1. **INTRODUCTION**

On 29 February 2000, the Premier tabled in the Queensland Parliament the Queensland Constitutional Review Commission’s *Report on the possible reform of and changes to the acts and laws that relate to the Queensland Constitution.*

The QCRC’s report not only incorporates this committee’s previous work on consolidating the Queensland Constitution but also makes recommendations about substantial issues of constitutional reform.

In a ministerial statement to the Legislative Assembly on 29 February 2000, the Premier stated that he tabled the QCRC’s report for this committee’s ‘consideration and reporting’. The Premier also indicated that while the committee is considering the report, the Government will consider the QCRC’s recommendations and, in particular, Cabinet will examine options for the possible introduction of four year terms as recommended by the QCRC. The Premier further indicated that Cabinet might make a decision on the four year term issue before the committee brings down its report.

Accordingly, the committee resolved to review and report to Parliament on the QCRC’s report in two stages, namely:

- to review and report to Parliament on QCRC recommendation 5.2 that the maximum term of the Legislative Assembly be extended to four years (stage 1, part A); and
- to (separately) review and report to Parliament on those QCRC recommendations which the committee considers as consolidatory and/or relatively non-controversial in nature (that is, capable of achieving bipartisan political support and likely widespread community support) and which the committee thinks desirable to implement (stage 1, part B); and
- at some time after the tabling of the stage 1 reports, review and report to Parliament on the remainder of the QCRC’s recommendations as the committee sees appropriate at that point in time (stage 2).

The committee has already called for public submissions on the QCRC’s recommendation regarding four year parliamentary terms and released a background paper to facilitate submissions. Submissions to the committee’s review of the four year term recommendation close on Friday, 12 May 2000.

This paper concerns part B of stage 1 of the committee’s inquiry, namely, those QCRC recommendations which the committee considers as consolidatory and/or relatively non-controversial in nature.

The purpose of this paper is to facilitate the committee’s call for public submissions on those QCRC recommendations which the committee considers as consolidatory and/or relatively non-controversial in nature.

The committee’s aim is to incorporate these recommendations into draft consolidatory legislation capable of bipartisan support in the Legislative Assembly so as to facilitate passage of a modern, easy-to-read consolidated Queensland Constitution in the short term.

The closing date for submissions is 26 May 2000. Please see the back page of this paper for guidelines on making a submission and the committee’s contact details.

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2. THE COMMITTEE’S APPROACH

In April 1999, the committee tabled its Consolidation of the Queensland Constitution: Final Report\(^3\) which recommended the consolidation of the extensive range of enactments relating to the Queensland Constitution. This was to be achieved by consolidating the relevant existing provisions into two bills:

- the Constitution of Queensland Bill 1999 (setting out Queensland’s fundamental laws relating to Parliament, Ministers, the Governor, the Supreme and District Courts and Local Government); and
- the Parliament of Queensland Bill 1999 (setting out essential laws concerning the operation of Parliament, its powers, rights and immunities and its members and committees).

These bills—the ‘LCARC Constitution Bill’ and the ‘LCARC Parliament Bill’—can be viewed at, and downloaded from, the Internet at <http://www.parliament.qld.gov.au/committees/lcarcindex2.htm>.

In drafting these bills, the committee was concerned only to consolidate the existing provisions in modern language without changing their substantive effect unless this was considered necessary. In this way only minimalist reform was proposed.

The most difficult aspect of this consolidation exercise arose in relation to those provisions which are ‘entrenched’ in the Constitution Act 1867 (Qld), the Constitution Act Amendment Act 1890 (Qld) and the Constitution Act Amendment Act 1934 (Qld). Entrenchment means that these provisions require a referendum to be changed or repealed. In its consolidation exercise to date, the committee has assumed that all of these provisions are effectively entrenched so that they cannot be altered in any respect without a referendum.

The purpose of the committee’s consolidation exercise, as reflected in its Final Report, is to produce a modern, accessible and readable Constitution for Queensland. Therefore, in its Final Report, the committee took the approach that this was best achieved by leaving untouched the entrenched provisions but including them also in their modern form in the proposed bills.

The Queensland Government subsequently considered both of the committee’s bills and, in July 1999, released revised versions for public comment in the form of ‘discussion drafts’. These discussion drafts closely followed the committee’s Constitution and Parliament Bills except the Government discussion drafts removed the entrenchment provisions.

The QCRC was established in May 1999 to report to Government on any reforms needed to the acts and laws that relate to the Queensland Constitution and to draft appropriate legislation. At the same time as the Government issued its discussion drafts, the QCRC released an extensive issues paper regarding possible constitutional reform for Queensland.\(^5\) The QCRC’s review culminated in its February 2000 report.

Given its terms of reference, the QCRC’s review of Queensland’s constitutional arrangements was much broader in scope than the committee’s consolidation inquiry. In addition to proposing more substantive reform to the Queensland Constitution, in its report the QCRC recommended that a number of current and new provisions be referendum entrenched. (The QCRC’s consolidatory legislation—the ‘QCRC Constitution Bill’ and the ‘QCRC Parliament Bill’—are based on the Government’s discussion drafts.)

So that Queensland might have a modern, easy-to-read consolidated Constitution in the short term, in this paper the committee identifies those QCRC recommendations which the committee believes are consolidatory and/or relatively non-controversial in nature and which the committee thinks it desirable to implement.

Once the committee has received and considered comment in response to the proposals stated in this paper, the committee will make such amendments as it considers appropriate to the Constitution Bill and Parliament Bill which the committee has already presented to Parliament. The committee

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will then report to Parliament on the amendments it sees as necessary and/or desirable to those bills.

Later, in stage 2 of its review, the committee will consider those QCRC recommendations which:

- in the committee’s opinion, are more controversial in nature and require further public consultation and consideration; and/or
- pertain to entrenchment.

In accordance with this approach, this position paper deals with those QCRC recommendations which, in the committee's view, fall into two categories: those which are clearly appropriate for inclusion in a mere consolidation of the Constitution (Category A); and those which the committee feels are likely to be accepted as eminently desirable and relatively uncontroversial but which the committee is particularly interested to receive public comment on (Category B).

The committee also canvasses in this paper substantive changes it proposes to its previous bills based on matters included in the QCRC’s draft legislation but which are not included in QCRC recommendations as such.

The committee seeks submissions from the public on the committee’s position regarding both categories of recommendations and these additional matters.

(All page references in the QCRC recommendations listed below relate to the relevant discussion in the QCRC’s report which the committee commends to the reader.)

3. CATEGORY A RECOMMENDATIONS

The committee has formed the view that each of the following QCRC recommendations should be included as part of the consolidation exercise on the basis that they deal with matters which constitute a correction to the text of the committee’s draft bills or reflect clearly established constitutional practice.

- R11.3 That superfluous words in s 69(4) be deleted (p 66).

The committee agrees that the inclusion in the definition of ‘local government’ in cl 70(4) of the LCARC Constitution Bill of the words ‘and a person or persons appointed to perform the functions and exercise the powers of the local government as an administrator’ should be deleted as inappropriate.

- R16.3 The second of two minor amendments recommended by the QCRC relates to cl 10 of the Government’s Discussion Draft Parliament Bill (p 83).

Clause 10 of the Government's Discussion Draft Parliament Bill differs in form only from cl 10 of the LCARC Parliament Bill. Both provisions allow the Legislative Assembly to proceed with its business despite up to five members not having been declared elected. The latter more closely follows s 14 of the Legislative Assembly Act 1867 (Qld) while the former adopts simpler terminology which is to the same effect. The committee proposes to adopt the simpler form of cl 10 proposed by the Government's Discussion Draft Parliament Bill.

The committee also proposes to adopt this QCRC recommendation so that the clause should begin with the words: ‘Following a general election’ rather than ‘On a general election’ in describing when the Legislative Assembly may proceed to transact business after a general election. (See now clause cl 10 of the QCRC Parliament Bill.)

- R16.7 That the provision requiring a separate appropriation for the Legislative Assembly be transferred from the Parliament of Queensland Bill to the Queensland Constitution (p 85).

The committee proposes to accept this recommendation that the provision for separate appropriation for the Legislative Assembly, currently found in cl 109 of the LCARC Parliament Bill, should be transferred to the LCARC Constitution Bill.

The committee also notes that the QCRC has made some minor drafting amendments to the LCARC’s initial provision (see cl 18 of the QCRC Constitution Bill). The committee proposes to retain its original drafting.

4. CATEGORY B RECOMMENDATIONS

This category contains those recommendations which the committee is prepared to include in this consolidation exercise because the committee considers them likely to be acceptable to the community as a whole and hence attract bipartisan support.
• **R4.1** That the Short Title be The Constitution of Queensland 2000 (p 35).

The committee acknowledges that this short description for the Constitution Bill highlights its singular importance as the primary enactment of the State. The committee agrees with the QCRC report that the deletion of ‘Act’ in the title would serve to ‘recognise its special status as the fundamental law and distinguish it from other Acts’.

• **R5.3** That direct election of Members of the Legislative Assembly be required and the provision be referendum entrenched (p 41).

Clause 10 of the LCARC Constitution Bill, which follows very closely the terms of s 28 of the Constitution Act 1867 (Qld), provides that: ‘[t]he Legislative Assembly is to consist of members who are eligible to be elected by the inhabitants of the State who are eligible to elect members’.

The QCRC interpreted this clause as not requiring the direct election of members by the inhabitants of the State, allowing for the possibility of appointed members. The committee is of the view that cl 10, like s 28 of the Constitution Act 1867 (Qld), requires a direct election and so for the sake of clarity proposes to adopt this recommendation in the form as drafted in cl 9 of the QCRC Constitution Bill. Hence, cl 10 of the LCARC Constitution Bill will refer to ‘directly elected members’. However, for the purpose of the committee’s current consolidation exercise, this provision will not be entrenched.

It should be noted that a similar phrase, ‘directly chosen by the people’, is used in relation to members of the Commonwealth Parliament in ss 7 and 24 of the Commonwealth Constitution. This wording provided the textual basis for the High Court deriving the implied freedom of political communication in the ACTV Case (1992) 177 CLR 106, later confirmed in Lange v ABC (1997) 189 CLR 520. However, those provisions are entrenched whereas cl 10 as proposed will not be entrenched, unless this is approved at some time in the future by referendum.

• **R5.4** That the maximum time limit between sittings of the Legislative Assembly be reduced to six months and the minimum number of sittings be increased to two per year (p 41).

At present, the Legislative Assembly is only required to sit once every year with a maximum period of 12 months between sittings (Constitution Act 1867 (Qld) s 3). Clause 18 of the LCARC Constitution Bill provides that the Assembly must meet at least once in every calendar year and that one year must not pass between a sitting of the Assembly and the next sitting of the Assembly.

This QCRC recommendation reduces the intervening period to six months thereby requiring at least two sittings a year. Given that the Legislative Assembly meets well in excess of twice a year, the committee proposes to adopt this recommendation.

• **R5.8** That Parliamentary Secretaries be dismissed by the Governor in Council rather than by the Premier (p 44).

At present, the Governor in Council appoints Parliamentary Secretaries under s 57 of the Constitution Act 1867 (Qld) and the Premier may dismiss them under s 59(3). The committee endorses this recommendation as the committee believes that both the power of appointment and of dismissal should be vested in the same authority. This is the position in relation to Ministers, where the powers of appointment and dismissal are vested in the Governor.

Accordingly, the committee proposes that it is appropriate that the Governor in Council possess both the power of appointment and of dismissal of Parliamentary Secretaries.

• **R6.1** That a statement of the executive power be added to the Queensland Constitution (p 50).

• **R6.7** That a section be added to the Queensland Constitution stating that (a) Cabinet is collectively responsible to the Legislative Assembly, and (b) is the principal instrument of policy (p 55).

The QCRC made several recommendations to insert into the Constitution Bill various provisions in relation to the role of the Governor and Cabinet (see R6.1-6.7). The QCRC regarded them as necessary to ensure that ‘the Constitution is comprehensive, that it is easily understood and that it accurately sets out the major processes of government’ (p 45). The committee is not sure, however, that all of those recommendations would be regarded as necessarily uncontroversial. Some, such as R6.4, require referendum approval.
The two recommendations listed here appear to the committee to involve no controversy for they merely state the present position according to well-established constitutional conventions or are already prescribed by the Australia Acts 1986.

As for R6.1, the QCRC drafted cl 30 of its Constitution Bill to give effect to this recommendation. Clause 30 provides:

30.(1) The executive power of Queensland is vested in the Sovereign and extends to the administration of the Constitution and the laws of Queensland.

(2) Subsection (1) does not limit the Sovereign’s other functions and powers in relation to Queensland.

(3) Subject to subsections (4) and (5), all functions and powers of the Sovereign in relation to Queensland may be performed or exercised only by the Governor.

(4) Subsection (3) does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor.

(5) While the Sovereign is personally present in Queensland, he or she is not precluded from performing or exercising any of His or Her functions and powers in relation to Queensland.

(6) Advice to the Sovereign in relation to the performance or exercise of the Sovereign’s functions and powers in relation to Queensland is to be tendered by the Premier.

Clause 30(1) reflects the accepted legal position in Queensland and adopts a similar formulation to s 61 of the Commonwealth Constitution which provides: ‘The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen’s representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth’.

The remaining subclauses of cl 30 simply repeat in substance the provisions in s 7(2) to (5) of the Australia Acts 1986 which are legally in force in all Australian States. Although their inclusion is consistent with producing a comprehensive and accessible Constitution, complications may arise in the future given that these provisions are entrenched in Commonwealth and United Kingdom legislation which it is beyond the capacity of the Queensland Parliament to change unilaterally. In other words, their inclusion in the Queensland Constitution runs the risk that attempts will be made to amend them unconstitutionally. Accordingly, the committee is of the view that it is preferable not to include them in this consolidation.

As for R6.7, this recommendation endeavours to make the Constitution more descriptive of the present system by incorporating in the Constitution Bill reference to Cabinet and the principle of collective ministerial responsibility, neither of which appear in the present Constitution. The committee accepts that their inclusion in terms of cl 40 in the QCRC Constitution Bill is desirable to produce a comprehensive and accessible Constitution.

The committee will examine the remainder of the recommendations made by the QCRC in this context—R6.2, R6.3, R6.4 and R6.6—in stage 2 of its review. (R6.5 is canvassed below.)

- R6.5 That the language of s 44(1) be amended concerning appointment of an acting Minister by changing “and” to “to” (p 54).

This recommendation relates to cl 44 of the Government’s Discussion Draft Constitution Bill which provides for the appointment of members of the Legislative Assembly as ‘Acting Ministers’. As drafted by the Government, cl 44(1) provides that the ‘Governor may appoint a person who is a member of the Legislative Assembly and the Executive Council to act as a Minister’. The QCRC recommendation is to change this clause to avoid the misconception that there are members of the Legislative Assembly who are also members of the Executive Council without being a Minister. In the QCRC’s view, ‘[s]omeone is made an Executive Councillor and only then can they be made a Minister’ (p 54).

However, the Government’s Discussion Draft cl 44(1) closely follows the terms of the current provision, s 3(3) of the Officials in Parliament Act 1896 (Qld) which empowers the Governor to appoint any member of the Executive Council (not a Minister) who is also a member of the Legislative Assembly to act as a Minister. It would appear though that this provision does not reflect constitutional practice where a person is appointed both a member of the Executive Council and a Minister or an Acting Minister at the same time.

Accordingly, the committee considers the preferable course here is to redraft cl 44(1) of the Government’s Discussion Draft to accord with
constitutional practice. This appears to the committee to be achieved by adopting the QCRC recommendation. In taking this course, the committee departs from cl 44(1) of the LCARC Constitution Bill which merely provides that a member of the Legislative Assembly may be appointed by the Governor to act as a Minister without referring to appointment to the Executive Council.

Indeed, the committee now proposes to substitute the whole of the Government's draft cl 44 for cl 44 in the LCARC Constitution Bill. Apart from the difference just discussed, there are several other differences between these two clauses. The Government's draft clause allows an acting appointment to be made when the Minister is absent from the State in the course of official duty or on sick leave granted by the Governor and prevents another Minister from also being appointed an Acting Minister. The LCARC clause redefined these circumstances more broadly by permitting an appointment when the office is vacant or the Minister is absent from duty or otherwise unable to perform the duties of the office.

As the Government's draft cl 44 more closely follows the terms of the current provision in s 3(3) of the Officials in Parliament Act 1896 (Qld), the committee prefers to substitute that clause as amended in accordance with the QCRC recommendation for cl 44 in the current LCARC Constitution Bill.

However, the committee is concerned that the heading of ‘Acting Ministers’ may result in confusion. This might arise given the present practice of describing a Minister who is appointed to assume the duties of another Minister for a period as an Acting Minister. Although this type of appointment is provided for in cl 43 of the LCARC Constitution Bill, the designation of ‘Acting Minister’ is only mentioned in the heading to cl 44 which relates to the appointment of members to act for Ministers. Accordingly, the committee is of the view that the heading of cl 44 ought to be changed to conform with that of cl 43 and so should read: ‘Member may act for a Minister’.

The committee also notes that the term ‘Acting Ministers’ is used in cl 22 of the LCARC Constitution Bill. On reflection, the committee believes that cl 22 is superfluous. The committee therefore proposes to delete cl 22, the text of which is to appear in a footnote to current cl 23(2). The heading to Part 3, Division 2 would therefore also be amended to read ‘Members who are Parliamentary Secretaries’.

- **R16.5 That the Speaker be designated to advise the Treasurer when the seat of a Member becomes vacant (p 84).**

This recommendation relates to cl 124 of the LCARC Parliament Bill (cl 127 of the QCRC Parliament Bill) which is proposed to amend the Parliamentary Members’ Salaries Act 1988 (Qld) by inserting a new s 13 to provide that where a member's seat has become vacant, the Governor in Council may direct the Treasurer to retain any amount payable to the member.

The committee proposes to adopt the QCRC recommendation on the basis that it is more consistent with the principle of separation of powers that the Speaker rather than the Governor in Council be empowered to issue the necessary direction to the Treasurer.

However, the committee sees the need to cover the situation where it is the Speaker whose seat is vacated. In that circumstance, the responsibility should rest with the Chairperson of Committees (in effect the Deputy Speaker) to issue the necessary direction to the Treasurer.

- **R16.6 That the disqualification provisions be extended to include offences in respect of enrolment in both State and Commonwealth electoral law (p 84).**

At present, candidates and members of the Legislative Assembly are disqualified if convicted of offences of influencing voting or voting when not entitled to (Electoral Act 1992 (Qld) ss 168 and 170). The committee accepts that the seriousness of other electoral offences which involve falsification of names on the electoral roll or forging an enrolment application should also disqualify any person convicted of these offences from being elected or from remaining as a member. Accordingly, the committee proposes to adopt the provisions recommended in cl 72(1)(i)(ii), (iii) and (iv) of the QCRC Parliament Bill.
5. MATTERS NOT THE SUBJECT OF QCRC RECOMMENDATIONS

- Removal of Supreme and District Court judges

Clause 64(1) of the QCRC Constitution Bill follows cl 59(1) of the Government’s Discussion Draft Constitution Bill in vesting the power to remove a Supreme Court judge or a District Court judge in the Governor on receipt of an address from the Legislative Assembly for proved misbehaviour or incapacity. These clauses differ from cl 60(1) of the LCARC Constitution Bill which vested this power in the Sovereign. The LCARC approach reflects the present position under s 16 of the Constitution Act 1867 (Qld) which vests the power in relation to the removal of Supreme Court judges in Her Majesty. In practice, this power is exercised by the Governor as her representative.

In the case of District Court judges, removal is by the Governor under s 15 of the District Court Act 1967 (Qld).

The committee believes that it is more appropriate that the power of removal under the circumstances prescribed be vested in the Governor in Council, rather than in the Governor or the Sovereign. This is consistent with the fact that cl 58 of the LCARC Constitution Bill (cl 62 of the QCRC Constitution Bill) vests the power of appointment in the Governor in Council. It also reflects the position in relation to the removal of federal justices by the Governor-General in Council under s 72 of the Commonwealth Constitution.

6. CONCLUSION

In this stage of its review of the QCRC’s report the committee is dealing only with those recommendations which, in the committee’s opinion, will not impede the introduction in the short term of legislation to consolidate and modernise Queensland’s Constitution.

As the committee has previously stated, it is highly desirable that Queensland’s Constitution be accessible to all citizens. The people of Queensland should be able to readily locate, read and understand the laws that make up the State’s Constitution. This cannot be achieved while Queensland’s constitutional provisions are scattered throughout numerous Acts and, in some cases, expressed in language that is difficult to understand.
GUIDELINES FOR MAKING A SUBMISSION

FORM

• There is no set form for a submission to the committee. Submissions may be in the form of a letter, a substantial paper or a short document and they may include appendices. Submissions may contain facts, opinions, arguments and recommendations for action.

• The committee will only consider written submissions. Typed text on A4 paper is preferable, though legible hand-written submissions are acceptable. It is helpful if submissions are also provided on computer disk (preferably in Word 7).

• Submissions must be signed and dated. Those signing a submission on behalf of an organisation should indicate at what level of the submission has been authorised (eg sub-committee, president, chair, state branch, etc.). A return address and contact number should also be provided.

• Public officers may make submissions as private individuals. However, if reference is made in a submission to their official position, it should also be made clear that the submission is made in a private capacity.

CONTENT AND RELEVANCE

• Submissions may cover some or all of the issues which form part of the committee’s inquiry.

• A submission should be relevant to the committee’s inquiry, otherwise the committee may decide not to accept it. The committee will inform you if it decides to reject your submission.

CONFIDENTIALITY

• If you want your submission, or part of it, to be treated confidentially, then you should clearly write ‘confidential’ on each page and, in a brief covering letter, explain why your submission should be treated confidentially. The committee will then consider your request for confidentiality.

UNAUTHORISED RELEASE

• A submission made to the committee must not be published or disclosed to any other person in that form without the committee’s authorisation.

• Publication of a submission without the committee’s permission means that that publication is not protected by parliamentary privilege and may amount to a contempt of Parliament.

FURTHER INFORMATION

All submissions should be sent to:

The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House, George Street
BRISBANE QLD 4000

SUBMISSIONS CLOSE ON FRIDAY, 26 MAY 2000

Extensions to the closing date may be given. If you need more time to make a submission or if you would like further information, contact the committee secretariat on:

Telephone: (07) 3406 7307
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Copies of this paper and all other LCARC publications are available on the Internet via the Queensland Parliament’s home page at:


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