;	13
(h) crown solicitor;	14
(i) director of public prosecutions;	15
(j) electoral commissioner;	16
(k) health rights commissioner;	17
(l) information commissioner;	18
(m) parliamentary commissioner for administrative investigations;	19
(n) parliamentary counsel;	20
(o) parliamentary criminal justice commissioner;	21
(p) public service commissioner;	22
(q) public trustee;	23
(r) solicitor-general.	24
(2) An office holder who fails to comply with subsection (1) is taken to resign office on becoming a candidate under the <i>Electoral Act 1992</i> , section 88(3), <sup>21</sup> despite any other law.	25 26 27

<sup>21</sup> *Electoral Act 1992*, section 88 (Announcement of nominations)

(3) For subsection (1), a person is not a deputy of anyone holding an office only because the person is temporarily acting in the office of deputy. 1  
2

**Effect of election on particular candidates [new] 3**

68.(1) Any one of the following persons who is elected as a member can not take his or her seat until the person stops holding the membership or appointment mentioned in relation to the person— 4  
5  
6

(a) member of the Commonwealth Parliament or of a legislature of another State; 7  
8

(b) mayor or a councillor of a local government of the State or another State; 9  
10

(c) holder of a paid public appointment other than a paid State appointment.<sup>22</sup> 11  
12

(2) Subsection (1) does not affect section 72(1)(a).<sup>23</sup> 13

**Appointment to paid State appointment is of no effect [OPA s 5 + LAA s 7A] 14  
15**

69.(1) A member must not accept a paid State appointment. 16

(2) Despite any other law, a purported appointment of a member to hold a paid State appointment is of no effect as an appointment.<sup>24</sup> 17  
18

<sup>22</sup> For the effect of a paid State appointment on a candidate's election, see section 66.

<sup>23</sup> Section 72 (Vacating seats of members in particular circumstances)

<sup>24</sup> For an effect of accepting a paid public appointment other than a paid State appointment, see section 72(e)

<b>PART 3—RESTRICTIONS ON DEALINGS WITH THE STATE</b>	1 2
<b>Meaning of “transacts business” [CA ss 6–7A] [LAA s 7B]</b>	3
<b>70.(1)</b> A member “transacts business” with an entity of the State if the member—	4 5
(a) has a direct or indirect interest in a contract with an entity of the State; or	6 7
(b) performs a duty or service for reward for an entity of the State.	8
<b>(2)</b> However, a member does not “transact business” with an entity of the State in the following circumstances—	9 10
(a) for a contract—	11
(i) the contract is required of, or expressly permitted for, the member, under an Act; or	12 13
(ii) the contract allows or permits the member to be provided with goods or to use services that are available to the public on the same terms the goods or services are available to the public; or	14 15 16 17
<i>Examples of subparagraph (ii)—</i>	18
1. A contract to use rail passenger transport.	19
2. The purchase of a vehicle at a public auction conducted by an entity of the State.	20 21
(iii) the contract is for the lawful payment of compensation; or	22
(iv) the contract is made, entered into, or accepted, by a listed or non-aligned corporation;	23 24
(b) for a duty or service—	25
(i) an Act requires or expressly permits the member to perform the duty or service; or	26 27
(ii) neither the member nor any other person is entitled to or is entitled to and receives any reward on account of the member performing the service or duty; or	28 29 30

*Parliament of Queensland*

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- (iii) the duty or service is the attendance at a court or other place or the giving of evidence at a court or other place in obedience to any court process. 1  
2  
3
- (3) For subsection (2)(b)(ii), a member is not taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward. 4  
5  
6
- (4) For a waiver under subsection (3), the member must, as soon as practicable after becoming aware of the entitlement— 7  
8
- (a) waive the entitlement in writing; and 9
- (b) give a copy of the waiver to the Speaker. 10
- (5) In this section— 11
- “listed corporation”** has the meaning given by the Corporations Law. 12
- “non-aligned corporation”** means a corporation with more than 13  
20 shareholders 1 of whom is the member if the member does not— 14
- (a) own 5% or more of the corporation’s shares; or 15
- (b) have control of the corporation’s board; 16
- “reward”** does not include— 17
- (a) an amount decided under the *Parliamentary Members’ Salaries Act 1988* or the *Parliamentary Contributory Superannuation Act 1970*; or 18  
19  
20
- (b) reasonable expenses actually incurred by or for the member for any 1 or more of the following— 21  
22
- (i) accommodation; 23
- (ii) meals; 24
- (iii) domestic air travel; 25
- (iv) taxi fares or public transport charges; 26
- (v) motor vehicle hire. 27

<b>Restrictions on member transacting business with an entity of the State [CA ss 6–7A + LAA s 7B]</b>	1
	2
71.(1) A member must not transact business, directly or indirectly, with an entity of the State. <sup>25</sup>	3
	4
(2) If a member contravenes subsection (1) in relation to a contract with an entity of the State—	5
	6
(a) the contract is invalid to the extent of the contravention; and	7
(b) the member is not entitled to, and may not receive, the reward in connection with the contract.	8
	9
(3) If a member contravenes subsection (1) in relation to the performance of a duty or service for an entity of the State, the member is not entitled to, and may not receive, the reward for the duty or service.	10
	11
	12
(4) A member does not contravene subsection (1) in relation to a contract with an entity of the State if the member—	13
	14
(a) acquires the interest in the contract—	15
(i) under a testamentary disposition or because of the laws of succession; or	16
	17
(ii) as executor, administrator or trustee of the estate of a deceased person; and	18
	19
(b) disposes of the interest within—	20
(i) 1 year after the day the person whose death gave rise to the interest mentioned in paragraph (a) died; or	21
	22
(ii) the longer period allowed by the Assembly.	23
(5) A new member does not contravene subsection (1) in relation to an interest in a contract with an entity of the State arising before the member's election if he or she disposes of the interest within 6 months after being elected.	24
	25
	26
	27
(6) A new member does not contravene subsection (1) in relation to an obligation to perform a duty or service arising before the member's election if he or she discharges the obligation within 6 months after being elected.	28
	29
	30

<sup>25</sup> The effect of a contravention of this subsection is dealt with under section 72(g) (Vacating seats of members in particular circumstances).

*Parliament of Queensland*

(7) It is declared that subsection (1) does not extend—	1
(a) to a contract or agreement with WorkCover Queensland in relation to insurance business carried on by it; or	2 3
(b) to any contract or agreement securing the repayment of the principal, or the payment of interest on, or both the repayment of principal and the payment of interest on, moneys lent to an entity of the State; or	4 5 6 7
(c) to any contract or agreement for the provision of legal assistance under the <i>Legal Aid Queensland Act 1997</i> , or similar assistance under another law, directly or indirectly by a member who is a lawyer or by a legal practice in which a member who is a lawyer has an interest.	8 9 10 11 12
(8) In this section—	13
“new member” means a member who was not a member of the Assembly immediately before the Assembly was last dissolved.	14 15

#### **PART 4—AUTOMATIC VACATION OF MEMBER’S SEAT**

<b>Vacating seats of members in particular circumstances [LAA s 7 + LGA s 224]</b>	16 17
<b>72.(1) A member’s seat in the Assembly becomes vacant if any of the following happens—</b>	18 19
(a) the member fails to take his or her seat within 21 sitting days after being elected as a member;	20 21 22 23
(b) the member stops being enrolled on the electoral roll for the members’s electoral district or another electoral district;	24 25
(c) the member stops being an Australian citizen;	26
(d) the member becomes a member of the Commonwealth Parliament or of a legislature of another State;	27 28

*Parliament of Queensland*

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|--|------------------|
| (e) the member accepts a paid public appointment, other than a paid State appointment; <sup>26</sup>   | 1<br>2           |
| (f) the member is elected or appointed as mayor or a councillor of a local government of the State or another State;   | 3<br>4           |
| (g) the Assembly by resolution—  | 5                |
| (i) decides the member has contravened section 71(1), whether or not after reference of the question to the Court of Disputed Returns under the <i>Electoral Act 1992</i> , section 143; <sup>27</sup> and | 6<br>7<br>8<br>9 |
| (ii) decides not to make a declaration under section 73;   | 10               |
| (h) the member takes an oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to, or becomes an agent of, a foreign state or power;  | 11<br>12<br>13   |
| (i) the member is convicted of any of the following offences—  | 14               |
| (i) an offence against the law of Queensland, another State or the Commonwealth for which the member is sentenced to more than 1 year's imprisonment;  | 15<br>16<br>17   |
| (ii) an offence against the <i>Electoral Act 1992</i> , section 154, 168 or 170(a) or (b); <sup>28</sup>   | 18<br>19         |
| (iii) an offence against the Criminal Code, section 59 or 60; <sup>29</sup>  | 20               |
| (iv) treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth;   | 21<br>22         |
| (j) the member becomes a bankrupt under the <i>Bankruptcy Act 1966</i> (Cwlth);  | 23<br>24         |

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<sup>26</sup> The effect of purporting to accept a paid State appointment is dealt with under section 69 (Appointment to paid State appointment is of no effect).

<sup>27</sup> *Electoral Act 1992*, section 143 (Reference of question as to qualification or vacancy)

<sup>28</sup> *Electoral Act 1992*, section 154 (False, misleading or incomplete documents), 168 (Influencing voting) or 170 (Voting if not entitled etc.)

<sup>29</sup> Criminal Code, section 59 (Member of Parliament receiving bribes) or 60 (Bribery of member of Parliament)



(k) the member—	1
(i) has executed a deed of arrangement as debtor under the <i>Bankruptcy Act 1966</i> (Cwlth), part X; and	2 3
(ii) breaches the terms of the deed;	4
(l) the member's creditors accept a composition under the <i>Bankruptcy Act 1966</i> (Cwlth), part X and the member breaches the terms of the composition;	5 6 7
(m) the member is absent without the Assembly's permission from the Assembly for more than 21 consecutive sitting days, whether over 1 or more sessions.	8 9 10
(2) For subsection (1)(i)(i), the following apply—	11
(a) if the sentence of imprisonment is suspended, the provision does not apply;	12 13
(b) however, if the member is ordered at any time to actually serve more than 1 year of the suspended term of imprisonment, the provision applies.	14 15 16
<b>Assembly may disregard disqualifying events [new]</b>	17
73.(1) This section applies if the Assembly considers that anything that happened whether before or after the commencement of this section (the “disqualifying ground”) may have caused—	18 19 20
(a) a person to be disqualified from being elected as a member; or	21
(b) the seat of a member to become vacant.	22
(2) The Assembly may declare by resolution the disqualifying ground to be of no effect.	23 24
(3) The Assembly may make the declaration only if the Assembly considers the ground—	25 26
(a) has stopped having effect; and	27
(b) was in all the circumstances trifling in nature; and	28
(c) happened or arose without the actual knowledge or consent of the person or member or was accidental or due to inadvertence.	29 30

(4) This section applies despite any other provision of this chapter.	1
(5) This section has no effect on the jurisdiction of the Court of Disputed Returns.	2 3
<b>Effect of appeals against conviction or sentence [new]</b>	4
74.(1) This section applies if a member whose seat becomes vacant because of anything mentioned in section 72(1)(i) (the “disqualifying ground”) appeals, or applies for leave to appeal, against the relevant conviction or sentence within 1 calender month after the conviction or sentence.	5 6 7 8 9
(2) If, on appeal, the conviction is quashed or set aside, or the sentence is changed to a sentence to which section 72(1)(i) does not apply, the disqualifying ground is taken never to have happened.	10 11 12
(3) To ensure that subsection (2) has effect, a writ for an election to fill the vacancy in the member’s seat caused by the disqualifying ground can not be issued—	13 14 15
(a) until at least 1 calender month has passed after the seat becomes vacant; and	16 17
(b) if the member appeals, or applies for leave to appeal, within 1 calender month after the seat becomes vacant—until the appeal has ended without subsection (2) applying.	18 19 20
(4) Subsection (3) does not prevent a writ for a general election being issued.	21 22

## **PART 5—VACATION OF SEAT BY MEMBER** 23

### **Resignation of seat in the Assembly [LAA s 8]** 24

75.(1) A member may resign his or her seat by signed writing addressed to the Speaker.	25 26
(2) The member’s seat becomes vacant when the Speaker receives the resignation.	27 28

<b>Vacancy because of resignation to contest Commonwealth election</b>	1
<b>[LAA s 8A]</b>	2
<b>76.(1)</b> This section applies if, to seek election for the Parliament of the Commonwealth, a member—	3 4
(a) resigns the member's seat not later than 21 days after the issue of the writ for the election; and	5 6
(b) at the time of tendering the resignation, notifies in writing to the Speaker—	7 8
(i) the member's intention to seek his or her election as a Commonwealth member; and	9 10
(ii) the member's intention in the event of failing to secure his or her election as a Commonwealth member to become again a candidate for the vacancy in the member's seat in the Assembly arising because of the resignation.	11 12 13 14
<b>(2)</b> The issue of a writ for an election to fill the vacancy in the member's seat in the Assembly must be deferred until—	15 16
(a) if the member is elected as a Commonwealth member and a petition against the member's election or return as elected is not lodged within the time allowed for the lodging of that type of petition—the expiration of the time so allowed; or	17 18 19 20
(b) if the member is elected as a Commonwealth member and a petition against the member's election or return as elected is lodged within the time allowed for the lodging of that type of petition—the final decision on that petition; or	21 22 23 24
(c) if the member is not elected as a Commonwealth member and does not lodge a petition against the election or return as elected of another person as a Commonwealth member within the time allowed for the lodging of that type of petition—the expiration of the time so allowed; or	25 26 27 28 29
(d) if the member is not elected as a Commonwealth member and lodges a petition against the election or return as elected of another person as a Commonwealth member within the time allowed for the lodging of that type of petition—the final decision on that petition; or	30 31 32 33 34

*Parliament of Queensland*

(e) if the member is not nominated as a Commonwealth member, or if nominated does not consent to the nomination, within the time required for nomination under the laws of the Commonwealth—the expiration of that time.	1 2 3 4
(3) In this section—	5
“Commonwealth member” means a member of either House of the Parliament of the Commonwealth.	6 7

## PART 6—GENERAL 8

### Particular matters not to affect function or power [EARC QCA ss 30–31 + new] 9 10

77. The performance of a function, or exercise of a power, by the Assembly or a committee is not affected because of any of the following— 11  
12

- |  |                |
|--|----------------|
| (a) the presence of a person who purports to be a member of the Assembly or committee, but who is not qualified to be a member;                  | 13<br>14<br>15 |
| (b) the presence of a person who purports to be a member of the Assembly or committee, but who is disqualified under an Act from being a member; | 16<br>17<br>18 |
| (c) the presence of a person whose seat has become vacant;   | 19             |
| (d) the presence of a person who was never properly elected as a member of the Assembly or committee;  | 20<br>21       |
| (e) a vacancy in the Assembly’s or committee’s membership.   | 22             |

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**CHAPTER 6—STATUTORY COMMITTEES OF  
THE ASSEMBLY**

**PART 1—OBJECTS AND DEFINITIONS**

**Main object of ch 6 and its achievement [PCA s 2]**

78.(1) The main object of this chapter is to enhance the accountability of public administration in Queensland.

(2) The chapter's main object is to be achieved by establishing committees of the Assembly with areas of responsibility that include—

- (a) administrative review reform, and constitutional, electoral and legal reform; and
- (b) the ethical conduct of members and parliamentary powers, rights and immunities; and
- (c) the integrity, economy, efficiency and effectiveness of government financial management; and
- (d) certain works undertaken by or for government; and
- (e) the application of fundamental legislative principles to particular Bills and subordinate legislation and the lawfulness of particular subordinate legislation; and
- (f) the Assembly's standing rules and orders.

**Definitions for ch 6 [PCA Dictn]**

79. In this chapter—

“Annual Appropriation Act” see the *Financial Administration and Audit Act 1977*, section 5(1).

“commercial entity” see section 97(4).<sup>30</sup>

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<sup>30</sup> Section 97 (Meaning of “constructing authority” for works)

<b>“community service obligation”</b> see the <i>Government Owned Corporations Act 1993</i> , section 121.	1 2
<b>“consider”</b> includes examine and inquire.	3
<b>“constructing authority”</b> see section 97.	4
<b>“government financial documents”</b> includes—	5
(a) a document tabled in the Assembly under the <i>Financial Administration and Audit Act 1977</i> ; and	6 7
(b) the annual financial statements and annual reports of a GOC; and	8
(c) a document that would be a government financial document if it had been tabled in the Assembly as required by law;	9 10
but does not include estimates of receipts for the proposed expenditure under an Annual Appropriation Act.	11 12
<b>“major GOC works”</b> means works (other than public works) undertaken as part of a major infrastructure investment outlined in a GOC’s statement of corporate intent.	13 14 15
<b>“proposed national scheme legislation”</b> means a Bill—	16
(a) that is intended to be substantially uniform with, or complementary to, legislation of the Commonwealth or another State; and	17 18 19
(b) whose operation may, under the Act, be changed by amendment of a law of the Commonwealth or another State.	20 21
<b>“public works”</b> see section 96(1). <sup>31</sup>	22
<b>“works”</b> includes—	23
(a) a project, service, utility or undertaking; and	24
(b) a part or stage of works; and	25
(c) a repair, reconstruction or extension of works.	26

<sup>31</sup> Section 96 (Areas of responsibility of Public Works Committee)

<i>Examples of paragraph (b)—</i>	1
1. Any intermediate stage of works between planning and completion.	2
2. Engagement of professional consultants for works.	3
3. Calling of tenders for works.	4

## PART 2—ESTABLISHMENT 5

### Establishment of statutory committees [PCA s 4] 6

**80.** The following committees of the Assembly (the “statutory committees”) are established— 7  
8

- Legal, Constitutional and Administrative Review Committee 9
- Members’ Ethics and Parliamentary Privileges Committee 10
- Public Accounts Committee 11
- Public Works Committee 12
- Scrutiny of Legislation Committee 13
- Standing Orders Committee. 14

### Membership of statutory committees [PCA s 4A] 15

**81.(1)** A statutory committee must consist of an equal number of members nominated by— 16  
17

- (a) the member who is recognised in the Assembly as the Leader of the House; and 18  
19
- (b) the member who is recognised in the Assembly as the Leader of the Opposition. 20  
21

**(2)** The chairperson of a statutory committee must be the member nominated as chairperson by the member mentioned in subsection (1)(a). 22  
23

<b>Quorum and voting at meetings of statutory committees [PCA s 4B]</b>	1
<b>82. At a meeting of a statutory committee—</b>	2
(a) a quorum consists of half the number of members appointed to the committee plus 1; and	3 4
(b) a question is decided by a majority of the votes of the members of the committee present and voting; and	5 6
(c) each member of the committee has a vote on each question to be decided and, if the votes are equal, the chairperson of the committee has a casting vote.	7 8 9
<i>Example of paragraph (a)—</i>	10
If 6 members are appointed to a statutory committee, the quorum is 4 (half the number of members (3) plus 1).	11 12
<b>PART 3—ROLE OF STATUTORY COMMITTEES</b>	13
<b>Purpose of pts 3 and 4 [PCA s 7]</b>	14
<b>83.(1)</b> This part sets out the role of statutory committees for their areas of responsibility.	15 16
<b>(2)</b> Part 4 sets out the areas of responsibility for each statutory committee.	17 18
<b>Role of statutory committees [PCA s 8]</b>	19
<b>84.(1)</b> The main role of a statutory committee is to deal with issues within its areas of responsibility.	20 21
<b>(2)</b> The committee is to also deal with an issue referred to the committee by the Assembly or under another Act, whether or not the issue is within its areas of responsibility.	22 23 24
<b>(3)</b> The committee may deal with an issue by—	25
(a) considering it; and	26



- (b) reporting on it, and making recommendations about it, to the Assembly. 1  
2

**PART 4—AREAS OF RESPONSIBILITY OF STATUTORY COMMITTEES** 3  
4

*Division 1—Legal, Constitutional and Administrative Review Committee* 5

**Areas of responsibility of Legal, Constitutional and Administrative Review Committee [PCA s 9]** 6  
7

**85.** The Legal, Constitutional and Administrative Review Committee has the following areas of responsibility— 8  
9

- administrative review reform 10
- constitutional reform 11
- electoral reform 12
- legal reform. 13

**Administrative review reform [PCA s 10]** 14

**86.(1)** The committee's area of responsibility about administrative review reform includes considering legislation, or provisions of legislation, about— 15  
16  
17

- (a) access to information; or 18
- (b) review of administrative decisions; or 19
- (c) anti-discrimination; or 20
- (d) equal employment opportunity. 21

**(2)** The committee's area of responsibility does not include— 22

- (a) investigating particular conduct; or 23

*Parliament of Queensland*

(b) reconsidering or reviewing a decision to investigate, conciliate or review, not to investigate, conciliate or review or to discontinue investigation, conciliation or review of a particular complaint or decision; or	1 2 3 4
(c) reconsidering or reviewing reports, findings, recommendations or decisions in relation to—	5 6
(i) a particular investigation, complaint or decision; or	7
(ii) particular conduct the subject of a report under the <i>Parliamentary Commissioner Act 1974</i> , section 24(6). <sup>32</sup>	8 9
<b>Constitutional reform [PCA s 11]</b>	10
87. The committee's area of responsibility about constitutional reform includes any Bill expressly or impliedly repealing any law relevant to the State's constitution.	11 12 13
<b>Electoral reform [PCA s 12]</b>	14
88. The committee's area of responsibility about electoral reform includes monitoring generally the conduct of elections under the <i>Electoral Act 1992</i> and the capacity of the electoral commission to conduct elections.	15 16 17
<b>Legal reform [PCA s 13]</b>	18
89. The committee's area of responsibility about legal reform includes—	19
(a) recognition of Aboriginal tradition and Island custom under Queensland law; and	20 21
(b) proposed national scheme legislation referred to the committee by the Assembly.	22 23

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<sup>32</sup> *Parliamentary Commissioner Act 1974*, section 24 (Procedure on completion of investigation)

<i>Division 2—Members’ Ethics and Parliamentary Privileges Committee</i>	1
<b>Areas of responsibility of Members’ Ethics and Parliamentary Privileges Committee [PCA s 14]</b>	2 3
<b>90.</b> The Members’ Ethics and Parliamentary Privileges Committee has the following areas of responsibility—	4 5
• the ethical conduct of members	6
• parliamentary powers, rights and immunities.	7
<b>Ethical conduct—registration of interests [PCA s 15]</b>	8
<b>91.</b> The committee’s area of responsibility about the ethical conduct of members includes—	9 10
(a) examining the arrangements, under resolutions of the Assembly, for compiling, keeping and allowing inspection of—	11 12
(i) a register of the interests of members; and	13
(ii) a register of the interests of persons related to a member; and	14
(b) considering proposals made by members and other persons about the form and content of the registers and documents relevant to the registers, including statements of interests to be made by members; and	15 16 17 18
(c) considering complaints referred to the committee about the failure to register particular interests; and	19 20
(d) considering the classes of persons who should be treated as related to a member; and	21 22
(e) considering any other issue about the registration of interests.	23
<b>Ethical conduct—code of conduct [PCA s 16]</b>	24
<b>92.(1)</b> The committee’s area of responsibility about the ethical conduct of members includes—	25 26
(a) recommending to the Assembly a proposed code of conduct for members (other than members in their capacity as Ministers); and	27 28

*Parliament of Queensland*

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(b) recommending to the Assembly a procedure for complaints about a member not complying with the code of conduct adopted by the Assembly, including, for example, the persons who may make complaints, or the persons who must refer complaints, to the committee; and	1 2 3 4 5
(c) considering complaints against particular members for failing to comply with the code of conduct, reporting to the Assembly about complaints and recommending action by the Assembly.	6 7 8
(2) In recommending a proposed code of conduct for members to the Assembly, the committee must have regard to—	9 10
(a) the ethics principles and obligations set out in the <i>Public Sector Ethics Act 1994</i> ; and	11 12
(b) the desirability of consistency between standards in the code of conduct and the ethics principles and obligations, to the extent the principles and obligations are relevant to members and their functions.	13 14 15 16
(3) A complaint about a member not complying with the code of conduct for members may be considered only by the Assembly or the committee.	17 18
(4) Subsection (3) has effect despite any other law, but the subsection does not apply to a court, tribunal or other entity if the entity may, under a law, consider an issue and the issue that is considered involves the commission, or claimed or suspected commission, of a criminal offence.	19 20 21 22
(5) Subsection (4) does not limit or otherwise affect the powers, rights and immunities of the Assembly and its committees and members.	23 24
<b>Parliamentary powers, rights and immunities [PCA s 17]</b>	25
93. The committee's area of responsibility about parliamentary powers, rights and immunities includes the powers, rights and immunities of the Assembly and its committees and members.	26 27 28

<b><i>Division 3—Public Accounts Committee</i></b>		1
<b>Area of responsibility of Public Accounts Committee [PCA s 18]</b>		2
<b>94.</b> The Public Accounts Committee's area of responsibility is to assess the integrity, economy, efficiency and effectiveness of government financial management by—		3 4 5
(a) examining government financial documents; and		6
(b) considering the annual and other reports of the auditor-general.		7
<b>Reference of issues to auditor-general [PCA s 19]</b>		8
<b>95.</b> The committee may refer issues within its area of responsibility to the auditor-general for consideration.		9 10
<b><i>Division 4—Public Works Committee</i></b>		11
<b>Areas of responsibility of Public Works Committee [PCA s 20]</b>		12
<b>96.(1)</b> The Public Works Committee's areas of responsibility are—		13
(a) works (" <b>public works</b> ") undertaken by an entity that is a constructing authority for the works if the committee decides to consider the works; and		14 15 16
(b) any major GOC works if the committee decides to consider the works.		17 18
<b>(2)</b> In deciding whether to consider public works, the committee may have regard to—		19 20
(a) the stated purpose of the works and the apparent suitability of the works for the purpose; and		21 22
(b) the necessity for, and the advisability of, the works; and		23
(c) value for money achieved, or likely to be achieved, by the works; and		24 25
(d) revenue produced by, and recurrent costs of, the works or estimates of revenue and costs for the works; and		26 27

*Parliament of Queensland*

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(e)	the present and prospective public value of the works, including, for example, consideration of the impact of the works on the community, economy and environment; and	1 2 3
(f)	procurement methods for the works; and	4
(g)	the balance of public and private sector involvement in the works; and	5 6
(h)	the performance of—	7
(i)	the constructing authority for the works; and	8
(ii)	the consultants and contractors for the works;	9
	with particular regard to the time taken for finishing the works and the cost and quality of it; and	10 11
(i)	the actual suitability of the works in meeting the needs and in achieving the stated purpose of the works.	12 13
	<b>Meaning of “constructing authority” for works [PCA s 21]</b>	14
	<b>97.(1)</b> An entity is a constructing authority for works if the entity is the State or a department.	15 16
	<b>(2)</b> An entity is also a constructing authority for a works if—	17
(a)	the entity is established under an Act, or under State or local government authorisation for a public, State or local government purpose; and	18 19 20
(b)	the works are funded from—	21
(i)	the public accounts; or	22
(ii)	the proceeds of a financial arrangement within the meaning of the <i>Statutory Bodies Financial Arrangements Act 1982</i> .	23 24
	<b>(3)</b> In addition, a GOC is a constructing authority for works if the works are undertaken specifically or substantially for a community service obligation of the GOC.	25 26 27
	<b>(4)</b> Also, an entity (a “ <b>commercial entity</b> ”) is a constructing authority for works if, under an agreement for the works—	28 29
(a)	the State or another entity representing the State—	30

*Parliament of Queensland*

(i)	has, or will or may have, a financial liability or interest; or	1
(ii)	has granted, or will or may grant land, or an interest in land or another right, privilege, monopoly, concession, franchise or interest; or	2 3 4
(iii)	has contributed, or will or may contribute, resources of any kind; and	5 6
(b)	the works have become, or will or may become, the absolute property of the State or another entity representing the State.	7 8
(5)	A GOC is a constructing authority for major GOC works referred to the committee by the Assembly.	9 10
<b>Issues to which committee may have regard [PCA s 27]</b>		11
98.	In considering works, the Public Works Committee may have regard to the issues mentioned in section 96(2)(a) to (i). <sup>33</sup>	12 13
<b>Entry and inspection of places [PCA s 28]</b>		14
99.(1)	The Public Works Committee may authorise a committee member or anyone else (the “authorised person”) to enter and inspect a place where works that the committee is considering is proposed to be, is being or has been carried out.	15 16 17 18
(2)	The authorised person may inspect anything in the place relevant to the works.	19 20
(3)	Nothing in subsection (1) prevents the committee from authorising all members of the committee to enter and inspect the place.	21 22
(4)	However, the authorised person may enter the place only if the committee or authorised person gives reasonable written notice about the entry to the chief executive of the constructing authority for the works.	23 24 25
(5)	On being given the notice, the chief executive must promptly make arrangements for the entry, including, for example, obtaining the consent of the following—	26 27 28

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<sup>33</sup> Section 96 (Areas of responsibility of Public Works Committee)

(a) if the place is occupied—the occupier of the place;	1
(b) if the place is not occupied—the owner of the place.	2
(6) The arrangements must ensure proper regard is given to safety.	3
(7) The authorised person may enter and inspect the place without the consent mentioned in subsection (5) if the chief executive attempted to obtain the consent, but—	4
(a) the attempt was unsuccessful (whether because the occupier or owner refused consent or otherwise); and	5
(b) the chief executive gave written notice about the entry (of at least 7 days) to the occupier or owner.	6
(8) In this section—	7
“ <b>building</b> ” includes any structure.	8
“ <b>chief executive</b> ”, of a constructing authority, includes its chief executive officer, however called.	9
“ <b>place</b> ” includes premises.	10
“ <b>premises</b> ” includes—	11
(a) a building; and	12
(b) a part of a building; and	13
(c) land where a building is situated.	14
<b>Restriction on procurement of capital works project [PCA s 29]</b>	15
<b>100.(1)</b> This section applies if the Assembly—	16
(a) refers works to the Public Works Committee; and	17
(b) directs that procurement for the works must not start until the committee has considered the works and reported to the Assembly about it.	18
(2) The works must not start or further proceed until the committee’s report is tabled in the Assembly and considered by it.	19
(3) This section applies despite any other Act.	20



<b>Dealing with commercially sensitive information in private session</b>	1
[PCA s 30]	2
<b>101.(1)</b> This section applies if, while considering works, it appears to the Public Works Committee that confidential information may be given to the committee in a public hearing and publication of the information at the hearing could—	3 4 5 6
(a) have a serious effect on the commercial interests of a GOC or commercial entity; or	7 8
(b) reveal trade secrets of a GOC or commercial entity.	9
<b>(2)</b> The committee must deal with the information in private session.	10
<b>(3)</b> This section does not limit any other power of a committee to deal with an issue in private session.	11 12
<b>Reporting commercially sensitive information to Assembly [PCA s 31]</b>	13
<b>102.(1)</b> This section applies if the Public Works Committee considers that information obtained by the committee while considering works could, if reported to the Assembly—	14 15 16
(a) have a serious effect on the commercial interests of a GOC or commercial entity; or	17 18
(b) reveal trade secrets of a GOC or commercial entity.	19
<b>(2)</b> The committee may report the information to the Assembly only if it considers it is in the public interest to report the information.	20 21
<i>Division 5—Scrutiny of Legislation Committee</i>	22
<b>Area of responsibility of Scrutiny of Legislation Committee [PCA s 22]</b>	23 24
<b>103.(1)</b> The Scrutiny of Legislation Committee's area of responsibility is to consider—	25 26

*Parliament of Queensland*

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(a) the application of fundamental legislative principles <sup>34</sup> to particular Bills and particular subordinate legislation; and	1 2
(b) the lawfulness of particular subordinate legislation;	3
by examining all Bills and subordinate legislation.	4
(2) The committee's area of responsibility includes monitoring generally the operation of—	5 6
(a) the following provisions of the <i>Legislative Standards Act 1992</i> —	7
• section 4 (Meaning of “fundamental legislative principles”)	8
• part 4 (Explanatory notes); and	9
(b) the following provisions of the <i>Statutory Instruments Act 1992</i> —	10
• section 9 (Meaning of “subordinate legislation”)	11
• part 5 (Guidelines for regulatory impact statements)	12
• part 6 (Procedures after making of subordinate legislation)	13
• part 7 (Staged automatic expiry of subordinate legislation)	14
• part 8 (Forms)	15
• part 10 (Transitional).	16
 <i>Division 6—Standing Orders Committee</i>	 17
 <b>Area of responsibility of Standing Orders Committee [PCA s 23]</b>	 18
104. The Standing Orders Committee's area of responsibility is standing orders about the conduct of business by, and the practices and the procedures of, the Assembly and its committees.	19 20 21

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<sup>34</sup> “Fundamental legislative principles” are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act 1992*, section 4(1)). The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

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**PART 5—CHANGE IN COMPOSITION OF STATUTORY COMMITTEE**

<b>Issues dealt with by previously constituted committees [PCA s 32]</b>	3
105.(1) If the composition of a statutory committee changes before it finishes dealing with an issue, the newly constituted committee may continue and finish dealing with the issue as if it had dealt with the issue from the beginning.	4 5 6 7
<i>Example—</i>	8
Evidence given to the previous committee may be taken to have been given to the newly constituted committee.	9 10
(2) Subsection (1) applies even if the committees are constituted during different Parliaments.	11 12

**CHAPTER 7—OTHER PROVISIONS ABOUT COMMITTEES**

<b>Act does not limit Assembly's powers [PCA s 5]</b>	13 14
106. The Assembly's power to establish committees, and confer functions and powers on committees (including statutory committees), is not limited by this Act.	15 16 17 18
<i>Example—</i>	19
The Assembly may, by resolution, establish a standing or select committee.	20
<b>Ministerial response to committee report [PCA s 24]</b>	21
107.(1) This section applies if a report of a committee, other than the Scrutiny of Legislation Committee, recommends the Government or a Minister should take particular action, or not take particular action, about an issue.	22 23 24 25

*Parliament of Queensland*

- 
- (2) The Minister who is responsible for the issue the subject of the report must provide the Assembly with a response. 1  
2
- (3) The response must set out— 3
- (a) any recommendations to be adopted, and the way and time within which they will be carried out; and 4  
5
- (b) any recommendations not to be adopted and the reasons for not adopting them. 6  
7
- (4) The Minister must table the response within 3 months after the report is tabled. 8  
9
- (5) If a Minister can not comply with subsection (4), the Minister must— 10  
11
- (a) within 3 months after the report is tabled, table an interim response and the Minister's reasons for not complying within 3 months; and 12  
13  
14
- (b) within 6 months after the report is tabled, table the response. 15
- (6) If the Assembly is not sitting, the Minister must give the response, or interim response and reasons, to the Clerk. 16  
17
- (7) The response, or interim response and reasons, is taken to have been tabled on the day they are received by the Clerk. 18  
19
- (8) The receipt of the response, or interim response and reasons, by the Clerk, and the day of the receipt, must be recorded in the Assembly's votes and proceedings for the next sitting day after the day of receipt. 20  
21  
22
- (9) The response, or interim response and reasons, is a response, or interim response and reasons, tabled in the Assembly. 23  
24
- (10) Subsection (1) does not prevent a Minister providing a response to a recommendation in a report of the Scrutiny of Legislation Committee if it is practicable for the Minister to provide the response having regard to the nature of the recommendation and the time when the report is made. 25  
26  
27  
28
- Example—* 29
- If the committee recommends that a Bill be amended because, in the committee's opinion, it does not have sufficient regard to fundamental legislative principles and the Bill has not been passed by the Assembly, it may be practicable for the Minister to provide a response. 30  
31  
32  
33

(11) Subsection (6) does not limit the Assembly's power by order to provide for the tabling of a response, or interim response and reasons, when the Assembly is not sitting.	1 2 3
(12) This section does not apply to an annual report of a committee.	4
<b>Annual report of committee [PCA s 33]</b>	5
108.(1) Within 4 months and 14 days after the end of each financial year, the chairperson of each committee that has met and conducted business during the year must table in the Assembly a report about the committee's activities during the year.	6 7 8 9
(2) The report must include—	10
(a) a list of meetings of the committee and the names of members attending or absent from each meeting; and	11 12
(b) a summary of issues considered by the committee, including a description of the more significant issues arising from the considerations; and	13 14 15
(c) a statement of the committee's revenue and spending for the year; and	16 17
(d) a brief description of responses by Ministers to recommendations of the committee.	18 19
(3) This section is subject to the Act or resolution of the Assembly under which the committee is established.	20 21

<b>CHAPTER 8—APPROPRIATION FOR ASSEMBLY</b>	1 2
<b>Separate appropriation for Assembly [EARC QPB s 200]</b>	3
<b>109.(1)</b> Legislation appropriating the consolidated fund for supplying services for the Assembly and the parliamentary service, including salaries payable under the <i>Parliamentary Service Act 1988</i> and the <i>Parliamentary Members' Salaries Act 1988</i> , is to be contained in a Bill separate from any other Bill about appropriations for other purposes.	4 5 6 7 8
<b>(2)</b> However, an ordinary appropriation Bill may contain appropriations for the supplying of services mentioned in subsection (1) pending the passing of an Annual Appropriation Act for the services.	9 10 11
<b>(3)</b> This section is to be read with the <i>Financial Administration and Audit Act 1977</i> .	12 13
<b>CHAPTER 9—REPEALS, AMENDMENTS AND TRANSITIONAL</b>	14 15
<b>PART 1—REPEALS</b>	16
<b>Repeals</b>	17
<b>110.</b> The following Acts are repealed—	18
• <i>Constitution Act Amendment Act 1896</i>	19
• <i>Parliamentary Committees Act 1995</i>	20
• <i>Parliamentary Papers Act 1992</i> .	21

<b>PART 2—AMENDMENT OF ACTS</b>		1
<b>INTERPRETATION ACT 1954</b>		2
<b>Act amended in pt 2</b>		3
111. This part amends the <i>Acts Interpretation Act 1954</i> .		4
<b>Omission of s 29A (Tabling of reports when Legislative Assembly not sitting)</b>		5
112. Section 29A—		6
<i>omit.</i>		7
		8
<b>PART 3—AMENDMENT OF THE DISTRICT COURT</b>		9
<b>ACT 1967</b>		10
<b>Act amended in pt 3</b>		11
113. This part amends the <i>District Court Act 1967</i> .		12
<b>Amendment of s 13 (Judges not to practise or sit in Parliament)</b>		13
114.(1) Section 13, heading, 'or sit in Parliament'—		14
<i>omit.</i>		15
(2) Section 13, ', and a judge shall not be capable of being summoned or being chosen as a member of the Legislative Assembly'—		16
<i>omit.</i>		17
		18

<b>PART 4—AMENDMENT OF ELECTORAL ACT 1992</b>	1
<b>Act amended in pt 4</b>	2
115. This part amends the <i>Electoral Act 1992</i> .	3
<b>Replacement of s 83 (Who may be nominated)</b>	4
116. Section 83—	5
<i>omit, insert—</i>	6
‘Who may be nominated	7
‘83. Provisions about who may be nominated as a candidate for election, and may be elected, as a member of the Assembly for an electoral district are set out in the <i>Parliament of Queensland Act 1999</i> , section 64. <sup>35</sup> ’.	8
	9
	10
<b>PART 5—AMENDMENT OF LOCAL GOVERNMENT ACT 1993</b>	11
	12
<b>Act amended in pt 5</b>	13
117. This part amends the <i>Local Government Act 1993</i> .	14
<b>Omission of s 224 (Termination of membership of Legislative Assembly on becoming councillor)</b>	15
	16
118. Section 224—	17
<i>omit.</i>	18

<sup>35</sup> *Parliament of Queensland Act 1999*, section 64 (Qualifications to be a candidate and be elected a member)



<b>PART 6—AMENDMENT OF PARLIAMENTARY MEMBERS' SALARIES ACT 1988</b>	1
	2
<b>Act amended in pt 6</b>	3
<b>119.</b> This part amends the <i>Parliamentary Members' Salaries Act 1988</i> .	4
<b>Amendment of s 2 (Salary entitlement of Legislative Assembly members)</b>	5
	6
<b>120.</b> Section 2(2), 'the <i>Constitution Act Amendment Act 1896</i> '—	7
<i>omit, insert—</i>	8
'part 6'.	9
<b>Insertion of new ss 6A and 6B</b>	10
<b>121.</b> After section 6—	11
<i>insert—</i>	12
' <b>Additional salary of Deputy Speaker [CAAA 1896 s 3]</b>	13
' <b>6A.</b> If the Chairperson of Committees acts as the Speaker for a continuous period of 30 days or more, the chairperson is to be paid for the period additional salary at the rate for the time being applicable to the office of the Speaker, instead of the additional salary payable to him or her as chairperson.	14
	15
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' <b>Additional salary of temporary Chairperson of Committees [CAAA 1896 s 3]</b>	19
	20
' <b>6B.</b> If a temporary Chairperson of Committees acts in the office of the Chairperson of Committees for a continuous period of 30 days or more, the temporary chairperson is to be paid for the period additional salary at the rate for the time being applicable to the office of the Chairperson of Committees, in addition to the salary payable to him or her as a member.'	21
	22
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<b>Renumbering of pt 6</b>	1
<b>122. Part 6—</b>	2
<i>renumber as part 7.</i>	3
<b>Renumbering of s 12</b>	4
<b>123. Section 12—</b>	5
<i>renumber as section 15.</i>	6
<b>Insertion of new pt 6</b>	7
<b>124. After section 11—</b>	8
<i>insert—</i>	9
<b>‘PART 6—WHEN SALARIES ARE PAID</b>	10
	11
<b>‘Salary when to be paid [CAAA 1896 s 6]</b>	12
<b>‘12.(1) A member is as follows entitled to salary as a member from the</b>	13
<b>day of the poll at which the person is elected until—</b>	14
(a) if the person is a member on a dissolution of the Parliament and	15
is not elected at the poll after the dissolution—the day of the poll;	16
(b) in any other case—the day on which the person stops being a	17
member.	18
<b>‘(2) An officer of the Assembly is entitled as follows to additional salary</b>	19
<b>under section 5<sup>36</sup> from the day of—</b>	20
(a) for an officer appointed by the Assembly—the appointment;	21
(b) in any other case—notification to the Speaker of the appointment	22
to the Assembly;	23
<b>until the day on which the person stops holding the office.</b>	24
<b>‘(3) For subsection (2), but subject to subsection (4), the person stops</b>	25
<b>holding the office on the day on which—</b>	26

<sup>36</sup> Section 5 (Rates of additional salaries)

*Parliament of Queensland*

- (a) the person stops being a member or resigns the office; or 1
- (b) for an officer appointed by the Assembly—a successor is appointed to the office; or 2  
3
- (c) in any other case—the Assembly is notified of the appointment of a successor. 4  
5
- ‘(4) For subsection (3), if the person is, on the dissolution of the Parliament, an officer mentioned in section 5(1)(a) to (h)<sup>37</sup> the person does not stop being a member on the dissolution, but if the person is not re-elected at the poll after the dissolution, the person is taken to stop being a member on the day of the poll. 6  
7  
8  
9  
10
- ‘(5) All the amounts are to be certified fortnightly by the Clerk, and when so certified are to be paid out of the consolidated fund. 11  
12
- ‘Apparent vacation of seat when Assembly not sitting 13**
- ‘13.(1) This section applies if at any time when the Assembly is not sitting it is made to appear to the Governor in Council that the seat of any member has become vacant for any cause. 14  
15  
16
- ‘(2) The Governor in Council may direct the Treasurer to retain the amounts that would be payable to the member for the interval between the happening of the cause and the next sitting or session of the Assembly. 17  
18  
19
- ‘(3) If the Assembly declares the seat to have been vacated, no payment is to be made to the member for the time that has elapsed since the happening of the cause. 20  
21  
22
- ‘(4) However, if the seat is not declared to have been vacated, the amounts retained by the Treasurer is to be immediately paid to the member. 23  
24

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<sup>37</sup> Section 5 (Rates of additional salaries)

<b>'Annual reversion to treasury of undrawn moneys</b>	1
<b>'14. (1)</b> If amounts payable to any member under any provision of this part have not been drawn by the member before the expiration of 7 days after 1 July in each year, the amounts are to revert to the treasury and become part of the consolidated fund.	2 3 4 5
<b>'(2)</b> The member is no longer entitled to payment of the amounts.'	6

## **PART 7—TRANSITIONAL PROVISIONS**

<b>Continuation of existing statutory committees</b>	8
<b>125.</b> Each statutory committee established under section 80 <sup>38</sup> is a continuation of the corresponding committee established under the <i>Parliamentary Committees Act 1995</i> .	9 10 11
<b>Continuation of the Speaker</b>	12
<b>126.</b> The member holding office as Speaker immediately before the commencement of this section, from the commencement is taken to hold office under section 14.	13 14 15
<b>Continuation of the Chairperson of Committees</b>	16
<b>127.</b> The member holding office as Chairperson of Committees immediately before the commencement of this section, from the commencement is taken to hold office under section 17.	17 18 19

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<sup>38</sup> Section 80 (Establishment of statutory committees)

**Saving of standing rules and orders**

128. The standing rules and orders of the Assembly in existence immediately before the commencement of this section, from the commencement are taken to have been prepared and adopted under section 11.

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**SCHEDULE**

1

section 3

2

**DICTIONARY**

3

<b>“Annual Appropriation Act”</b> for chapter 6, see section 79.	4
<b>“Assembly”</b> means the Legislative Assembly.	5
<b>“authorised committee”</b> see section 25(2).	6
<b>“authorising person”</b> for chapter 4, part 3, see section 48.	7
<b>“Bill”</b> means a Bill for an Act proposed for enactment by the Parliament.	8
<b>“candidate”</b> , for election, see <i>Electoral Act 1992</i> , section 3, definition “candidate”.	9 10
<b>“Chairperson of Committees”</b> means the Chairperson of Committees in the Assembly.	11 12
<b>“chief reporter”</b> means the chief reporter, parliamentary reporting staff.	13
<b>“Clerk”</b> means the Clerk of the Parliament.	14
<b>“commercial entity”</b> for chapter 6, see section 79.	15
<b>“committee”</b> means a committee of the Assembly, whether or not a statutory committee.	16 17
<b>“community service obligation”</b> for chapter 6, see section 79.	18
<b>“consider”</b> for chapter 6, see section 79.	19
<b>“constructing authority”</b> for chapter 6, see section 79.	20
<b>“entity”</b> of a State, means—	21
(a) the relevant State; or	22
(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office, or other entity, established for a government purpose of the relevant State; or	23 24 25

## SCHEDULE (continued)

(c) a part of an entity mentioned in paragraph (b).	1
<b>“entity of the Commonwealth”</b> , means—	2
(a) the Commonwealth; or	3
(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office, or other entity, established for a Commonwealth government purpose; or	4 5 6
(c) a part of an entity mentioned in paragraph (b).	7
<b>“fundamental legislative principles”</b> see the <i>Legislative Standards Act 1992</i> , section 4.	8 9
<b>“government printer”</b> in relation to a document or evidence that the Assembly or a committee orders or otherwise authorises to be printed, or that is taken to be printed by the Assembly, includes a person authorised by the Assembly to print the document or evidence.	10 11 12 13
<b>“inquiry”</b> means an inquiry held under the authority of the Assembly.	14
<b>“major GOC works”</b> for chapter 6, see section 79.	15
<b>“medical certificates”</b> means certificates of legally qualified medical practitioners.	16 17
<b>“member”</b> means a member of the Assembly.	18
<b>“office”</b> held by a person, includes position.	19
<b>“paid public appointment”</b> see section 65(1).	20
<b>“paid State appointment”</b> see section 65(3).	21
<b>“possession”—</b>	22
(a) for a document in the possession of the Assembly, or a committee or an inquiry, includes a document tabled in, or presented or submitted to the Assembly, the committee or the inquiry; and	23 24 25 26
(b) generally includes the following—	27
(i) control;	28
(ii) power.	29

## SCHEDULE (continued)

<b>“proceedings in the Assembly”</b> see section 9.	1
<b>“proposed national scheme legislation”</b> for chapter 6, see section 79.	2
<b>“public works”</b> for chapter 6, see section 79.	3
<b>“reward”</b> includes fee.	4
<b>“rights”</b> includes privileges.	5
<b>“Speaker”</b> means the Speaker of the Assembly.	6
<b>“standing rules and orders”</b> means the standing rules and orders made under section 11.	7 8
<b>“State entity”</b> means—	9
(a) the State; or	10
(b) a department, service, agency, authority, commission, corporation, instrumentality, board, office, or other entity, established for a State government purpose; or	11 12 13
(c) a part of an entity mentioned in paragraph (b).	14
<b>“statutory committee”</b> means a statutory committee established under section 80.	15 16
<b>“tabled”</b> includes laid before.	17
<b>“works”</b> for chapter 6, see section 79.	18 19



## KEY

		1
AIA	<i>Acts Interpretation Act 1954</i>	2
Bill Rts	Bill of Rights (1 William and Mary Sess.2.c.2 (Imp))	3
CA	<i>Constitution Act 1867</i>	4
CAAA 1896	<i>Constitution Act Amendment Act 1896</i>	5
DCA	<i>District Court Act 1967</i>	6
EA	<i>Electoral Act 1992</i>	7
EARC	Electoral and Administrative Review Commission	8
EARC QCA	<i>Queensland Constitution Act 1993 (Reprint)</i> in Appendix A to EARC's <i>Report on Consolidation and Review of the Queensland Constitution (1993)</i>	9 10 11
EARC QPB	<i>Queensland Parliament Bill 1993</i> in Appendix G to EARC's <i>Report on Review of Parliamentary Committees (1993)</i>	12 13
LAA	<i>Legislative Assembly Act 1867</i>	14
LGA	<i>Local Government Act 1993</i>	15
OPA	<i>Officials in Parliament Act 1896</i>	16
PCA	<i>Parliamentary Committees Act 1995</i>	17
PPA	<i>Parliamentary Papers Act 1992</i>	18
PPVA	<i>Parliamentary Privileges Act 1987 (Cwlth)</i>	19
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		21

## PARLIAMENT OF QUEENSLAND BILL 1999

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### FINAL DRAFT

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### NOTES TO THE BILL

The attached final draft Parliament of Queensland Bill 1999 ('the Parliament Bill' or 'the Bill') represents the Legal, Constitutional and Administrative Review Committee's proposal for consolidating the law relating to the Parliament, its powers and procedures, its members and committees. This final draft Bill supersedes the consultation draft Bill which the committee released for public consultation in its May 1998 interim report on the consolidation of the Queensland Constitution. Changes have been made to the Bill to incorporate suggestions made in public submissions to the committee.

These notes to the Bill consequently supersede the notes to the consultation draft version of the Bill (contained in Part III of the interim report). Nevertheless, the notes to the majority of clauses are unchanged from those to the consultation draft Bill.

These notes explain each clause of the Parliament Bill, its origins in existing law (also noted in the clause headings in the actual Bill) and any major changes that have been made in rewording the existing provision(s) which the clause represents. The notes also highlight proposed changes to existing law that might be regarded as substantial in nature.

Shaded boxes are used to explain how EARC (and, where relevant, the PCEAR) had approached the relocation of relevant existing provisions when those bodies considered the issues. The boxed text especially highlights instances where this committee's approach diverges from EARC's proposals.

The boxes also contain commentary on any substantial modifications made to a clause since the consultation draft Bill was released. Minor changes are not noted. An asterisk ("\*") at the start of the notes for a clause denotes that at least some change has been made to the clause since the consultation draft Bill was released. Mere renumbering of clauses is not referred to in the notes.

A number of global changes have been made to the consultation draft Parliament of Queensland Bill 1998. For example, in its *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members*, the Members' Ethics and Parliamentary Privileges Committee stated its belief that the most appropriate term to describe 'parliamentary privilege' is the 'powers, rights and immunities of Parliament, its committees and members'. Where appropriate, this change in terminology has been effected in this Bill.

Another example is that the phrase 'laid in the Assembly' has been replaced with 'tabled in the Assembly' throughout the Bill.

The last page of the Bill provides a key to abbreviated names of Acts referred to in the Bill and in these notes.

## CHAPTER 1—PRELIMINARY

**Clause 1** provides the short title of the Act.

**Clause 2** provides for the commencement of the Act. The clause provides that the Act commences on a day to be fixed by proclamation.

**Clause 3** provides that the dictionary in the schedule defines particular words used in the Bill.

**Clause 4** (new) explains the object of the Bill. It explains that, whilst the Bill generally consolidates existing laws incidental to the operation of the Legislative Assembly, there are a number of laws which have been reformed.

**Clause 5** (new) explains the relationship between the Bill and other Acts that concern the Parliament of Queensland. The clause provides that:

- the *Constitution of Queensland Act 1999* contains provisions about the establishment of the Parliament of Queensland, its members and powers;
- the *Parliamentary Service Act 1988* contains laws about support services for the Legislative Assembly; and
- the *Parliamentary Members' Salaries Act 1988* contains laws about the salaries of members of the Legislative Assembly.

\***Clause 6** [*Parliamentary Papers Act 1992* (PPA), s 13] provides that nothing in the Bill derogates from any power, right or immunity of the Assembly or its members or committees. 'Right' is defined in the dictionary to include privilege. Clause 6 is largely based on PPA s 13 but has been expanded to cover the entire Bill, that is, not just the provisions of the PPA being consolidated as clauses in chapters 2 and 4 of the Bill.

**Clause 7** (new) explains when a member takes a seat in the Legislative Assembly. It is important for a number of clauses in the Bill to establish the precise time a member takes his or her seat [for example, clause 72 (Vacating seats of members in particular circumstances)]. The clause provides that a member takes his or her seat on taking the oath mentioned in s 21 of the *Constitution of Queensland Act 1999*.

## CHAPTER 2—PROCEEDINGS IN THE LEGISLATIVE ASSEMBLY

### *Provisions consolidated:*

- *Bill of Rights 1688* (Imp) Article 9
- PPA s 3                      Meaning of "proceedings in Parliament"

Article 9 of the *Bill of Rights 1688* (Imp) enshrines the most important provision relating to parliamentary privilege—freedom of speech and debates in the Parliament. The article provides that speeches, debates or other proceedings in the Parliament cannot be impeached or questioned in any court or place out of Parliament. One of the more obvious effects of the article is to ensure that words spoken in the Parliament cannot be used as the basis for legal proceedings. For

example, a person cannot use words spoken in Parliament as a basis for defamation proceedings. However, the overall effect of article 9 is much wider. The article is designed to protect the Parliament, its committees, members and witnesses from any adverse action by other organs of the state, particularly the courts or other tribunals, for what is said or done in Parliament. Therefore, the article operates to:

- forbid cross-examination in a court, commission of inquiry or other tribunal of anything said by a member or witness in, or before, Parliament or a parliamentary committee; and
- forbid the questioning of any document prepared for, or tabled in, the Parliament or a committee.

\***Clause 8** (*Bill of Rights* article 9) is a faithful rewrite of article 9 with the replacement of the term 'Parliament' with 'Assembly'. Currently, article 9 of the *Bill of Rights* applies in Queensland by virtue of s 40A of the CA.

However, out of an abundance of caution, a new subclause (2) has been inserted to remove any doubt that clause 8(1) is intended to have the same scope and effect as article 9 had in Queensland immediately before the commencement of subclause (1).

The direct importation of article 9 into a Queensland statute was the approach that was adopted by EARC (see EARC QPB clause 6), although there was no commentary explaining EARC's reasons. However, considering the importance of article 9 to Queensland's constitutional framework, the committee has decided to adopt EARC's approach and expressly incorporate the article in the Bill, rather than to continue to rely on the imperial statute.

\***Clause 9** (PPA s 3) provides a definition of the term 'proceedings in the Assembly'. Subclauses (1) and (2) largely reproduce ss 3(2) and (3) of the PPA but substitute the term 'Assembly' for 'Parliament'. The previous reference to article 9 of the *Bill of Rights* (as appears in PPA s 3) has been deleted from clause 9 as clause 8 now incorporates the terms of article 9.

Subclause (3) has been added in accordance with a recommendation of the Members' Ethics and Parliamentary Privileges Committee in its Report No 26, *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members*, (at p 19). This subclause is designed to overcome difficulties which might arise in relation to documents which are brought into existence for some purpose other than specifically for the purpose of business of the Assembly, and which later become parliamentary proceedings. The new subclause makes it clear that such documents can, if their publication has been authorised by the Assembly or the relevant committee, be questioned or impeached in respect of that other purpose.

## CHAPTER 3—PROCEDURES AND POWERS

### PART 1—MISCELLANEOUS

**Provisions consolidated:**

- LAA s 14                      Assembly may proceed to business although writs not exceeding 5 shall not have been returned
- CA s 8                         Standing rules and orders to be made
- LAA s 13                      Quorum, division and casting vote

**Clause 10** [*Legislative Assembly Act 1867* (LAA), s 14] provides that the Assembly may proceed to transact business even though not more than five writs of election have not been returned or, that in not more than 5 electoral districts, the electors have failed to elect a member to the Assembly. This clause slightly amends s 14 of the LAA.

In both its October 1992 *Report on Review of Parliamentary Committees* (EARC's 'committees report') (at para 10.40) and its August 1993 *Report on Consolidation and Review of the Queensland Constitution* (EARC's 'consolidation report') (at para 6.102 and paras 6.249-6.256), EARC recommended the repeal of s 14 of the LAA. EARC noted that s 14 is based on the practice specified in s 46 of the former *Elections Act 1983* of issuing an election writ in each of the 89 electoral districts. EARC also noted that that Act was repealed by the *Electoral Act 1992* and that, under s 123 of the *Electoral Act*, the Electoral Commission is required to return a single writ for a Legislative Assembly general election. EARC stated that, as there is now only one writ for an election, s 14 of the LAA was no longer applicable. Therefore, EARC recommended its repeal.

The committee has come to a different conclusion. The committee believes that there is a necessity for a provision such as s 14. Clause 10, as does s 14 of the LAA, refers to not more than 5 writs or 5 electoral districts. The provision would thus be operative under the current *Electoral Act* or, if the previous practice of a writ for each electoral district was reintroduced, under that new law.

\***Clause 11** [*Constitution Act 1867* (CA), s 8] is largely a rewrite in modern language of s 8 of the CA and provides the circumstances in which standing rules and orders may be made for the Assembly, what those standing rules and orders may provide for and the manner in which those standing rules and orders are to be adopted.

The committee has adopted EARC's recommendation (committees report at para 11.24) that the requirement that the standing orders are to be approved by the Governor be deleted. The committee believes that the internal proceedings of the Assembly should not be a matter requiring approval from the Executive. In this regard, the committee notes that approval by the Governor, whilst required in South Australia, New South Wales and Tasmania, is not required in Western Australia and Victoria.

Subclause 3 has been amended since the consultation draft Bill to make it clear that the Assembly can adopt a standing rule or order which is to come into effect at a future time.

**Clause 12** (LAA s 13) provides that at a meeting of the Assembly, 16 members exclusive of the Speaker constitute a quorum. This provision faithfully reproduces in modern language part of s 13 of the LAA.

Clause 13 of EARC's Constitution Bill 1993 provided that 23 members (approx. a quarter of the membership) of the Legislative Assembly constitute a quorum. However, the PCEAR review (paras 80-85) of EARC's Bill disagreed with EARC's proposal and recommended the quorum of 16 be retained. The LCARC endorses the PCEAR's recommendation.

**Clause 13** (LAA s 13) reproduces in modern language that part of s 13 of the LAA which provides that a question before the Assembly or a Committee of the Whole House is decided by a majority of members present and voting, and that the Speaker or the Chairperson of Committees presiding has no deliberative vote but, if the votes are equal, has a casting vote.

EARC recommended in its constitution report (at para 6.56) that s 13 be incorporated into its Queensland Constitution Bill. However, the committee believes it is more appropriately placed in the Parliament of Queensland Bill.

## PART 2—THE SPEAKER

### **Provisions consolidated:**

- LAA s 12 Election of the Speaker
- CAAA 1896 s 3(4) Salaries of office holders in Assembly

**Clause 14** (LAA s 12) provides that members of the Assembly must immediately on sitting after every general election proceed to elect a member to be a Speaker. The clause further provides that the Speaker must preside at all meetings in the Assembly unless otherwise provided by the standing rules and orders. The clause also provides that the Speaker stops holding office on resignation or removal by a vote of the Assembly. This is a faithful, though modern, rewrite of s 12 of the LAA. Clause 14 has been drafted to be read with the current *Standing Rules and Orders of the Legislative Assembly* which provide that the longest continually serving member of the House, not being a Minister, shall preside over the election of the Speaker (See SO 4).

**Clause 15** (new) is a new clause which provides that the Speaker stops holding office at the end of the day before the first sitting day of the new Assembly after a general election. This provision has been added to provide certainty as to the tenure of the Speaker's office. Currently, there is no explicit statutory formula as to when the Speaker's office is vacated, although in practice the office of the Speaker is regarded as ending on the day before the new Parliament. This practice has been given further weight by the provisions of the PMSA which provide that office holders are to be paid until such time as their successor is appointed.

\***Clause 16** [*Constitution Act Amendment Act 1896* (CAAA 1896), s 3(4)] provides that during any vacancy in the Speaker's office, or during a period when the Speaker is absent from duty, away from the State, or is for another reason unable to perform the duties of the office, the Chairperson of Committees may act as the Speaker. Clause 16(3) replaces s 3(4) of the CAAA 1896. The provision in no way affects the way that the Assembly is presided over when it is sitting in the absence of the Speaker—which is dealt with by the *Standing Rules and Orders of the Legislative Assembly* (see SO 10-14). Subclauses (4)-(6) are new and provide who may act as Speaker in the absence of both the Speaker and the Chairperson of Committees.

## PART 3—CHAIRPERSON OF COMMITTEES

\***Clause 17** (new) provides—in terms similar to clause 14 in relation to the Speaker—that the members of the Assembly must as soon as practicable on sitting after every general election proceed to appoint a person to be Chairperson of Committees. The Chairperson of Committees must preside at all meetings of the Committee of the Whole House, subject to the standing rules and orders.

The committee has amended clause 17 of the consultation draft Bill to replace the word 'immediately' with 'as soon as practicable', and to replace the word 'elect' with 'appoint'. These amendments:

- accommodate the practice of appointing the Chairperson of Committees on the third sitting day of a new Parliament; and
- ensure consistency with the current *Standing Rules and Orders of the Legislative Assembly* in relation to the appointment (rather than election) of the Chairperson of the Committees (See SO 12).

**Clause 18** (new) provides (in similar terms to clause 15 in relation to the Speaker) that the Chairperson of Committees continues to hold office until the eve of the sitting of the new Parliament.

#### PART 4—PROXY VOTING

**Provisions consolidated:**

- LAA 1867 s 15 Voting as and for a member absent through ill health
- LAA 1867 s 16 Cesser of proxy
- LAA 1867 s 18 Saving of s 7

EARC had recommended that ss 15 and 16 of the LAA 1867 relating to proxy voting be repealed. EARC expressed the view in its committees report (at paras 10.36-10.37) that these provisions have no place in a modern statute dealing with Parliament. EARC reasoned that these provisions were inserted in 1922 during a bitter session when the Government's majority had been reduced by defections and illness and there was a refusal to grant pairs.

However, the PCEAR noted in its consolidation report (at paras 96-97) that research revealed that the provisions had in fact been utilised three times since 1923, and that all of those occasions occurred in 1986 when members were incapacitated due to surgical operations. The PCEAR stated: *Technically the provision functions as a last resort, available only if the absent Member "through no fault on his part has failed to secure a "Pair" during the period specified" ... In the light of this the Committee believes that the provision for proxy voting has not been abused and should be retained to be used as a last resort in case of medical emergencies. However, the Committee does not think it appropriate that the provision should be based on the inability of a member to obtain a pair. The practice of pairing has no legal status. The Committee recommends that approval of a member's notification of a proxy vote should be based on a justified medical emergency, evidenced by at least two medical certificates presented to the Speaker in the manner currently prescribed in s 15 of the Legislative Assembly Act 1867.*

Clauses 19-24 of the Bill faithfully reproduce in modern drafting style the relevant provisions of the LAA.

**Clause 19** (LAA s15) provides that a member, who through no fault of their own and because of a justified medical emergency evidenced by at least two medical certificates, may vote by proxy. Clause 19 provides for the procedure as to how medical certificates and notification is to be dealt with by the Speaker.

**Clause 20** (LAA s 15) sets out the manner in which a person who is voting for another by a proxy must declare the vote.

**Clause 21** (LAA s 15) sets out how a proxy is substituted.

**Clause 22** (LAA s 15) provides that any certificate, notification or declaration by the Speaker under this part ends on the last day of the session of the Assembly in which the certificate, notification or declaration was received or made. However, this does not prevent renewal of the certificate, notification or declaration in appropriate circumstances.

**Clause 23** (LAA s 16) provides that the proxy ends if:

- the member attends any sitting of the Assembly or any Committee of the Whole House; or
- the Speaker is satisfied that the member is able to attend the sittings; or
- the member notifies that the member's vote is no longer to be declared by proxy.

**Clause 24** (LAA s 18) provides that the part relating to proxy voting does not affect other provisions relating to vacating seats of members of the Assembly.

## \*CHAPTER 4—POWERS, RIGHTS AND IMMUNITIES

### PART 1—POWERS TO REQUIRE ATTENDANCE AND PRODUCTION

**Provisions consolidated:**

- |            |  |
|------------|--|
| • CA s 41  | Power to order the attendance of persons                                       |
| • CA s 42  | Order to attend to be notified by summons                                      |
| • CA s 43  | Attendance of members  |
| • CA s 44  | Objection to answer questions or produce documents to be reported to the House |
| • PCA s 25 | Power to call for persons etc  |
| • PCA s 26 | Privilege against self-incrimination   |

The powers, rights and immunities of the Assembly, and, in particular, the power of the Assembly and its committees to require attendance and production of persons, papers and things, is currently provided for in the CA and in the PCA. Part 1 of chapter 4 of the Bill consolidates the relevant provisions of those two Acts and standardises the exceptions to the exercise of the powers and the procedures to be followed. Clause 9 of the accompanying draft Constitution of Queensland Bill 1999 is the primary source of the powers, rights and immunities of the Assembly, its committees and members.

**Clause 25** [CA s 41; *Parliamentary Committees Act 1995* (PCA), s 25] provides that the Assembly or a committee authorised by the Assembly may call for persons, documents and other things. The clause also provides the definition of an 'authorised committee'. The term 'authorised committee' is a new concept that has been introduced as a shorthand method of describing a committee which has been authorised by the Assembly or an Act to call for persons, documents or things. Clause 25(3) makes it clear that a statutory committee may also call for persons, documents or other things and is, therefore, also an authorised committee. (A 'statutory committee' is a committee established by cl 80 and is defined as such in the dictionary.) Clause 25(4) makes it clear that a committee which is not an authorised committee may nonetheless receive voluntary testimonial and documentary evidence.

**Clause 26** [CA s 42(1)-(3)] provides that a person ordered to attend must be given a summons issued by either the Speaker (if ordered to attend by the Assembly) or the Clerk of the Parliament



on notification by the committee's chairperson (if ordered to attend by a committee). Clause 26(2) provides that the summons must state a reasonable time and place for attendance and reasonable particulars of any documents or things ordered to be produced. Clause 26(1) is a faithful reproduction in modern language of s 42(1) of the CA. Clause 26(2) is a rewrite of s 42(2) of the CA. It should be noted that s 42(3) of the CA which deals with the service of the summons, has not been incorporated into the Bill because the service of documents is now provided for by s 39 of the AIA.

Clause 26(2) differs from cl 9(2) of EARC's Parliament Bill 1993 in one particular, namely, clause 26(2) does not require the provision of reasonable particulars in the summons of the matter for which attendance is required. Such a requirement is not dealt with in any of the existing provisions, and the committee does not believe that it is required within the provision. Committees are accountable to the Parliament and the Parliament sets out rules and procedures for committees to follow in their dealings with witnesses. The committee is concerned that setting out statutory requirements for committees about the content of summons may result in such actions being open to judicial review.

**Clause 27** [CA 42(4)] provides that a person (who is not a member) ordered to attend is entitled to be paid a reasonable amount for expenses of attendance as decided by the Speaker.

Section 42(4) of the CA currently provides that a person summoned shall be paid a reasonable sum for his or her expenses of attendance if the person does not reside within 10 kilometres of the Assembly's chambers.

Draft cl 15 of EARC's Parliament Bill 1993 actually set the amount of expenses for attendance as equal to that payable for an expert witness attending the Supreme Court under the Rules of the Supreme Court. The committee prefers to leave the amount for expenses to be decided by the Speaker. The committee envisions that the Speaker would issue a general policy as to expenses and that in formulating that policy regard would be had to the fees paid in the various courts and tribunals of the State.

**\*Clause 28** (CA 43) is a faithful rewrite in modern style of s 43 of the CA and provides that a member of the Assembly may be ordered by the Assembly to attend before the Assembly or before an authorised committee of the Assembly without a summons.

The words 'by the Assembly' have been inserted after the word 'ordered' since the consultation draft Bill to ensure that a member can only be required by the Assembly (and not by a committee) to attend before the Assembly or a committee without a summons. This accords with CA s 43.

**Clause 29** (new) provides that the Assembly or an authorised committee may require a person to answer questions under oath or affirmation. Clause 29 is a new provision and is based upon cl 11 of EARC's Parliament Bill 1993.

**\*Clause 30** (new) makes it clear that a person ordered to attend before the Assembly or a committee must not fail to attend as ordered. A person may be excused from a failure to attend by a committee (where ordered to attend by the committee) or the Assembly (in any case). Clause 30 is a new provision based upon cl 12 of EARC's Parliament Bill 1993.

**\*Clause 31** (new) makes it clear that a person ordered to attend must not, if required, fail to be sworn or make an affirmation, or fail to answer a question, or fail to produce a document or other thing that the person was ordered to produce. A person may be excused from such a failure by a committee (where ordered to attend by the committee) or the Assembly (in any case). Clause 31 is a new provision based upon cl 13 of EARC's Parliament Bill 1993.

Clauses 30 and 31 have been amended since the consultation draft Bill to enable a committee or the Assembly (as the case may be) to excuse persons from certain failures.

There is no equivalent to clauses 30 and 31 in the CA as such. However, it is made clear in s 45 of the CA that failure to attend pursuant to an order, refusal to be examined or to answer any questions is a contempt. Note that s 58 of the *Criminal Code* provides a criminal offence for failure to attend or give evidence to the Parliament or a committee.

**Clause 32** (CA s 44; PCA s 26) provides that a person may object to answering a question or producing a document or other thing if:

- the answer, document or thing is either of a private nature and does not affect the subject of inquiry; or
- the giving of the answer or the producing of the document or thing might tend to incriminate the person and the person would have a claim of privilege against self-incrimination in a Supreme Court action.

Clause 32 consolidates the only grounds of objection to the coercive powers of the Assembly and its authorised committees currently found in s 44 of the CA and s 26 of the PCA.

**Clause 33** (CA s 44; PCA s 26) explains the procedure that is to take place when a person objects to answering a question or producing a document or other thing to the Assembly. Whilst this is a new provision, it is based upon existing CA s 44 and PCA s 26.

**Clause 34** (CA s 44; PCA s 26) explains the procedure that is to take place when a person objects to answering a question or producing a document or thing ordered by a committee. Clause 34 is a new provision primarily based upon s 26 of the PCA.

**Clause 35** [PCA s 26(6)] sets out the matters to which the Assembly is to have regard to when considering objections made to the Assembly or a committee. The Assembly must have regard to the public interest in having a question answered or the documents or other things produced and the public interest in providing appropriate protection to individuals against invasions of privacy or against self-incrimination. Clause 35 largely encapsulates the concepts that have been provided as exceptions to the coercive powers of the Assembly and its committees set out in s 44 of the CA and s 26 of the PCA.

\***Clause 36** [PCA s 26(9) and (10)] is a faithful reproduction of s 26(9) of the PCA and provides that evidence may not be given in any proceeding of an answer given by a person before a committee, or of the fact the person produced a document or other thing to a committee.

Clause 36(1) has been amended since the consultation draft Bill so as to revert to an exact reproduction of s 26(9) of the PCA. This is in accordance with submissions received by the committee and a recommendation of the Members' Ethics and Parliamentary Privileges Committee in its Report No 26, *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members* (at p 22). The concern with the consultation draft version of this clause was that it was drafted too widely in that the PCA provisions on which it was based only apply to evidence given to committees, not to the Assembly. In its former form the clause might have been interpreted widely to preclude evidence which would not impeach or question parliamentary proceedings and hence unduly restrict the use of proceedings.

Clause 36(2)(a) and (b) provide that clause 36(1) does not apply to proceedings before the Assembly or a committee of the Assembly, or a criminal proceeding about the falsity, threatening or offensive nature of the evidence, document information or other thing.

Clause 36(2)(c) is a new provision. It provides a further exception to the general rule in cl 36(1) by also allowing the use of the evidence in a criminal proceeding about the person's failure to

produce a document or thing or refusal to answer a question before the Assembly or a committee. Clause 36(2)(c) addresses an anomaly in the existing law, whereby an offence for such conduct exists but there is doubt as to whether the critical evidence to prove the offence could ever be used.

## PART 2—CONTEMPTS

### *Provisions consolidated:*

- CA s 45 House empowered to punish summarily for certain contempts
- CA s 46 Speaker to issue warrant
- CA s 47 Persons disturbing proceedings of House may be arrested without warrant
- CA s 48 Form of warrant
- CA s 49 Execution of verbal order or warrant
- CA s 50 Doors may be broken in executing warrant
- CA s 52 House may direct Attorney-General to prosecute for other contempts
- LAA s 7E Power of Treasurer to retain moneys being allowance to members adjudged guilty of contempt and ordered to pay fine

\***Clause 37** [*Parliamentary Privileges Act 1987* (Cth) (PPVA), s 3(3), 4] defines what constitutes contempt of the Assembly. This definition is based on the definition of contempt contained in the *Parliamentary Privileges Act 1987* (Cth). The examples of what constitutes contempt are drawn from CA s 45, although some examples have been amended to incorporate references to committees. The extension of these matters to committees is thought necessary because of the more extensive and active committee system that now exists in the Queensland Parliament.

\***Clause 38** (new) makes it clear that whether particular conduct is contempt of the Assembly is a matter for the Assembly to decide, acting on any advice it considers appropriate.

The Members' Ethics and Parliamentary Privileges Committee in its *First Report on the powers, rights and immunities of the Legislative Assembly, its committees and members* (at p 15) recommended that a general definition of contempt, such as that contained in the *Parliamentary Privileges Act 1987* (Cth), should be adopted in Queensland and included in the draft Parliament of Queensland Bill. That committee further recommended that this definition should be qualified by a provision which provides that it is entirely a matter for the Assembly to decide whether particular conduct does constitute contempt.

This committee has implemented both of these recommendations in clauses 37 and 38.

**\*Clause 39** (new) provides that the Assembly has the same power to deal with a person for contempt of the Assembly as the House of Commons had, at the establishment of the Commonwealth, to deal with contempt of the Commons. To remove any doubt, the clause also provides that the power includes the power to fine the person and, in default of the fine being paid, impose imprisonment on the person. The manner in which a person can be fined and imprisoned is provided for in clauses 40 to 45.

Clause 37 is a new clause inserted by this committee in response to a submission from the Members' Ethics and Parliamentary Privileges Committee dated 10 March 1999. This submission and the reasons for the change to the contempt provisions in this Bill are explained by the committee in some detail in section 3.1.2 of its covering report. In essence, the MEPPC highlights the current uncertainty surrounding this area of the law and the practical difficulties which have arisen as a result. This committee agrees that the Assembly's power to deal with contempt should be clarified beyond doubt. Therefore, this committee has made what the MEPPC and this committee consider appropriate amendments to the relevant provisions in the Bill. These amendments do not affect the various procedural fairness safeguards that apply to a contempt investigation.

Clause 39(1) provides that the Assembly's power to deal with a person for contempt is the same power as the House of Commons had at the establishment of the Commonwealth to deal with contempt of the Commons. This link with the House of Commons power *as at the establishment of the Commonwealth* flows from this committee implementing a recommendation of the MEPPC in its report no 26 (at p 8) that CA s 40A be amended to provide that the powers, rights and immunities of the Assembly, its members and committees are those that applied in the House of Commons as at the date of federation. This committee has implemented that recommendation in its reproduction of CA s 40A, namely, clause 9 of the Constitution of Queensland Bill 1999.

**\*Clause 40** (CA s 45) provides that proceedings for the punishment by the Assembly of contempt are to be taken in the way specified in the standing rules and orders. Clause 40(2) provides that the Assembly may order that a person found to have committed a contempt may be ordered to pay a fine of not more than an amount stated in the standing rules and orders and, if the fine is not paid, imprisoned until the fine is paid or until the end of that session of the Parliament. Clause 40(3) provides that the Assembly may order a person to be imprisoned in the custody of an officer of the Assembly or in a prison under the *Corrective Services Act 1988*. Clause 40 is based on the first paragraph of CA s 45 and is largely a reproduction of cl 17 of EARC's Parliament Bill 1993.

**Clause 41** (CA s 46) 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.

**\*Clause 42** (CA s 47) provides that a person who commits a contempt by creating or joining in any disturbance in the Assembly or before a committee while it is sitting that may interrupt its proceedings may be apprehended without warrant on the Speaker's order (oral or written) and kept in the custody of an officer of the Assembly pending the person being dealt with under section 39.

**\*Clause 43** (CA s 48) provides that a warrant issued under section 41 need not be in a particular form but it must state in effect that the person has been found by the Assembly to have committed a contempt of the Assembly.

Clause 43 closely resembles cl 20 of EARC's Parliament Bill 1993.

The committee has decided to largely adopt EARC's provision. However, the provision does not require, unlike s 48 of the CA, that the nature of the contempt be specified in the warrant. The effect of the additional requirement in s 48 of the CA may have led to a warrant under the section being subject to judicial review. Warrants which simply cite that a contempt has been adjudged are beyond judicial review: *R v Richards; Ex parte Fitzpatrick and Brown* (1955) 92 CLR 157.

The committee's clause has recently been endorsed by the Members' Ethics and Parliamentary Privileges Committee in its Report No 26 *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members* (at pp 21-22). The MEPPC noted (at p 22) that: *The current s 48 derives from the Parliamentary Privileges Act 1861 (Qld)—at a time when Queensland was a colony and its Parliament in its infancy. The provision no longer has a place in a sovereign state with a mature legislature.*

**Clause 44** [CA s 49(1); CA s 50] provides that the commissioner of the police service, all police officers and other persons are required to assist in the apprehension and detention of any person who is required to be apprehended under an order or warrant of the Speaker. Clause 44(2) provides that for the purpose of searching for and apprehending a person the subject of a Speaker's warrant, a person may enter any place using force that may be reasonably necessary.

**Clause 45** [CA s 49(2)] provides that the person in charge of a prison to whom is delivered a person apprehended under a Speaker's warrant must take the person into custody and detain that person in accordance with the warrant's terms.

\***Clause 46** (LAA s 7E) provides that if a member commits a contempt and is dealt with by the Assembly and ordered to pay a fine and that fine is not paid by the member as required, the Treasurer, upon the Speaker's signed certificate, may order an amount to be set aside and retained by the Treasurer out of the member's salary until the full amount of the fine has been paid. This is a faithful modern rewrite of s 7E of the LAA.

Section 7E of the LAA was not dealt with by EARC in either its Parliament Bill 1993 or Constitution Bill 1993.

**Clause 47** (CA s 52) provides that if a person's conduct constitutes both a contempt of the Assembly and an offence under another Act, the person may be proceeded against either for the contempt or for the offence against the other Act, but the person is not liable to be punished twice for the same conduct. This protection against double jeopardy is new. Clause 47(2) provides that the Assembly may direct the Attorney-General to prosecute the person for the offence against the other Act. Section 52 of the CA currently provides that it is lawful for the Assembly to direct the Attorney-General to prosecute before the Supreme Court any such person guilty of any other contempt against the House which is punishable by law.

EARC appeared to express the view (in cl 23 of its Constitution Bill 1993) that s 52 of the CA was, in effect, authorising the prosecution before the Supreme Court of a contempt of Parliament. However, the committee believes that the better view is that s 52 merely permits the Assembly to direct the Attorney-General to prosecute a person for an offence that would also constitute a contempt of Parliament. (See Members' Ethics and Parliamentary Privileges Committee, Report No 15 at section 7.1.) Therefore, it is suggested by the committee that its cl 47(2) really encapsulates what is currently the law pursuant to s 52 of the CA.

It should also be noted that clause 47(2) does not precisely reflect s 52 in that it refers to offences punishable under an 'Act' whereas s 52 covers an offence 'punishable by law', that is, under statute law and the common law. The committee notes however that when section 52 was originally drafted criminal offences were common law offences. Today criminal offences in Queensland are declared by statute. Therefore, the committee has kept the references to 'Act' in both subclauses of clause 47.

EARC's cl 23 introduced the concept of double jeopardy, that is, that a person cannot be proceeded against for both a contempt and an offence at law. The committee endorses this approach.

### PART 3—PARLIAMENTARY PAPERS

#### *Provisions consolidated:*

- PPA s 2 and ss 4-12

Part 3 relocates section 2 and sections 4-12 of the *Parliamentary Papers Act 1992* (the PPA) to the Bill. These sections, being of recent origin and consistent with modern drafting style, are virtually reproduced in this part without amendment.

**Clause 48** (PPA s 2) defines who is an 'authorising person' for part 3.

**Clause 49** (PPA s 4) provides that the Assembly or a committee may authorise the publication of certain proceedings.

**Clause 50** (PPA s 5) provides that unless the Assembly or a committee otherwise orders, then the Assembly or the committee is taken to have authorised the government printer to publish the evidence or document authorised for publication by the Assembly or a committee.

**\*Clause 51** (PPA s 6) provides that the Assembly is taken to have authorised a defined person to publish parliamentary documents. A definition of 'parliamentary document' is provided in the clause.

This clause has been amended since the consultation draft Bill (then clause 49) to replace, in the definition of 'parliamentary document', the term 'Notices of Questions' with the more modern terminology 'Questions on Notice'.

**\*Clause 52** (PPA s 7) provides that a person may read any document that is tabled in the Assembly by a member, but is not ordered or otherwise authorised by the Assembly to be printed. The person may make a copy of, take an extract from, or take notes of, the document and does not incur any civil or criminal liability for so doing.

**\*Clause 53** (new) deems particular documents to be taken to be printed when tabled or taken to be tabled in the Assembly.

Submissions from both the Clerk of the Senate and the Clerk of the Queensland Parliament expressed concern at the distinction drawn by clauses 50, 51 and 53 of the consultation draft Bill (now clauses 52, 54 and 56) between documents tabled but not printed and those tabled and printed. Their submissions cite confusion in the existing law. Clause 53 attempts to reduce this confusion by deeming particular documents to be printed when tabled (or deemed tabled) in the Assembly.

**\*Clause 54** (PPA s 8) provides that a person does not incur any civil or criminal liability for the publication of a fair report of a document that is tabled in the Assembly by a member with the express permission of the Speaker or by leave of the Assembly.

**\*Clause 55** (PPA s 9) provides for certificates to be signed by an authorising person as evidence of the matters stated in the certificate and provides a list of the matters that may be certified.

**Clause 56** (PPA s 10) provides that a person does not incur any civil or criminal liability for publishing evidence or a document by order or under the authority of the Assembly or a committee. The clause also provides that if a proceeding is brought for a publication to which subsection (1) applies, the defendant may produce to the court a certificate signed by an authorising person which states that the publication is of that nature.

**Clause 57** (PPA s 11) provides that reports of the debates in the Assembly published by order or under the authority of the Assembly may be received in evidence as an accurate record of what happened in the Assembly. However, evidence must not be admitted contradicting, adding to or otherwise impugning the accuracy of the reports.

**\*Clause 58** (PPA s 12) provides that the part applies to evidence given and documents tabled, printed or published at any time whether before or after the commencement of the part.

In the draft consultation Bill, this clause (then clause 55) provided that the part applied to evidence and documents *published* after 2 July 1992, being the date on which the PPA 1992 commenced. However, to ensure that documents *tabled* prior to 2 July 1992 (whether or not ordered to be printed) can be copied and distributed without fear of legal reprisal (see cl 52), the committee has amended clause 55 to make it clear that the part applies to documents whether tabled, printed or published before or after 2 July 1992.

#### **\*PART 4—TABLING OF REPORTS OUTSIDE SITTINGS**

***Provision consolidated:***

- AIA s 29A                      Tabling of reports when Assembly not sitting

**Clause 59** [*Acts Interpretation Act 1954* (AIA), s 29A] provides that reports that are required or permitted to be tabled in the Assembly under an Act may be received by a Minister or the Speaker, and tabled when the Assembly is not sitting. The clause in effect relocates s 29A of the AIA. However, the clause further simplifies the requirements currently existing in s 29A of the AIA by providing that if the Minister or Speaker wants to table the report when the Assembly is not sitting, the Minister or Speaker may give a copy of the report to the Clerk of the Parliament, and the report is taken to have been tabled on the day a copy of the report is received by the Clerk.

The provision also now provides that the day of the receipt of the report is to be recorded in the votes and proceedings for the next sitting day after the day of receipt. A wide definition of report is also provided to include a document accompanying a report. The provision is designed to promote the efficacious tabling of reports when the Assembly is not sitting.

### **\*PART 5—CUSTODY OF DOCUMENTS (NEW)**

Part 5 is a new part which the committee has inserted in response to a submission from the Clerk of the Queensland Parliament. The Clerk submitted that a new clause be inserted in the Bill to address the situation where Parliamentary Service officers are served with coercive documents to produce documents to courts and other inquiries.

Standing Order 327 currently provides that the custody of all journals, records and tabled documents vest in the Clerk 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 document if the Parliament is prorogued or the Assembly is adjourned for any period exceeding seven days.

The Clerk envisages a problem in that another parliamentary officer served with a coercive document requiring the production of documents of the Assembly runs the risk of being in contempt of the court that has issued the subpoena or the Assembly.

This part addresses these concerns.

**\*Clause 60** (new) makes it clear that the part applies despite any other law.

**\*Clause 61** (new) provides that for part 5 the Clerk has the custody of all documents in the possession of the Assembly, a committee or an inquiry.

**\*Clause 62** (new) states that that an instrument requiring access to or production of a document in the possession of the Assembly, a committee or an inquiry must be addressed to the Clerk otherwise it is of no effect.

**\*Clause 63** (new) provides that the Clerk may not allow access to, or produce, a document as required under an instrument and which has not been tabled unless the Assembly, committee or inquiry, as the case may be, has by resolution given leave.

However, if an instrument requires access to, or production of, a document in the possession of the Assembly and the Assembly is dissolved, prorogued or adjourned for more than 7 days, the Speaker may give leave for the document to be accessed or produced as required under the instrument.

### **CHAPTER 5—CANDIDATES AND MEMBERS**

This chapter locates in one area all the rules relating to the qualification and disqualification of candidates and members.

This was a task considered in some detail, but never completed, by EARC. PCEAR did not consider the issue in its review of EARC's report. The committee decided that its consolidation



exercise would not be complete without bringing together the various provisions relating to the qualification and disqualification of candidates and members.

In undertaking this task, the committee elected to adopt an approach that makes the disqualifications and qualifications that apply to both candidates and members as consistent as possible. The committee has also elected to amend some of the archaic and largely confusing language which makes this area of the law difficult to understand. For example, the committee has elected not to use the existing language 'office of profit under the Crown' and has replaced that language with more modern terminology that is more clearly defined within the chapter. The Bill continues to ensure that there is no conflict of interest between a member's duty to the Assembly and any obligations owed by the member to the Crown.

It is necessary to briefly explain the current qualification and disqualification provisions relating to candidates and members.

Currently, in accordance with s 83(1) of the *Electoral Act* (EA), in order to be eligible to be a candidate, a person must be:

- an Australian citizen;
- an adult;
- enrolled in an electoral district.

In accordance with s 83(2) of the *Electoral Act*, a candidate is disqualified if:

- they are an undischarged bankrupt;
- they have executed a deed of arrangement under part X of the *Bankruptcy Act 1966* (Cth) and the terms of the deed have not been fully complied with;
- their creditors have accepted a composition under the part X of the *Bankruptcy Act 1966* (Cth) and a final payment has not been made under that composition;
- they are in prison or subject to a periodic detention order;
- they have, within 3 years, committed specified offences under the *Electoral Act*;
- they are a member of the Commonwealth Parliament.

A member is currently disqualified (that is, their seat vacated) under s 7 LAA if he or she:

- is absent from Parliament for one whole session without permission;
- accepts a foreign relationship (takes an oath to a foreign power or becomes a citizen of a foreign state);
- becomes a bankrupt or insolvent debtor;
- becomes a public contractor or defaulter;
- is attainted of treason, convicted of a crime or infamous offence;
- is convicted of a one of a number of specified offences under the *Electoral Act* (these offences are the same that apply to candidates).

An examination of the above lists reveals a number of inconsistencies between the disqualifications affecting candidates and members.

For example, a candidate is disqualified if they are an undischarged bankrupt, have executed a deed of arrangement and not fully complied with its terms, or whose creditors have accepted a composition under the *Bankruptcy Act* and a final payment has not been made under that composition. Conversely, a member is only disqualified if they become a bankrupt or an insolvent debtor.

Another example of inconsistency relates to the commission of offences. Currently, a person is disqualified from being a candidate if they are in prison, subject to a periodic detention order or they have committed a specified offence under the *Electoral Act* within 3 years. Conversely, a member is disqualified if they are 'attainted of treason, convicted of a crime or infamous offence' or they have committed a specified offence under the *Electoral Act*. Although some inconsistency in these provisions might be justified on the basis that the issue of a candidate's suitability raises different considerations to denying constituents on-going representation in the Parliament through their member, clearly it is desirable to rationalise the relevant provisions.

In addition, the language used in the *Legislative Assembly Act* such as 'attainted of treason' and 'infamous offence' is outdated. These terms have not been used since the *Criminal Code* was passed in Queensland almost 100 years ago.

It is also useful to briefly explain the current provisions relating to restrictions on candidates and members dealing with the State. In this regard there is considerable overlap between ss 6, 7 & 7A of the CA and s 7B of the LAA.

Sections 6, 7 and 7A of the *Constitution Act 1867* provide that a person (candidate or member) is incapable of being elected to, sitting in or voting in the Assembly during any period he or she is involved in a contract or agreement for, or on account of, the public service. However, the restriction only applies to contracts or agreements for furnishing wares to be used or employed in the public service and does not extend to:

- a lease or contract relating to land, mining or dredging;
- contracts with Suncorp and the Worker's Compensation Board;
- loans to the Crown; or
- where the member's interest arises because of his or her interest in a company with more than 20 shareholders.

In addition, pursuant to s 7B of the LAA a member who transacts any business or performs any duty or service for the Crown is not entitled to any fee or reward and is liable to expulsion by resolution of the Assembly. The provision does not apply in certain circumstances including the performance of functions by Ministers and Parliamentary Secretaries.

Section 5 of the *Officials in Parliament Act 1896 (OPA)* and s 7A of the LAA also provide restrictions on members holding 'an office of profit under the Crown'. The provisions do not restrict a person holding such an office from nominating as a candidate. However, s 5 of the OPA provides that any office of profit held by a successful candidate is deemed vacated upon the return of the writ. The provision also enables a person who holds such an office to take leave for up to 2 months in order to enable them to contest an election.

Section 7A of the LAA provides that a member is not permitted to take an office of profit under the Crown and that any such appointment is null and void. There are certain exceptions to this

provision including where an Act or regulation allows a member to hold the office and where the office is held by a Minister.

There is a suggestion, noted in EARC's committees report, that OPA s 5 has been impliedly repealed by s 7A LAA—at least to the extent that there is inconsistency between the two. (See the advice from the Crown Solicitor which was attached as Appendix M of EARC's committees report.) However, the extent of inconsistency and, therefore, repeal is unclear.

## PART 1—QUALIFICATIONS

### *Provisions consolidated:*

- |            |  |
|------------|--|
| • LAA s 7  | Vacating seats of members of Assembly in certain cases |
| • EA s 83  | Who may be nominated                                   |
| • DCA s 13 | Judges not to practice or sit in Parliament            |

\***Clause 64** [LAA s 7; EA s 83(1)-(2); *District Courts Act 1967* (DCA) s 13] provides for candidates' qualifications. Clause 64(1) is based upon s 83(1) of the EA. Clause 64(2) outlines the circumstances in which a person is disqualified from being a candidate, and draws upon the existing prohibitions. Clause 64(3) also makes it clear that the Governor-General, Administrator or head of Government of the Commonwealth or another State and the holder of a judicial office in any jurisdiction are not qualified persons. This strengthens the concept of separation of powers.

Clause 64(1)(a), in prescribing that a candidate must be enrolled on an electoral roll, imports the requirements for enrolment in s 64(1) of the EA. This section in turn imports the requirements of s 93 of the *Commonwealth Electoral Act 1918* which prescribes as grounds of disqualification for enrolment: (a) unsound mind; (b) serving a sentence of 5 years or longer for an offence against Commonwealth, State or Territory law; and (c) convicted of treason or treachery and not been pardoned.

The specific disqualification of members of the Commonwealth Parliament under s 83(2)(f) of the EA has been replaced by clause 68(1)(a) which allows members of other Parliaments to be elected but in order for them to take their seats they must resign their other Parliamentary membership.

Clause 64(2)(a)(ii) is a new disqualification and has been amended by this committee since the consultation draft Bill (then clause 57). The subclause disqualifies persons who, within two years before nominating for election, are convicted of an offence against the law of Queensland, another State (or Territory—AIA s 33A) or the Commonwealth and are sentenced to more than 1 year's imprisonment.

Subclauses (4) and (5) have also been inserted since the committee's consultation draft Bill. Subclause (4) is designed to ensure that clause 64(2)(a)(i) disqualifies persons who are released from a term of imprisonment or detention on parole, home detention, leave of absence or otherwise without being discharged from liability to serve all or part of the term. Although, the disqualification is not designed to apply to persons who are subject to a term of imprisonment but are at liberty because the term of imprisonment has been suspended.

Subclause (5) is designed to ensure that, where a sentence of imprisonment is suspended, the disqualification in clause 64(2)(a)(ii) only applies if, and when, the person is subsequently ordered to actually serve more than 1 year of the suspended term of imprisonment.

Both new subclauses are designed to make candidate disqualification provisions consistent with those relating to members.

## PART 2—CANDIDATES AND MEMBERS HOLDING PAID PUBLIC APPOINTMENT

### *Provisions consolidated:*

- LAA s 7A Eligibility of members to hold offices etc
- LAA s 7C Exclusion of positions from s 7A
- OPA s 3 Governor may declare what Ministers may sit in Legislative Assembly
- OPA s 5 Government officers not to sit in Legislative Assembly except as mentioned
- OPA s 6 Parliamentary Secretary not officer liable to retire on political grounds etc
- OPA s 8A Attorney-General is a Minister
- LGA s 224 Termination of membership of Legislative Assembly on becoming councillor

The aim of Part 2 is to ensure that members do not have a conflict between their duty as a member of Parliament to make the Government of the day accountable and some other duty the member owes to the Government in their personal capacity. The part does this by preventing a member from receiving certain pecuniary interests derived from paid offices of the State.

**\*Clause 65** (OPA s 5; LAA s 7A) provides a definition of the term 'paid public appointment'. This is a new term which replaces the old concept of 'office of profit under the Crown'. A person holds paid public appointment if the person for *reward*:

- (a) holds an office under, or is employed by, the State, another State or the Commonwealth;
- (b) holds an appointment to or in or is employed by or in an entity of the State, another State or the Commonwealth;
- (c) holds an appointment to or in or is employed by or in the parliamentary service of a State or the Commonwealth legislature;
- (d) holds an appointment to or in or is employed by or in a court or tribunal or a registry or other administrative office of a court or tribunal of the State, another State or the Commonwealth; or
- (e) holds an appointment to or in or is employed by or in a local Government of the State, another State or the Commonwealth.

The provisions are intended to cover all paid public appointments including employees of the public service and parliamentary service, and statutory office holders. The provisions are not intended to cover essentially private entities which may operate under or pursuant to a law of the

State or which receive funding of some sort from the State—unless appointments to those entities are controlled in some way by the State.

Clause 65(3) defines 'paid State appointment' as a paid public appointment held in connection with Queensland.

Clause 65(4) makes it clear that a member does not hold a paid public appointment if: (a) an Act expressly permits the appointment to be held by a member; or (b) when the appointment is held by a member, neither the member nor any other person is entitled to or is entitled to and receives any reward on account of the member holding the appointment.

Clause 65(5) provides that for subsection (4)(b) a member is not to be taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward.

Clause 65(6) requires the member to waive in writing the entitlement as soon as practicable after becoming aware of the entitlement and provide a copy of the waiver to the Speaker.

Clause 65(7) defines the term 'reward' by providing that a reward does not include:

- an amount decided under the PSMA;
- reasonable expenses actually incurred by or for the member for a number of listed matters; or
- an amount paid as pension, entitlement, remuneration or allowance for past service in a paid public appointment, or past or existing service as a member of the Commonwealth's military reserve forces.

The exclusion from the term 'reward' of an amount decided under the PMSA is important, because it is that Act which determines the salaries of Ministers and Parliamentary Secretaries. Therefore, an appointment as a Minister or a Parliamentary Secretary does not qualify as a paid public appointment.

The committee has made a number of changes to this clause since it appeared as clause 58 in the consultation draft Bill. Subclauses (4),(5) and (6) and para (b) of the definition of reward in subclause (7) have been inserted. This is as a result of the committee deciding to incorporate into this Bill the provisions of the Parliamentary Members (Office of Profit) Amendment Bill 1999 (the '1999 Bill'). (See section 3.2 of the committee's covering report.)

As a result of incorporating certain provisions of the 1999 Bill, clause 59 of the consultation draft Bill has been deleted. Subparagraph (a) of the former clause 59 (excluding the part from applying to paid public appointments excluded by an Act) has been incorporated in the new subclause (4). Subparagraph (b) of the former clause 59 (excluding the part from applying to paid public appointments excluded by regulation) has been deleted. As noted in the explanatory notes to the 1999 Bill, the risk of a members' election becoming null and void or the member losing their seat by Parliamentary resolution, *results from the ambiguity of the relevant provisions with a complicated and time-consuming series of resolutions, regulations, or enactment required each time a member wishes to further contribute to the administration of the State by accepting a position on, or performing a service for a government board, committee, council or other body.* Hence, the 1999 Bill (and this Bill) no longer require resolutions, regulations, or specific enactments for each occasion a member is to be appointed. Instead, clearer yet strict rules apply for the appointment of a member to a paid public appointment.

The definition of 'paid State appointment' in clause 64(3) has also been refined since the consultation draft Bill to make its intent clearer. Subclause (4) of the consultation draft Bill (then clause 58), which defined 'paid public appointment under the State, another State or the Commonwealth' and seemed superfluous, has been removed.

**\*Clause 66** (LAA s 7A; OPA s 5; new) describes the effect of a paid State appointment on a candidate's election. In summary, the clause provides that a candidate who holds paid State appointment must, during an election period, be absent on leave from that appointment. For that purpose, a person is entitled to take any accrued leave or leave without reward for the election period despite any other law. Clause 66(3) provides that if the person fails to take leave as required then they are taken to be on unpaid leave and are not entitled to be rewarded for service in the paid State appointment during the election period.

Clause 66(4) provides that, if a person who holds a paid State appointment is elected as a member, the person's paid State appointment ends on the day the person is elected, despite any other law. The election period is defined as being the period starting on the day of the person's nomination and ending on the day that a candidate is elected to that seat.

The committee has amended this clause slightly from the consultation draft Bill (then clause 60) to make it clear that a candidate who holds a paid State appointment and who is not on leave is not disqualified if elected.

**\*Clause 67** (new) provides that certain statutory office holders, and deputies to those office holders, must resign office immediately on being nominated as a candidate for election. By inserting this clause the committee adopts the reasoning of the House of Representatives Standing Committee on Legal and Constitutional Affairs in its *Report on Aspect of section 44 of the Australian Constitution - Subsections 44(i) and (v)* at 3.92:

*It seems that some public sector positions are so sensitive that their occupants should be required to relinquish the office even before nominating for election.*

Clause 67(1) lists those offices from which the committee believes office holders should resign when nominating as a candidate.

Clause 67(2) provides that a prescribed office holder who fails to comply with subclause (1) is taken to have resigned their office on becoming a candidate.

Clause 67(3) makes it clear that a person is not a deputy for the purposes of subclause (1) if they are only temporarily acting in the office of deputy.

The committee has amended this clause from the consultation draft Bill (then clause 61) to include deputies in the list of those senior officers required to resign before nominating for election to the Assembly. Clause 67(3) ensures that s 34 of the AIA does not operate to extend the section to cover a person who may be acting in a deputy position in a temporary capacity.

The committee has also added to the list of offices in subclause (1) the children's commissioner, the health rights commissioner and the public trustee.

**Clause 68** [new; *Local Government Act 1993* (LGA), s 224] provides that:

- a member of the Commonwealth Parliament, or of a legislature of another State;
- the mayor or a councillor of a local government; and
- the holder of a paid public appointment other than a paid State appointment (that is, a public appointment in another State or the Commonwealth);

who is elected as a member, cannot take his or her seat until the person stops holding that membership or appointment.

(Note that Clause 72(1)(a) provides that a member who fails to take his or her seat within 21 sitting days after being elected as a member vacates their seat. A member takes their seat upon the swearing of the oath required under s 21 of the accompanying draft Constitution of Queensland Bill 1999.)

**Clause 69** (OPA s 5; LAA s 7A) provides that a member must not accept a paid State appointment and any such purported appointment is of no effect.

### PART 3—RESTRICTIONS ON DEALINGS WITH THE STATE

**Provisions consolidated:**

- |            |  |
|------------|--|
| • CA s 6   | Disqualifying contractors and persons interested in contract—<br>election to take place on vacancies |
| • CA s 7   | Election of disqualified persons void  |
| • CA s 7A  | Scope of ss 6 and 7  |
| • LAA s 7B | Eligibility of members to perform services   |

This part is concerned with preventing contracts between the State and a member which may bring a member into conflict with his or her duties in making the Government accountable. This part replaces CA ss 6 to 7A which disqualify contractors and persons interested in contracts from being members, and LAA s 7B which prevents a member performing any duty or service for the Crown.

The committee has made certain amendments to clauses in this part since the consultation draft Bill to ensure that there is consistency in references to 'an entity of the State'.

**\*Clause 70** [CA s 6-7A; LAA s 7B] provides the definition of the term 'transacts business'. Clause 70(1) provides that a member transacts business with an entity of the State if the member has a direct or indirect interest in a contract with an entity of the State or performs a duty or service for an entity of the State. Clause 70(2) provides exceptions to the definition in clause 70(1).

The exceptions largely follow the existing exceptions in ss 6 and 7A of the CA. In addition, the exceptions incorporate provisions of the Parliamentary Members (Office of Profit) Amendment Bill 1999. In this regard, a member does not 'transact business' in the case of a duty or service if an Act expressly permits the member to perform the duty or service or neither the member nor any other person is entitled to or is entitled to and receives any reward on account of the member performing the duty or service.

Clause 70(3) makes it clear that for subsection (2)(b)(ii) a member is not to be taken to be entitled to a reward if the member irrevocably waives for all legal purposes the entitlement to the reward.

Clause 70(4) requires the member to waive in writing the entitlement as soon as practicable after becoming aware of the entitlement and provide a copy of the waiver to the Speaker.

The exclusion from the definition 'reward' of an amount decided under the PMSA is important, because it is that Act which determines the salaries of Parliamentary Secretaries and Ministers.

Therefore, an appointment as a Parliamentary Secretary or a Minister does not amount to transacting business with the State.

The committee has made a number of changes to this clause since it appeared as clause 64 in the consultation draft Bill.

Subclauses (2)(b),(3) and (4) and para (b) of the definition of reward in subclause (5) have been inserted/amended since the committee's draft consultation Bill. This is as a result of the committee deciding to incorporate into this Bill the provisions of the Parliamentary Members (Office of Profit) Amendment Bill 1999. (See section 3.2 of the committee's covering report.)

**\*Clause 71** (CA s 6-7A; LAA s 7B) provides that a member must not transact business, directly or indirectly, with an entity of the State. A member who contravenes the section is not entitled to, and may not receive, the reward in relation to a contract with an entity of the State. Therefore, the provision only prevents the member from profiting from the transaction, and does not itself cause a disqualification. However, transacting business with the State may lead to disqualification under clause 72(1)(g).

Clause 71(4) provides that a member does not contravene the section if the member acquires the interest in a restricted contract under a testamentary disposition or as an executor or a trustee of a deceased person's estate and disposes of that interest within 12 months after the day that the interest accrues (or a longer period allowed by the Assembly). This is a new provision and has been included in order to avoid difficulties for members who may receive such property via a testamentary disposition. It enables those members a period of grace to divest themselves of any interest which it would otherwise be in contravention of the Act to hold.

Clauses 71(5) and (6) provide that a new member does not contravene the section if the new member disposes of their interest in a restricted contract or discharges an obligation to perform a restricted duty or service within 6 months after being elected as a member. A new member is a member who was not a member of the Assembly immediately before it was last dissolved. This is also a new provision and is designed to allow newly elected members a period of grace in which to dispose of any inappropriate interests. The provision has been inserted in an effort to provide fairness to those members who may have some substantial business dealings with the State prior to their election, and where it would be unconscionable to expect them to divest their interest prior to standing for election.

#### PART 4—AUTOMATIC VACATION OF MEMBER'S SEAT

**Provisions consolidated:**

- LAA s 7                      Vacating seats of members of Assembly in certain cases
- LGA s 224                  Termination of membership of Legislative Assembly on becoming councillor
- EA s 83                      Who may be nominated

**\*Clause 72** (LGA s 224; EA s 83) provides that a member's seat in the Assembly becomes vacant if any one of a number of listed circumstances occur. The circumstances outlined in the clause largely mirror the circumstances outlined in clause 64(1) which disqualify a person from



becoming a candidate for an election. As stated earlier, the chapter has been drafted to provide, as far as possible, consistency between the rules relating to disqualification and qualification of members and candidates. The qualifications and disqualifications in clauses 64 and 72 are based on the disqualifications for candidates currently found in s 83 of the EA and for members currently found in s 7 of the LAA and s 224 of the LGA.

However, a significant change has been made in respect of offences, the commission of which by a member will vacate their seat. Under clauses 64(2)(a)(ii) & 72(1)(i)(i), a candidate and member will respectively be disqualified if:

- (a) in the case of a candidate, the candidate has been convicted within 2 years before the date of nomination of an offence and sentenced to more than 1 year's imprisonment;
- (b) in the case of a member, the member is convicted of an offence for which the member is sentenced to more than 1 year's imprisonment.

Clause 72(2) provides that, in the case of a member, if the sentence of imprisonment is suspended, the disqualifying provision does not apply. However, if the member is subsequently ordered at any time to actually serve more than 1 year of the suspended term of imprisonment, the disqualifying provision would apply at that later time. [A similar provision exists with respect to candidates, see clause 64(5).]

A change has also been made to make the qualifications and disqualifications in respect of bankruptcy, deeds of arrangement and compositions under the *Bankruptcy Act* consistent.

The clauses relating to the disqualification of candidates and members have been amended since the consultation draft Bill. The earlier clauses provided that, then under clauses 57 & 66 respectively, a candidate and member will be disqualified if:

- (a) in the case of a candidate, the candidate has been convicted within 1 year before the date of nomination of an offence *punishable* by more than 1 year's imprisonment;
- (b) in the case of a member, the member is convicted of an offence *punishable* by more than 1 year's imprisonment.

This committee believed—after considering a range of offences and the penalties which apply to those offences and the circumstances in which a person might find themselves convicted of an offence—that it was more appropriate to link the disqualification provisions to an actual sentence rather than the maximum penalty which attaches to the offence. This links a candidate's/member's disqualification to the actual penalty imposed by a body skilled in assessing facts (a court) and allows for consideration to be given to the severity of the offence in the particular circumstances.

Given these amendments, the former clause 66(i)(i) of the consultation draft Bill has been deleted from the final draft Bill.

**Clause 73** (new) provides that the Assembly may by resolution declare a disqualifying circumstance otherwise outlined in the part to be of no effect. The Assembly must consider that the circumstance has stopped having effect, was trifling in nature, and happened without the actual knowledge or consent of the person or member. However, clause 73(5) provides that the section has no effect on the jurisdiction of the Court on Disputed Returns. Clause 73(5) is a new provision and is based on the *Constitution Act 1975* (Vic).

**Clause 74** (new) provides for circumstances in which a member's seat has become vacant under clause 72(1)(i) and the member appeals, or applies for leave to appeal, against the relevant

conviction or sentence within 1 calendar month after the conviction or sentence. The clause ensures that a writ for an election to fill the vacancy in the member's seat can not be issued until at least 1 calendar month has passed after the seat becomes vacant and, if the member appeals within 1 calendar month after the seat becomes vacant, until the appeal has ended.

If, on appeal, the conviction is quashed or set aside, or the sentence is changed to a sentence to which clause 72(1)(i) does not apply, then the member's seat does not become vacant.

Clause 74 was not contained in the consultation draft Bill. The committee has inserted this clause as it believes that provision should be made for circumstances where a member, convicted of an offence which renders their seat vacant, successfully appeals that conviction.

Similar provision is made in s 222(2) of the *Local Government Act 1993* (Qld) which provides that a local government councillor vacates office on conviction of certain offences:

- (a) if the councillor appeals against the conviction—on the appeal being dismissed, struck out or discontinued; or
- (b) if the councillor does not appeal against the conviction—at the end of the time fixed by law within which an appeal must be started.

However, to ensure that the appeal process is not unduly lengthy—leading to an extended period in which a member's constituents are unrepresented—the committee has drafted clause 74 so that it requires a member to lodge an appeal (or apply for leave to appeal) within the usual appeal period of 28 days.

## PART 5—VACATION OF SEAT BY MEMBER

### *Provisions consolidated:*

- LAA s 8                      Resignation of seats in the Assembly
- LAA s 8A                    Vacancy occurring by reason of resignation to contest Commonwealth election

**Clause 75** (LAA s 8) provides that a member may resign his or her seat by writing addressed to the Speaker and that the seat becomes vacant when the Speaker receives the resignation.

**Clause 76** (LAA s 8A) provides a mechanism for a member to resign to contest a Commonwealth election and replaces s 8A of the LAA.

The committee understands that s 8A of the LAA has not been used since its introduction in 1977. Unfortunately, when s 8A was introduced there was sparse accompanying information provided about its intent and the procedure to be followed. Clause 76 is a modern reproduction of s 8A of the LAA, in all but one respect. Section 8A(a) provides that the member must resign their seat 'not later than 21 days prior to the issue of the writ' for the Commonwealth election. The committee finds this provision impracticable—how would a member of the Legislative Assembly know when a writ for the Commonwealth election was to be issued? Theoretically, it could mean that a member of the Legislative Assembly could resign months before a Commonwealth election pursuant to this clause and a by-election for that member's seat could not occur before the Commonwealth election.

In the absence of any detailed explanation in the debates during the 1977 amendment, the committee believes that what must have been intended was that the member must resign not more than 21 days after the writ for the Commonwealth election has been issued. Clause 76 has, therefore, been drafted accordingly. Clause 76 is required because s 163 of the *Commonwealth Electoral Act* provides that a member of a State Parliament cannot be elected to the Commonwealth Parliament.

## PART 6—GENERAL

**Clause 77** is a new provision based on cls 30 and 31 of EARC's Constitution Bill 1993 (Reprint). It provides that the performance of a function or exercise of a power by the Assembly or a committee is not invalidated merely because of the presence of a person who was not qualified to be elected or whose seat has for any reason become vacant.

## CHAPTER 6—STATUTORY COMMITTEES OF THE ASSEMBLY

Chapter 6 relocates the *Parliamentary Committees Act 1995* within the Parliament of Queensland Bill 1999.

The object of the *Parliamentary Committees Act* (PCA) was to establish a new system of committees for the Legislative Assembly. Unless specifically referred to in these notes, it is not the intention of the committee to in any way change the object of that Act or the current provisions of that Act in this chapter.

The background to, and reasons for, the *Parliamentary Committees Act 1995* is discussed in the explanatory notes to the 1995 Bill.

In this chapter:

- part 1 contains the object of chapter 6 and definitions for chapter 6;
- part 2 establishes statutory committees of the Legislative Assembly;
- part 3 sets out the role of statutory committees;
- part 4 sets out the specific areas of responsibility of each committee as they are currently described in the PCA; and
- part 5 deals with changes in composition of statutory committees.

The powers and privileges of all committees are now found in chapter 4 of the Act.

## PART 1—OBJECTS AND DEFINITIONS

### *Provisions consolidated:*

- |           |                                 |
|-----------|---------------------------------|
| • PCA s 2 | Main object and its achievement |
| • PCA     | Dictionary                      |

**Clause 78** (PCA s 2) declares the legislative object of the chapter, namely, to enhance the accountability of public administration in Queensland by establishing committees of the Assembly with areas of responsibility which include:

- administrative review reform, and constitutional, electoral and legal reform;
- the ethical conduct of members and parliamentary powers, rights and immunities;
- the integrity, economy, efficiency and effectiveness of government financial management;
- certain works undertaken by or for government;
- the application of fundamental legislative principles to particular Bills and subordinate legislation and the lawfulness of particular subordinate legislation; and
- the Assembly's standing rules and orders.

**Clause 79** (PCA Dictn) provides definitions for terms used in the chapter.

## PART 2—ESTABLISHMENT

**Provisions consolidated:**

- PCA s 4 Establishment of statutory committees
- PCA s 4A Membership of statutory committees
- PCA s 4B Quorum and voting at meetings of statutory committees

**Clause 80** (PCA s 4) continues the establishment of six statutory committees: the Legal, Constitutional and Administrative Review Committee; the Members' Ethics and Parliamentary Privileges Committee; the Public Accounts Committee; the Public Works Committee; the Scrutiny of Legislation Committee; and the Standing Orders Committee.

**Clause 81** (PCA s 4A) provides that a statutory committee must consist of an equal number of members nominated by the Leader of the House and the Leader of the Opposition. Clause 81(2) provides that the chairperson must be a member nominated by the Leader of the House.

**Clause 82** (PCA s 4B) provides for the quorum and voting at meetings of a statutory committee.

## PART 3—ROLE OF STATUTORY COMMITTEES

**Provisions consolidated:**

- PCA s 7 Purpose of part
- PCA s 8 Role of statutory committees

**Clause 83** (PCA s 7) states the purpose of parts 3 and 4.

**Clause 84** (PCA s 8) sets out the role of statutory committees. The main role of a statutory committee is to deal with issues which fall within its area of responsibility. However, a statutory

committee is also to deal with an issue referred to it either by the Legislative Assembly or under another Act, even if that issue does not fall within its areas of responsibility. A committee may deal with an issue by considering it and reporting on it (with recommendations) to the Assembly.

#### PART 4—AREAS OF RESPONSIBILITY OF STATUTORY COMMITTEES

**Provisions consolidated:**

- PCA ss 9-23 (Various)
- PCA ss 27-31 (Various)

##### *Division 1—Legal, Constitutional and Administrative Review Committee*

**Clause 85** (PCA s 9) sets out the areas of responsibility of the Legal, Constitutional and Administrative Review Committee. These areas are administrative review reform, constitutional reform, electoral reform and legal reform.

**Clause 86** (PCA s 10) states that the Legal, Constitutional and Administrative Review Committee's responsibility for administrative review reform enables it to examine legislation which deals with:

- access to information (for example, the *Freedom of Information Act 1992*);
- review of administrative decisions (for example, the *Judicial Review Act 1991* and the *Parliamentary Commissioner Act 1974*);
- anti-discrimination (for example, the *Anti-Discrimination Act 1991*); and
- equal employment opportunity (for example, the *Equal Opportunity in Public Employment Act 1992*).

The clause also provides that the committee may not investigate particular conduct or reconsider or review a decision to investigate etc a particular complaint or decision. This is to ensure that bodies and officers such as the Parliamentary Commissioner for Administrative Investigations (the Ombudsman), the Information Commissioner and the Anti-Discrimination Commission can operate independently in carrying out their statutory duties to investigate particular cases, while enabling the committee to examine the overall effectiveness of the legislation under which they operate.

**Clause 87** (PCA s 11) provides that the Legal, Constitutional and Administrative Review Committee's responsibility for constitutional reform includes any Bill impliedly or expressly repealing any law relevant to the State's Constitution.

**Clause 88** (PCA s 12) provides that the Legal, Constitutional and Administrative Review Committee's responsibility for electoral reform includes monitoring generally the conduct of elections under the *Electoral Act* and the Electoral Commission's capacity to conduct elections.

**Clause 89** (PCA s 13) provides that the Legal, Constitutional and Administrative Review Committee's responsibility for legal reform includes the recognition of Aboriginal tradition or Island custom under Queensland law, and any proposed legislation referred to the committee by the Legislative Assembly which would establish law that is uniform with that of other

jurisdictions. However, the committee's responsibility for legal reform is not limited by these two matters. The committee has power to review any legal issue that falls within the purview of the Parliament of Queensland.

### *Division 2—Members' Ethics and Parliamentary Privileges Committee*

The committee has made certain amendments to this division since the consultation draft Bill in accordance with the Members' Ethics and Parliamentary Privileges Committee's statement in its *First report on the powers, rights and immunities of the Legislative Assembly, its committees and members* that the appropriate term to describe 'parliamentary privilege' is the 'powers, rights and immunities of Parliament, its committees and members' (at p 4). However, the committee has not gone so far as to change the committee's name.

**Clause 90** (PCA s 14) provides that the Members' Ethics and Parliamentary Privileges Committee has responsibility for the ethical conduct of members of the Legislative Assembly (MLAs) and for parliamentary powers, rights and immunities.

**Clause 91** (PCA s 15) sets out the committee's responsibilities in regard to the registration of members' interests.

**Clause 92** (PCA s 16) sets out the committee's responsibilities with regard to the development and implementation of a code of conduct for members. The Assembly and the committee have exclusive jurisdiction to investigate alleged or suspected breaches by members of the code of conduct, except where there is alleged or suspected criminal misconduct by a member. Where criminal misconduct is alleged or suspected, courts, tribunals and other entities such as the Criminal Justice Commission and the Police Service will have jurisdiction.

**Clause 93** (PCA s 17) sets out the committee's responsibilities with regard to parliamentary powers, rights and immunities.

### *Division 3—Public Accounts Committee*

**Clause 94** (PCA s 18) sets out the area of responsibility of the Public Accounts Committee. The Public Accounts Committee has responsibility to ensure that the Legislative Assembly has sufficient information to hold Government accountable for the management of public finances. The committee may examine Government financial documents (including annual financial statements and annual reports of agencies) and the reports of the Auditor-General.

**Clause 95** (PCA s 19) provides that the Public Accounts Committee may refer issues within its areas of responsibility to the auditor-general.

#### ***Division 4—Public Works Committee***

The committee has made certain amendments to this division since the consultation draft Bill in accordance with a submission by the Public Works Committee. The Public Works Committee submitted that currently the relevant provisions of the PCA use both the term 'work' and 'works' and that it would be preferable if the Act was consistent in its usage of these terms. The Public Works Committee submitted that it would be best if the term was expressed in the plural.

Whilst the committee notes that s 32C of the AIA states that words in the singular include the plural and that words in the plural include the singular, the committee agrees that, to remove doubt, there should be consistency in the term as used in the relevant provisions. Changes in accordance with this position have been made in this division.

**Clause 96** (PCA s 20) sets out the works which the Public Works Committee may examine. The Public Works Committee may examine works which are the responsibility of a constructing authority, or which are being carried out by a government owned corporation if the committee decides to consider the works. The clause also sets out issues to which the Public Works Committee may have regard when examining those works, such as the necessity for, and the advisability of carrying out the works and procurement methods for the works.

In other words, the role of the Public Works Committee is to ensure that the Legislative Assembly has sufficient information to hold Government accountable for its use of public resources in developing and managing public works. The Public Works Committee also has the responsibility for monitoring and reviewing proposed works (for example, the building of roads and the construction of new schools) in which the State has, or will have, any financial interest or liability, or to which State resources are to be devoted, and of which the State has, will or may acquire, sole ownership.

**Clause 97** (PCA s 21) defines what is a 'constructing authority' for works.

**Clause 98** (PCA s 27) provides that when considering works, the Public Works Committee may have regard to the issues mentioned in section 96(2)(a) to (i).

**Clause 99** (PCA s 28) sets out the procedures to be followed by the Public Works Committee when seeking to gain entry to places for inspection. The clause ensures that owners and occupiers of places are given fair warning of the committee's intention to enter and inspect a place (for example, a building or building site). The clause also sets out when an authorised person may enter and inspect without the occupier's or owner's consent.

**Clause 100** (PCA s 29) provides that, if the Legislative Assembly has so resolved, the procurement for a work referred to the Public Works Committee by the Assembly may not commence until the committee has reported on the works to the Assembly.

**Clause 101** (PCA s 30) provides that the Public Works Committee must hear commercially sensitive information in private session.

**Clause 102** (PCA s 31) provides that the Public Works Committee may report on commercially sensitive information to the Legislative Assembly only if the committee considers that it is in the public interest to do so.

### *Division 5—Scrutiny of Legislation Committee*

**Clause 103** (PCA s 22) sets out the area of responsibility of the Scrutiny of Legislation Committee. In particular, the committee is to scrutinise Bills and subordinate legislation for compliance with the fundamental legislative principles set out in the *Legislative Standards Act 1992*. These principles require legislation to have sufficient regard, for example, to the rights and liberties of individuals and to the institution of Parliament. The Scrutiny of Legislation Committee also has responsibility for overseeing the general operation of certain provisions of the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*.

Thus, the committee's role is to monitor legislation. The committee may raise issues (such as breaches of fundamental legislative principles) with the responsible Minister, or with a Member sponsoring a Private Member's Bill, prior to pursuing issues, where appropriate, in the Assembly.

### *Division 6—Standing Orders Committee*

**Clause 104** (PCA s 23) provides that the Standing Orders Committee has responsibility for the standing rules and orders which set out the procedures for the conduct of business in the Legislative Assembly and its committees.

## **PART 5—CHANGE IN COMPOSITION OF STATUTORY COMMITTEE**

***Provision consolidated:***

- PCA s 32                      Issues dealt with by previously constituted committees

**Clause 105** (PCA s 32) provides that if a statutory committee changes before it finishes dealing with an issue, the newly constituted committee may continue and finish dealing with the issue as if it had dealt with the issue from the beginning. The clause applies even if the committees are constituted during different Parliaments.

## **CHAPTER 7—OTHER PROVISIONS ABOUT COMMITTEES**

***Provisions consolidated:***

- PCA s 5                      Act does not limit the Assembly's powers
- PCA s 24                     Ministerial response to committee reports
- PCA s 33                     Annual report of committee

The provisions in this chapter, whilst taken from the PCA, apply to all committees of the Assembly.

**Clause 106** (PCA s 5) provides that the Act does not limit the Assembly's capacity to establish other committees. The Legislative Assembly can, by resolution, establish other committees (that is, for example, the method by which the Estimates Committees which examine the Government's proposed expenditure for the next year are established). Further, the Act does not



affect the power of Parliament to create other committees by other Acts of Parliament (such as the Parliamentary Criminal Justice Committee).

**Clause 107** (PCA s 24) of the Act requires the appropriate Minister to respond to a committee's report when the committee has recommended action by the Government. The clause also requires the Minister to respond when a committee's report recommends that the Government not take action on an issue.

Clause 107 provides that the Minister must table his or her response within three months of the tabling of the committee's report. However, if a committee's report may not be able to be analysed and considered appropriately by the Government within three months of the committee tabling the report (for example, because the report is very complex), clause 107 provides that:

- the Minister's response may be tabled within 6 months, rather than 3 months, of the committee tabling its report; and
- if this applies, the Minister must table an interim response within 3 months of the tabling of the report, together with reasons for not tabling the response within 3 months.

To demonstrate that the Government has considered the issues raised in the committee's report, the Minister is required to state:

- which recommendations, if any, have been accepted by the Government and the method and timing of their implementation; and
- which recommendations, if any, have been rejected by the Government and the reasons for their rejection.

Clause 107(1) provides that the Minister need not respond to a report of the Scrutiny of Legislation Committee. This provision was originally included in the PCA because the strict time limits applying to the committee's review of Bills would not enable Ministers to respond in the manner envisaged by clause 107. Ministers will generally respond to the Scrutiny of Legislation Committee's reports during parliamentary debate on the legislation. However, clause 107(10) makes it clear that Ministers are not prevented from making a formal response to the Scrutiny of Legislation Committee's reports when it is practicable to do so.

**\*Clause 108** (PCA s 33) requires each committee that has met and conducted business during the year to produce within 4 months and 14 days after the end of each financial year, an annual report detailing their activities for the year. The clause also provides for the matters which must be included in the annual report. This clause is based on s 33 of the PCA, but has been changed so that it applies to all committees of the Assembly that have met and conducted business during the year, not just statutory committees.

The committee has amended this clause since the consultation draft Bill (then clause 101) to require that annual reports of committees are tabled within 4 months and 14 days after the end of the financial year instead of "as soon as practicable". This brings the reporting time period in line with that required of most Government departments and agencies.

## **CHAPTER 8—APPROPRIATION FOR ASSEMBLY**

**\*Clause 109** (new) provides that there must be a Bill, separate from any other Bill for appropriations, for the Assembly. This has been the practice for a number of years. It was a matter recommended by EARC in its committees report (at paras 9.26 to 9.49 and see cl 200 of EARC's Parliament Bill).

## **CHAPTER 9—REPEALS, AMENDMENTS AND TRANSITIONAL**

The clauses in Chapter 9 are largely machinery in nature to ensure the repeal of other legislation and to make incidental amendments to other legislation.

Part 1 (cl 110) repeals the CAAA 1896, PCA and PPA.

Part 2 (cls 111-112) makes an incidental amendment to the AIA in view of clause 59.

Part 3 (cls 113-114) makes incidental amendments to the DCA in view of clause 64(3)(b).

Part 4 (clauses 115-116) makes an incidental amendment to the EA in view of clause 64.

Part 5 (clauses 117-118) makes an incidental amendment to the LGA in view of clause 72(1)(f).

Part 6 (clauses 119-124) amends the PMSA by relocating provisions from the CAAA 1896 which relate to the salaries of members. The CAAA 1896 is repealed by cl 110.

Part 7 (clauses 125-128) contains transitional provisions.

## **SCHEDULE**

The schedule contains a dictionary which defines particular words used in the Bill.

There have been some amendments made to terms defined in the dictionary since the consultation draft Bill as a result of the amendments to the Bill.