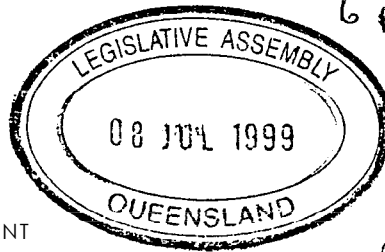




QUEENSLAND GOVERNMENT

PREMIER OF QUEENSLAND



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- 7 JUL 1999

Mr R Doyle
Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Doyle *Robert*,

**Legal, Constitutional and Administrative Review Committee Report No.13
Members' Ethics and Parliamentary Privileges Committee Report No.26**

I refer to Report No.13 of the Legal, Constitutional and Administrative Review (LCARC) tabled on 22 April 1999 - *Final Report on Consolidation of the Queensland Constitution* and Report No.26 of the Members' Ethics and Parliamentary Privileges Committee (MEPPC) tabled on 8 January 1999 - *First Report on the Powers, Rights and Immunities of the Legislative Assembly, Its Committees and Members*.

Under the *Parliamentary Committees Act 1995* the Government response to Report No.13 is due on 27 July 1999 and a response to Report No.26 is due on 7 July 1999.

It should be noted that the Chairman of the Members' Ethics and Parliamentary Privileges Committee wrote to me in February 1999 recognising that although under section 24 of the *Parliamentary Committees Act 1995*, it can not be said that I am the Minister responsible for parliamentary privilege, recommendations contained in Report No.26 impact on statutes within my portfolio responsibilities.

Many of the issues raised in Report No.26 related to matters included in LCARC's *Final Report on Consolidation of the Queensland Constitution*. As indicated in my interim response to Report No.26, given the overlap of issues in the Reports, the Government decided that its responses to the Reports should be presented at the same time. The responses to the Reports are attached.

It would be appreciated if you could arrange for the tabling of the responses on the next sitting day.

Finally, I advise that copies of the *Consolidation of the Queensland Constitution - Discussion Drafts - Constitution of Queensland Bill and Parliament of Queensland Bill* will be tabled in the Legislative Assembly in the near future.

Yours sincerely

[Original Signed]

**Peter Beattie MLA
Premier**

Government Response to
the Legal, Constitutional and Administrative Review Committee (LCARC)
Report No. 13, April 1999,
Consolidation of the Queensland Constitution: Final Report

The Committee's Recommendations:

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 extensive/y 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.

The Government endorses the Committee's objective in consolidating and modernising existing constitutional provisions as the appropriate first step in considering reform of Queensland's Constitution.

Matters of State constitutional significance are currently contained in about ten principal Acts. The language contained in those Acts is often archaic. These factors make the Queensland Constitution difficult to read and contribute to the document having little understanding or relevance in the wider community.

Over six years of deliberation by the Electoral and Administrative Review Commission, the Parliamentary Committee for Electoral and Administrative Review and the Legal, Constitutional and Administrative Review Committee has culminated in a plain English re-write of existing constitutional provisions into two primary statutes: the *Constitution of Queensland Bill 1999* and the *Parliament of Queensland Bill 1999*.

The Government accepts the allocation of existing provisions between the *Constitution of Queensland Bill 1999* and the *Parliament of Queensland Bill 1999* as appropriate.

The Government has revised the Bills, however, to make minor technical amendments as well as amendments to facilitate *full* consolidation of the Queensland Constitution.

The revised *Constitution* of Queens/and Bill does not include the current entrenching provisions (section 53 of the *Constitution Act 1867*, sections 3 and 4 of the *Constitution Act Amendment Act 1934*; as well as section 56 of the *Constitution Act 1867*). This means that the proposed consolidated Constitution could be changed by a Parliament of the day without the need to first follow a special procedure such as referral of the proposed change to a State referendum for approval.

At this stage, a state referendum is planned for about September 2000 to consider suggested amendments for reform of the Queensland Constitution, and the consolidated Constitution.

The Queensland Government has appointed a Queensland Constitutional Review Commission (QCRC) under the Commissions of *Inquiry Act 1950* to research, investigate and drive community consultation on whether there should be reform of the Queensland Constitution. The QCRC must also research and investigate what alterations would be necessary to the Queensland Constitution to enable the State to sever its links with the Crown, if the Federal republic referendum on 6 November 1999 is carried. The QCRC is to recommend draft legislation accordingly.

As requested by the Prime Minister, I have given a commitment that if a republican system of government is endorsed at the Commonwealth level, the Queensland Government would do everything in its power to facilitate a simultaneous change at the State level on 1 January 2001.

Accordingly, it is proposed that a State referendum be held in about September 2000 in order to consider the consolidated Constitution and suggested amendments for reform of the Constitution, following passage of the legislation by the Legislative Assembly of Queensland.

Recommendation 2

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

- *prepare an explanatory book/et to contain or accompany the Constitution;*
- *distribute the Constitution and accompanying explanatory book/et 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.

The Government endorses the recommendation that measures be taken to improve the civic education of Queenslanders, in particular the level of awareness and understanding of the Queensland Constitution.

Our Constitution is the fundamental law about how the people of Queensland are governed. It is imperative that Government promote its accessibility and relevance to the people of Queensland.

Strategies suggested by the committee would assist the Government in this endeavour.

The Government will release its proposed *Constitution of Queensland Bill 1999* and *Parliament of Queensland Bill 7999* (and explanatory notes) for wide distribution in the community, prior to their introduction in the House. It is expected that publication of the Government's Bills will be followed closely by the release of an Issues Paper by the Queensland Constitutional Review Commission. The Issues Paper and the Bills are to stimulate community education and debate about the existing constitutional provisions.

The early release of the Government's Bills will assist the review exercise by providing the people of Queensland with an accessible, plain English consolidated draft Constitution endorsed by Government. It is from the Government's version of the Bills that the Queensland Constitutional Review Commission can recommend draft legislation.

The Bills will be published in hard copy format, including an introduction outlining the history of the development of the consolidated Constitution of Queensland. The Bills will also be available on the Queensland Government's new Constitution Website (www.premiers.qld.gov.au/constitution/constitution.htm), together with copies of the Reports of the Electoral and Administrative Review Commission, Parliamentary Committee for Electoral and Administrative Review and the Legal, Constitutional and Administrative Review Committee on Consolidation of the Queensland Constitution.

Government Response to
the Members' Ethics and Parliamentary Privileges Committee (MEPPC)
Report No. 26, January 1999,
First Report on the Powers, Rights and Immunities of the Legislative
Assembly, its Committees and Members

The Committee recommended that:

- 1. Section s.40A [of the Constitution Act 1867] be amended to provide that the powers, rights and immunities of the Queensland Parliament and 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 Government agrees that the linkage of the powers, rights and immunities of the Queensland Parliament to those in the House of Commons (UK) "for the time being" is no longer appropriate today. Should the House of Commons divest itself of any of its powers or modify them in any way, the continuing linkage may cause uncertainty in defining those powers, rights and immunities applicable in Queensland.

This linkage and uncertainty is unacceptable for a mature Parliament.

The Government accepts the Parliamentary Legal, Constitutional and Administrative Review Committee's (LCARC's) implementation of this recommendation in its proposed Bills.

- 2. There should be no provision for either individual members, or the Parliament collectively, to waive the immunity conferred by Article 9 of the Bill of Rights.***

Abolition of this protection could have serious ramifications for independent members and minority parties.

The Government accepts MEPPC's rejection of a provision to waive the freedom of speech immunity conferred by Article 9 of the Bill of Rights.

3. ***A separate Queensland statute comprehensively defining the powers, rights and immunities of the Queensland Legislative Assembly or a code containing these matters should not be adopted.***

The Government agrees with MEPPC's conclusion that current arrangements preserve maximum flexibility, and guarantee that Parliament has recourse to the full body of parliamentary law with respect to its own proceedings.

4. ***The proposed LCARC model legislation – whereby matters relating to the Queens/and Parliament are contained in a separate statute in the form of the Parliament of Queensland Bill 1998 – be adopted.***

Consolidation of provisions relating to the Queensland Parliament in one statute, as per LCARC's model legislation, is endorsed.

5. ***A general definition of contempt such as that contained in s.4 of the Parliamentary Privileges Act 1987 (Cth) should be adopted in Queensland and included in the draft Parliament of Queensland Bill.***

The full extent of the power of the Legislative Assembly regarding contempt is unclear. For the protection of the individual such provisions ought to be clear in their expression and application.

The Government accepts LCARC's implementation of MEPPC's recommendation in its ***Parliament of Queensland Bill 7999***.

6. ***This definition should be qualified by inserting a further section which provides:***

(2) ***Whether conduct does or does not constitute an offence as specified in subsection (1) is a matter entire/y for the Assembly to decide acting on any advice it deems necessary.***

The Government accepts LCARC's implementation of this recommendation.

7. ***The contempt currently enumerated in the Constitution Act 1867 (Qld) should be presented in current form as they appear in the LCARC's draft of the Parliament of Queensland Bill.***

The Government accepts LCARC's implementation of this recommendation.

- 8. The definition of “proceedings in the Assembly” as set out in the LCARC’s report on the consolidation of the Constitution – which repeats s.3 of the Parliamentary Papers Act 1992 (Q/d) be adopted,**

The Government accepts LCARC’s implementation of this recommendation.

- 9. This definition of “proceedings in the Assembly” be amended by adding a further provision in terms similar to the following:**

- (5) If a document described in (3)(d) above was a document that was not brought into existence for the purpose of being laid before, or presented or submitted to the House or a committee, or an inquiry by the House or a committee, but was brought into existence for another purpose, it can (if its publication has been authorised by the House or the committee) be questioned, or impeached in respect of that other purpose. .**

This provision is appropriate and consistent with the (comparable) common law on legal professional privilege. The Government accepts LCARC’s implementation of this recommendation.

- 10. The removal of the phrase “not inconsistent with this Act or any other Act” from s.40A of the Constitution Act 1867 (Qld).**

The Government accepts LCARC’s implementation of this recommendation.

- 11. A new provision that provides that there is a legal presumption that a provision or act is not inconsistent with the powers, rights and immunities of the Legislative Assembly conferred by s.40A (or its equivalent) unless the intention is clearly expressed in the provision or act**

LCARC declined to make a decision in respect of this recommendation in view of the wider impact in implementing the statutory presumption. LCARC did suggest that such a statutory presumption would be more appropriately placed in the *Acts Interpretation Act 1954*, rather than the *Constitution of Queensland and Bill 1999* or the *Parliament of Queensland and Bill 1999*.

The Government accepts MEPPC’s arguments and recommendation in this regard. A statutory presumption in favour of the Parliament’s powers, rights and immunities should be adopted to protect the Parliament’s privileges from inadvertent abrogation.

72. The wording of c/.36(7) of the Parliament of Queensland Bill 1998 be replaced with the wording in s.26(9) of the *Parliamentary Committees Act 7995 (Qld)*.

LCARC's earlier provision went beyond the existing law and MEPPC considered that it would unduly restrict the use of proceedings. The Government accepts LCARC's revision of the relevant clause.
