The committee is conducting a review of certain matters relating to the Queensland Constitution. Primarily, this review considers various recommendations of, and issues raised by, the Queensland Constitutional Review Commission in its February 2000 Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution. In the first stage of this review, which is the subject of report no 36, The Queensland Constitution: Specific content issues, tabled with this paper, the committee considered certain specific content issues relating to the Constitution.

This paper commences the second stage of the committee’s review, concerning entrenchment of the Queensland Constitution. To facilitate the committee’s call for public submissions on this stage, the committee has formulated proposals for comment on relevant issues. A summary of proposals appears at the beginning of the paper. The committee will take comments from submitters into consideration in preparing its final report.

Additional background information is available from the sources indicated in relevant sections of the paper.

The closing date for submissions is Friday, 11 October 2002. Please see the back page of this paper for guidelines on making a submission and the committee’s contact details. Submitters are asked to clearly identify which proposal they are addressing in their submission.
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• cannot be passed within 27 calendar days of being introduced;
• must be the subject of a report to Parliament by an appropriate, duly constituted
  parliamentary committee before being passed; and
• must contain the words “Constitution Amendment” in its title;
• must be passed by a majority of the Legislative Assembly equal to a majority of the
  number of seats in the Assembly (an absolute majority of the Legislative Assembly).

These requirements should be referendum entrenched.

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The Constitution should require that entrenching provisions requiring special procedures which an absolute majority of the Legislative Assembly will be able to comply with should only be inserted following the same procedure as the provision itself provides for amendment or repeal of the entrenched provisions.

The Constitution should expressly provide that a referendum is necessary to insert entrenching provisions requiring a referendum or requiring other special additional procedures which cannot be complied with by an absolute majority. This provision should itself be referendum entrenched.

7. Adoption of the Constitution at a referendum

Committee proposal 13 – Adoption of the constitution at a referendum

When consideration of the current issues of constitutional reform is finalised, the Queensland Constitution should be submitted for approval at a referendum.

Committee proposal 14 – A constitutional convention

A constitutional convention should be convened as the penultimate stage of the current process of constitutional reform to finalise the drafting of the Queensland Constitution and determine the logistical details for proceeding to a referendum.

APPENDIX A ~ Entrenchment of specific provisions of the Constitution of Queensland 2001

Committee proposal 15 – Entrenchment of specific provisions

[Appendix A contains the committee’s proposal regarding which specific provisions of the Constitution of Queensland 2001 should be referendum entrenched, and which should be parliamentary entrenched. In the case of sections of the Constitution of Queensland 2001 which refer to currently entrenched provisions, appendix A identifies the elements of the provision in relation to which the committee proposes referendum entrenchment. A summary of appendix A is provided below.]

The following sections of the Constitution of Queensland 2001 should be referendum entrenched:

- s 6 The Parliament (refers to the Constitution Act 1867, s 2A which is currently entrenched);
- s 7 Legislative Assembly (refers to the Constitution Act 1867, s 1 which is currently entrenched);
- s 8 Law making power (refers to the Constitution Act 1867, s 2 which is currently entrenched);
- s 10 Members of Legislative Assembly;
- s 12 Division of State into electoral districts;
- s 13 1 member for each electoral district;
- s 16 Duration of Legislative Assembly (refers to the Constitution Act 1890, s 2 which is currently entrenched);
• s 29 Governor;
• s 30 Office of Governor (refers to the Constitution Act 1867, ss 11A and 11B, which are currently entrenched);
• s 57 Supreme and District Court (as it relates to the Supreme Court);
• s 58 Supreme Courts superior jurisdiction;
• s 60 Length of judge’s appointment;
• s 61 Removal from office for misbehaviour or incapacity (in part);
• s 62 Judge’s salary;
• s 63 Protection if office abolished;
• s 64 Consolidated fund;
• s 65 Requirement to pay tax, impose, rate or duty;
• s 66 Payment from consolidated fund; and
• s 70 System of local government.

Other sections of the Constitution of Queensland 2001 should be parliamentary entrenched.

APPENDIX B – Constitutional provisions recommended in LCARC report no 36 The Queensland Constitution: Specific content issues

[Appendix B contains the committee’s proposals regarding entrenchment of provisions the committee recommended in report no 36 The Queensland Constitution: Specific content issues. A summary of appendix B is provided below.]

The committee proposes referendum entrenchment of provisions relevant to the following recommendations from report no 36:

• recommendation 2: A statement of executive power;
• recommendation 7: Requirement for ministers to be members of the Legislative Assembly (in part);
• recommendation 8: Appointment of the Premier;
• recommendation 9: Dismissal of the Premier;
• recommendation 31: Acting judges;
• recommendation 32: Compulsory retirement age for judges; and
• recommendation 33: Removal of judges from office (in part).
1. **INTRODUCTION**

1.1 **Background to the review**

On 29 February 2000, the Premier tabled in the Queensland Parliament the report of the Queensland Constitutional Review Commission (QCRC) titled *Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution*.\(^1\) As this title suggests, the QCRC’s mandate was wide-ranging: essentially, to research and investigate whether there should be reform of, and changes to, the Acts and laws that relate to the Queensland Constitution.\(^2\)

The Premier stated that he tabled the QCRC’s report for ‘consideration and reporting’ by the Legal, Constitutional and Administrative Review Committee of the Queensland Legislative Assembly (‘the committee’ or ‘LCARC’).\(^3\)

The then LCARC subsequently reviewed and reported to Parliament on:
- the QCRC’s recommendations relating to a consolidation of the Queensland Constitution;\(^4\) and
- the QCRC’s recommendation that the maximum term of the Legislative Assembly be extended to four years with a fixed minimum period of three years.\(^5\)

The former LCARC did not embark on a review of the remainder of the QCRC recommendations relating to reform of the Queensland Constitution before its dissolution in January 2001 for the 2001 general State election.

In November 2001, an extensive exercise to consolidate Queensland’s Constitution culminated in the Legislative Assembly passing the *Constitution of Queensland 2001* (Qld) and the adjunct *Parliament of Queensland Act 2001* (Qld). The passage of these statutes followed not only the QCRC’s review, but also reviews by other independent commissions and parliamentary committees over the preceding eight years, namely:
- the Electoral and Administrative Review Commission;\(^6\)
- the Parliamentary Committee for Electoral and Administrative Review;\(^7\) and
- the Legal, Constitutional and Administrative Review Committee of the 48\(^{th}\) and 49\(^{th}\) Parliaments.\(^8\)

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The Constitution of Queensland 2001 (the Constitution) and the Parliament of Queensland Act 2001 commenced on 6 June 2002. With few exceptions, these statutes merely consolidate the various statutes that formerly contained Queensland’s constitutional provisions. However, a referendum is required to relocate those provisions entrenched in earlier constitutional legislation, and thereby fully complete the consolidation of Queensland’s constitutional legislation.

1.2 The review generally

In February 2002 this committee—the LCARC of the 50th Parliament—resolved to conduct an inquiry into issues of constitutional reform which encompasses:

♦ a review of the QCRC recommendations not considered by the former LCARC and other issues raised by the QCRC;
♦ issues of constitutional reform which the Government referred to the committee in a letter from the Acting Premier dated 17 January 2002; and
♦ an outstanding issue from LCARC report no 31 relating to the oath or affirmation of allegiance required to be taken or made by Queensland members of Parliament.

The committee is dealing with these issues of constitutional reform in separate stages. The first stage, relating to substantive issues of constitutional reform, is the subject of report no 36, The Queensland Constitution: Specific content issues, tabled in the Legislative Assembly with this consultation paper.

The second stage, initiated by this consultation paper, relates to entrenchment of provisions of the Constitution. In this stage the committee will consider which parts of the Constitution should be entrenched and how any entrenchment should be effected. This consultation paper includes consideration of whether the substantive provisions recommended in the committee’s stage one report should be entrenched and, if so, how.

The third stage of the committee’s inquiry will concern QCRC R5.6 that, during this Parliament, the LCARC conduct an inquiry into the possibility of special representation for Aborigines and Torres Strait Islanders.

Finally, the committee will give further consideration to the issue of a preamble for the Constitution.

1.3 Proposals for comment

To commence stage 2 of its inquiry the committee has formulated proposals on matters relevant to entrenchment of the Constitution. The QCRC’s recommendations form the basis of the committee’s proposals. The committee has also taken into account: the comments, findings and recommendations of the former Electoral and Administrative Review Commission, and the 1999 Gladstone Constitutional

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9 As discussed in section 2.1 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 a referendum or approval by a two-thirds majority in the Parliament.
10 This letter is reproduced in full in LCARC, The Queensland Constitution: Specific content issues, report no 36, GoPrint, Brisbane, August 2002.
11 LCARC, Review of the members’ oath or affirmation of allegiance, report no 31, GoPrint, Brisbane, October 2001.
12 Note 10.
13 In its April 2002 issues paper The Queensland Constitution: Specific Content Issues, relating to stage one of its inquiry, the committee noted that it did not propose to pursue the issue of whether the Constitution should include a preamble and, if so, what form that preamble should take. By letter dated 22 April 2002 the Premier wrote to the committee asking it to reconsider its position.
Convention;\textsuperscript{15} and relevant submissions made to previous LCARC inquiries in relation to the consolidation of the Constitution and the QCRC’s review. At this stage the committee seeks comment on its proposals. The committee will take into consideration comments from submitters in preparing its final report on stage 2.

Complex legal and policy issues surround entrenchment of constitutional provisions. Sections 2.2 and 2.3 outline background information relevant to considering the extent to which the Constitution can and should be entrenched.

In chapter 5 the committee proposes that the Queensland Constitution should be partially referendum entrenched and identifies the criteria to determine which provisions should be referendum entrenched. Further, the committee proposes certain procedures to entrench those provisions of the Constitution which are not referendum entrenched. In appendix A the committee considers specifically how each provision of the Constitution should be entrenched. In appendix B the committee considers how provisions recommended in its stage 1 report \textit{The Queensland Constitution: Specific content issues} should be entrenched. These appendices need to be read in conjunction with the \textit{Constitution of Queensland 2001} which is available on the internet at \url{http://www.legislation.qld.gov.au}. The committee recognises that the Constitution might be amended as a result of recommendations emanating from future inquiries into:

- special parliamentary representation for Aborigines and Torres Strait Islanders (QCRC R5.6);
- the issue of a preamble for the Queensland Constitution; and
- certain matters relating to the judiciary (see chapter 13 of report no 36 \textit{The Queensland Constitution: Specific content issues}).\textsuperscript{18}

In chapter 6 the committee discusses certain recommendations of the QCRC designed to ensure that the Constitution remains relevant.

\section*{2. BACKGROUND}

\subsection*{2.1 Meaning of entrenchment}

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 a referendum or approval by a two-thirds majority of the Legislative Assembly. 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 process.

The entrenchment of a law usually occurs by a substantive provision (the ‘entrenched provision’) being subjected to another provision (the ‘manner and form provision’\textsuperscript{17} or ‘entrenching provision’) which states that the substantive provision may not be repealed or amended by future laws without observance of a special additional procedure.

\textbf{Double entrenchment:} Double entrenchment involves requiring a special additional procedure to enact laws seeking to amend or repeal the entrenched provision or the entrenching provision. Double entrenchment is necessary to effectively bind a future Parliament. Without double entrenchment, the

\textsuperscript{15} 16 – 18 June, 1999, Gladstone.
\textsuperscript{16} See n 10.
\textsuperscript{17} The term “manner and form” is used by some authors to refer to provisions which are enforceable pursuant to the Australia Acts, s 6. See section 2.2.1.
Parliament could repeal the entrenching provision by simple majority and the entrenched provision, then exposed, could be repealed or amended in the ordinary way.18

**Single entrenchment:** When a particular provision is entrenched, but the entrenching provision is not itself entrenched, the first provision is said to be *singly entrenched*. Such a provision can be amended without observing the special additional procedure required by the entrenching provision if the entrenching provision is expressly amended or repealed first.

The effect of single entrenchment appears to be that the entrenched provision cannot be impliedly repealed by a later inconsistent provision because the later provision will not be inconsistent with the entrenching provision (ie the provision requiring a special additional procedure), and therefore will not impliedly repeal that provision.19 Thus, it is likely that a singly entrenched provision can only be amended without complying with the entrenching provision, if that provision is first expressly repealed.

### 2.2 Legal arguments regarding entrenchment

Whether particular provisions can be effectively entrenched depends on Parliament having the legislative capacity to fetter itself and future Parliaments by requiring special procedures to be followed to enact certain legislation in the future.

The Westminster doctrine of parliamentary sovereignty provides, amongst other things, that Parliament cannot bind its successors.20 State Parliaments, however, only enjoy limited parliamentary sovereignty in that their legislative power can be exercised for the peace, order and good government of the State within the limits primarily imposed on that power by Imperial and Commonwealth law. Their capacity to entrench laws must be found within these limits. In other words, a legal basis must be identified to effectively entrench a provision of the Queensland Constitution, and thus restrict the capacity of future Parliaments to amend the provision.

#### 2.2.1 Australia Acts, s 6

The only clearly established basis upon which a State Parliament can bind its successors is found in s 6 of the *Australia Act (UK) 1986* and s 6 of the *Australia Act (Cth) 1986* (the Australia Acts)21 which provide that:

> Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

The Australia Acts empower Parliament to make ‘manner and form’ provisions which prevent laws ‘respecting the constitution, powers or procedure of the Parliament’ from amending or repealing entrenched provisions without observing special additional procedures. However, a law which amends or repeals the Constitution is not necessarily a law respecting the constitution, powers or procedure of the Parliament.22 Thus, some of the principal features of most constitutions, for example, provisions relating to the executive and judicial branches of government, do not fulfil the necessary test. Therefore,

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18 EARC issues paper, n 14 at para 2.126.
20 Carney, n 19 at 70.
21 Section 6 (in conjunction with other sections of the Australia Acts) is of similar effect to a provision previously contained in the *Colonial Laws Validity Act 1865* (Imp). A substantial amount of case law relating to the provision of the CLVA is relevant.
22 Carney, n 19 at 78.
other legal grounds are needed to support the effective entrenchment of provisions other than those relating to the constitution, powers or procedure of the Parliament.

The current manner and form provisions of the Queensland Constitution are considered in chapter 3.

### 2.2.2 Other possible legal grounds

Possible legal grounds other than s 6 of the Australia Acts for enforcing a provision which purports to require a special additional procedure to make certain laws (that is, an entrenching provision) include:

- section 106 of the Commonwealth Constitution;
- the reconstituted legislature argument; and
- the principle in *The Bribery Commissioner v Ranasinghe*.  

While there is some support for each of these grounds in Australia, their application to the constitutions of the Australian states remains uncertain in the absence of authoritative judicial determination.

**Section 106 of the Commonwealth Constitution.** Section 106 of the Commonwealth Constitution provides:

> The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

There are at least two possible interpretations of s 106.  

- The first is that it provides a constitutional guarantee that any special procedure prescribed by a state constitution for its own amendment must be observed whether or not any other legal basis exists for its enforcement.
- If reliance is placed on this interpretation of s 106, it is essential that the entrenching provision is in the state constitution, and it regulates a law which amends the constitution itself and not some other law.

Difficulties may arise in determining precisely what constitutes the ‘state constitution’.

The second possible interpretation of s 106 is that it merely ensures the maintenance of state constitutions as they exist from time to time and subjects them to the Commonwealth Constitution. If this is the correct interpretation of s 106, it does not provide an independent basis for enforcing entrenching provisions in state constitutions.

**Reconstituted legislature.** There is support for the proposition that, subject to certain limitations, laws may be entrenched by vesting the power to repeal or amend them in a reconstituted legislature. A referendum requirement is the clearest example of reconstituting a legislature so that ‘the newly constituted legislature comprises both houses (or one house in Queensland) of the original legislature,'
the electorate and the Governor. The electorate is added as if it were another chamber.\textsuperscript{31} The original legislature no longer possesses the necessary power to enact relevant laws and, provided the requirement is doubly entrenched, cannot recall the power.\textsuperscript{32}

The principle in \textit{The Bribery Commissioner v Pedrick Ranasinghe}.\textsuperscript{33} This principle provides:

\begin{quote}
... a Legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make laws.
\end{quote}

This principle supports the proposition that once there is a written constitution with a special amendment procedure, the constitution, not the Parliament, is supreme.\textsuperscript{34}

\textbf{Conclusion}. Arguably, a general power of the states to entrench their own constitution can be derived from first principles. That is, it must be possible for a democratic polity to give itself a constitution that represents fundamental law.\textsuperscript{35} The reconstituted legislature argument, and the principle in \textit{Ranasinghe} discussed above might simply be specific examples of this broader concept.

Conversely, it has been argued that s 2 of the Australia Acts, which provide that the Parliament of each State has all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of the Australia Acts, limits the application of the principle in \textit{Ranasinghe}.\textsuperscript{36}

Thus, the extent to which provisions of State Constitutions which do not relate to the constitution, powers or procedure of Parliament can be entrenched is currently uncertain.

\textbf{2.2.3 Types of entrenching provisions}

The special additional procedures which Parliament is required to follow in order to make laws which amend or repeal entrenched provisions can take many forms. Common examples include an entrenching provision which requires that laws seeking to amend or repeal the entrenched provision(s):

\begin{itemize}
  \item be approved at a referendum; or
  \item be approved by a special majority, for example a two thirds majority, of the Legislative Assembly.
\end{itemize}

Provisions which purport to deny Parliament of its power to legislate, or have this effect in practice (for example, by requiring a bill to be approved by 99% of voters at a referendum), are unlikely to be valid.\textsuperscript{37}

Similarly, entrenching provisions which require particular action or endorsement by a body or institution other than Parliament are unlikely to be enforceable.\textsuperscript{38} Such provisions would have the effect of subjecting Parliament’s power to legislate to approval of another body or institution and are therefore inconsistent with parliamentary sovereignty. This situation is distinguished from a referendum,\textsuperscript{39} which provides a mechanism through which Parliament can defer to the direct expression of the people’s will.

\begin{footnotesize}
\begin{itemize}
  \item Carney, n 19 at 86.
  \item Carney, n 19 at 86.
  \item Note 24.
  \item EARC issues paper, n 14at para 2.136-2.138.
  \item Constitutional Centenary Foundation; \textit{The States and a Republic: Background Paper Queensland Constitutional Convention 16-18 June 1999, Gladstone} <constitution.qld.gov.au/gladstone> at 1.3.
  \item See EARC report, n 6 at para 4.20.
  \item Carney, n 19 at 82 in relation to manner and form provisions under s 6 of the Australia Acts. See also EARC report, n 6at para 4.31.
  \item \textit{Attorney General for New South Wales v Trethowan} n 30 at 421.
\end{itemize}
\end{footnotesize}
Certain types of entrenching provisions do not seek to restrict the capacity of Parliament to amend or repeal the entrenched provision. For example, an entrenching provision could require that laws seeking to amend or repeal the entrenched provision(s):

- adopt a special formula or words, such as ‘These provisions apply despite any inconsistency with [the entrenched provisions];’
- not be passed until a certain period, for example one month, has lapsed since the introduction of the bill; or
- not be passed until they have been the subject of a report by a parliamentary committee.

Such provisions would enable a future Parliament to expressly amend or repeal the entrenched provisions by simple majority. However, it appears likely that implied amendment or repeal of the entrenched provision would be precluded, because the later provision would not impliedly amend or repeal the entrenching provision. This type of entrenching provision might be included simply to protect the entrenched provision against inadvertent amendment by an inconsistent provision which effects implied amendment or repeal. Alternatively, such entrenching provisions might be inserted to ensure more detailed consideration of the implications of the future legislation than would necessarily occur if the legislation was passed following the ordinary procedures.

Although such provisions do not seek to impinge on the power of future Parliaments to enact certain legislation, they do purport to impose binding requirements on future Parliaments as to the form of the legislation or the procedure to be adopted to pass the legislation. Thus, they are likely to be subject to the same legal limitations as entrenchment provisions which seek to restrict the sovereignty of future Parliaments in a more substantial way.

2.3 Policy arguments regarding entrenchment

Entrenchment of legislative provisions by one Parliament effectively limits the capacity of future Parliaments to amend those provisions. As discussed in section 2.2, there is some question as to the extent to which Parliaments can legally entrench provisions of a constitution, and thus restrict the capacity of future Parliaments to legislate. However, even if Parliaments can legally bind their successors, the question of whether, and the extent to which, Parliaments should bind their successors remains.

In essence, the question the committee is concerned with is whether the Constitution should be a controlled document, amendable only by special procedures, or an Act which the Parliament of the day is able to amend by ordinary statute.

The arguments against entrenchment. The Parliament is democratically elected to represent the people. Thus, it might be argued that restricting the capacity of the Parliament of the day to legislate effectively overrides the will of the people. There is no guarantee that the restrictions on future Parliaments will be in the general public interest.

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40 Goldsworthy, n 23; Carney, n 19.
41 See The South Eastern Drainage Board v The Savings Bank of South Australia (1939) 62 CLR 603, Dixon J at 625. See also Carney, n 19 at 72.
42 EARC report, n 6 at para 4.33.
43 See Carney, n 19 at 73.
Arguably, a Parliament should be able to govern unfettered by restrictions imposed at a different time in history. A successor Parliament will possess more experience of the circumstances and necessities amid which citizens live than the earlier Parliament.\(^{44}\)

To some extent these issues can be addressed by ensuring that entrenching provisions are only inserted with the support of a referendum.

However, practical considerations also weigh against heavily entrenched constitutions. Most significantly:

- the cumbersome process and cost of amending entrenched provisions reduces the likelihood of changes being made, even where amendments are generally agreed to be necessary, especially if the amendments are merely a matter of form rather than substance;\(^{45}\)

- unnecessary rigidity may prevent matters evolving over time; and\(^{46}\)

- the need to interpret a constitution could ‘politicise’ the judiciary.\(^{47}\) This argument has two elements. The first is the possibility that judges might be required to adjudicate on the constitutional validity of certain legislation which might increase the likelihood of governments appointing judges who they anticipate will be sympathetic to their policies on constitutional issues. Secondly, matters which come before the court relating to the enforcement of entrenching provisions of the Constitution are likely to be politically controversial and divisive.

As noted in section 2.2.3 certain types of entrenchment provisions do not seek to restrict the capacity of Parliament to amend or repeal the entrenched provisions. Given that such provisions do not seek to impinge upon the sovereignty of future parliaments, they are less open to objection.

**The arguments in favour of entrenchment.** Entrenchment of constitutional provisions can be seen as a mechanism for sovereignty of the people if the Constitution is amendable only by some process of reference to the people, such as a referendum.\(^{48}\) Arguably, fundamental legal rules which are not subject to abrogation by Parliament alone are appropriate given the reality that the proceedings of Parliament are dictated by the governing party.\(^{49}\)

In theory, the absence of any entrenched provision provides vast power to the governing party in Parliament. For example, in the absence of any entrenched provisions, it might be possible to extend the term of Parliament to twenty years by ordinary Act of Parliament or suppress political parties, freedom of electoral campaigning or voting rights for particular sections of the community.\(^{50}\) Democratic election of the Parliament does not necessarily prevent the will of the people becoming distorted in relation to certain issues or the parliamentary system itself being manipulated to disregard the rights of particular groups.

Further, there is no guarantee that Parliament will defend citizens against inappropriate action by the executive. As EARC stated:

*Parliament no longer fights the executive; since the Ministers who head the executive have to be members of Parliament, Parliament tends to be led by the executive. Party*

\(^{44}\) *McCawley v. The King* [1920] AC 691 at 703.

\(^{45}\) See QCRC, n 1 at 77 and EARC issues paper, n 14 at para 3.25.

\(^{46}\) See submission by Associate Professor Carney to EARC, quoted in EARC report, n 6 at para 4.50.

\(^{47}\) EARC issues paper, n 14 at para 3.25.

\(^{48}\) See EARC issues paper, n 14 at paras 3.16-3.19.

\(^{49}\) EARC issues paper, n 14 at para 3.16-3.19 and the submission by R McFadyen to EARC, referred to in EARC report, n 6 at para 4.53.

\(^{50}\) See EARC issues paper, n 14 at para 2.74-2.76.
discipline may prevent members from voting according to their consciences. At the worst extreme a party in power may enact laws designed to stifle dissent – but even without any intent by the members of the Parliament to act oppressively, senior permanent public servants may influence their Ministers to formulate legislation to suit the convenience of the public service and to disregard the rights of citizens.\textsuperscript{51}

This argument is particularly significant in a unicameral Parliament, where any legislation need only be passed by a single House.

Entrenchment can protect certain fundamental principles of a constitutional system. A constitution which entrenches by referendum fundamental laws by which Parliament itself is thereby bound enables citizens to define the scope of the power they grant to Parliament. It reflects the principle that ultimate sovereignty is vested in the people, not the Parliament.

3. CURRENTLY ‘ENTRENCHED’ PROVISIONS

In Queensland, s 53 of the \textit{Constitution Act 1867} (Qld) entrenches by referendum: the Legislative Assembly (s 1); the ‘peace, welfare and good government’ grant of legislative power (s 2); the requirement of Royal Assent to legislation (s 2A); and the office of Governor as the Queen’s representative and its powers (ss 11A and 11B).

The \textit{Constitution Act Amendment Act 1934} (Qld) entrenches by referendum: the unicameral nature of the Parliament by preventing the introduction of ‘another legislative body’ (s 3); and the three-year term of the Legislative Assembly (s 4).\textsuperscript{52}

All of these provisions were doubly entrenched without seeking the people’s consent at a referendum.

The entrenched provisions remain in their original Acts. The \textit{Constitution of Queensland 2001} includes signposts where the entrenched provisions are relevant and sets out the provisions in full in attachments.

Section 78 of the \textit{Constitution of Queensland 2001} requires that a bill for an Act ending a system of local government be approved at a referendum. This provision does not entrench itself and could be expressly repealed by an ordinary Act of Parliament.\textsuperscript{53}

Apart from these entrenched provisions, Queensland’s Constitution can be amended by Parliament, either expressly or impliedly, like any other ordinary piece of legislation.

\textbf{Legal issues relating to currently entrenched provisions.} Provisions amending some of the currently entrenched provisions would not necessarily relate to the constitution, powers or procedure of Parliament. Thus, there is a difference of opinion as to the effect of the entrenching provisions discussed above on the provisions which are purportedly entrenched. (See section 2.2 regarding the legal grounds for entrenchment.)

Until 1996, s 53 of the \textit{Constitution Act 1867} also purported to entrench s 14 of the \textit{Constitution Act 1867} which vested in the Governor in Council the power to make appointments to public offices and to appoint and dismiss ministers. Thus, s 14 related to the power of the Governor, or the appointment of public servants, but not to the constitution, powers or procedure of the Parliament. Section 53 provided

\textsuperscript{51} EARC issues paper, n 14 at para 3.20.
\textsuperscript{52} The \textit{Constitution Act Amendment Act 1890}, s 2 provides that the maximum term of the Legislative Assembly is three years. The \textit{Constitution Act Amendment Act 1934}, s 4 prevents the term of the Legislative Assembly being extended without the approval of a referendum and referendum entrenches itself.
\textsuperscript{53} Explanatory notes to the \textit{Constitution of Queensland 2001}; cl 78. This replicates the position prior to the commencement of the \textit{Constitution of Queensland 2001}. See now repealed s 56(2) of the \textit{Constitution Act 1867}. 
that a bill which expressly or impliedly in any way affected s 14 was not to be presented for assent until it was approved by a majority of electors at a referendum. Section 146 of the Public Service Act 1996 amended s 14 and removed the reference to s 14 from s 53. No referendum supporting the amendment was conducted.

The validity of s 146 of the Public Service Act depends on the extent to which s 53 of the Constitution Act 1867 is enforceable in relation to s 14. If reliance is placed on s 6 of the Australia Acts to enforce s 53, it could be argued that because s 146 did not relate to the ‘constitution, powers or procedure of the Parliament’ s 53 does not render s 146 of the Public Service Act 1996 invalid. In contrast, if s 53 is enforceable on other grounds such as s 106 of the Commonwealth Constitution, the reconstituted legislature argument or the principle in Ranasinghe, s 146 might be found to be invalid.

**Approach to currently entrenched provisions.** Given that a referendum will be necessary to finalise the process of constitutional reform, it is appropriate to:

- reassess the currently entrenched provisions and the extent to which they should be included in the Constitution; and
- to redraft the provisions which are to be included using modern language where this does not alter the original meaning.

These entrenched provisions have previously been incorporated into draft constitutions forming part of EARC *Report on consolidation and review of the Queensland Constitution* and LCARC reports 10, 13 and 24, which were drafted in the context of consolidating the Constitution rather than reforming the Constitution. Thus, the recommendations of these reports restate the existing entrenched provisions rather than reviewing the desirability for their existence or content.

The QCRC also recommended provisions to replace the currently entrenched provisions in its Constitution of Queensland 2000. The QCRC’s report did not specifically discuss the process used in deciding upon these provisions, or the extent to which the QCRC considered reform of them appropriate.

In the table in appendix A the committee states its proposals as to the components of each of the currently entrenched provisions which should be retained in the *Constitution of Queensland 2001* and how such components should be entrenched.

### 4. **The QCRC’s Approach to Entrenchment**

The QCRC considered that the status of the Queensland Constitution as the fundamental law of the State requires appropriate recognition but opposed referendum entrenchment of the entire text of the Queensland Constitution. The QCRC recommended two forms of entrenchment: (i) referendum entrenchment of the most fundamental aspects of the Constitution; and (ii) three requirements, together comprising ‘parliamentary entrenchment’, to apply to those sections of the Constitution not referendum entrenched: QCRC R12.3.

#### 4.1 Referendum entrenchment

Matters which the QCRC considered justify referendum entrenchment are identified in appendix A.
The QCRC’s recommendations are broadly consistent with the Gladstone Convention at which the following resolution attracted broad support:

4. Compliance with special procedures beyond a simple majority vote of the Parliament should be required to change certain parts of the State constitutions.

...  
6. Parts of State Constitutions that may need entrenchment could include:
   • a democratically elected Parliament;
   • judicial independence;
   • an executive that is responsible to the Parliament;
   • rights of the citizen; and
   • a system of local government.

4.2 Parliamentary entrenchment

The QCRC’s concept of ‘parliamentary entrenchment’ involves an additional three steps to the ordinary law-making procedure, namely:

♦ a minimum period of one month between the first and second readings of the bill (to ensure sufficient time for the community to be alerted to what is proposed and take any appropriate action);
♦ a LCARC report on the bill to the Legislative Assembly before the second reading (to enable a careful and public examination of the merits of the proposal); and
♦ the short title of the bill to include the words ‘Constitution Amendment’ (to ensure that the Constitution is not amended inadvertently or by concealment).

Clauses 82 and 83 of the QCRC Constitution of Queensland 2000 contain the relevant provisions. The QCRC proposed that these provisions should be referendum entrenched: cl 84.

5. THE COMMITTEE’S PROPOSALS REGARDING ENTRENCHMENT

In its report no 36 The Queensland Constitution: Specific content issues the committee recommended that The Constitution should identify the key components of government and include provisions that are necessary to explain the operation and interrelationship of these key components. The committee considers that the Constitution of Queensland 2001 broadly achieves this objective.

In this chapter the committee considers whether the Constitution should be wholly or partly entrenched, or not entrenched at all, and how any entrenchment should be effected.

5.1 Referendum entrenchment

<table>
<thead>
<tr>
<th>Recommendation under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R2.2 That all the principal elements of the State’s constitutional structure in the Queensland Constitution be subject to referendum entrenchment.</td>
<td>QCRC report ch 2 at 24; QCRC Constitution of Queensland 2000, cl 84(5)</td>
</tr>
</tbody>
</table>

57 The QCRC, noted that “rights of the citizen” were not included in the matters which it recommended for referendum entrenchment, because adding a bill of rights to the Queensland Constitution was specifically excluded from the QCRC’s inquiry: n 1 at 76.
58 Note 1 at 78 and 79 and R12.3.
59 Note 1012 at recommendation 1.
5.1.1 The essential structure of the State’s constitutional system

As discussed in section 2.3, there are competing policy considerations relevant to deciding whether part or all of the Constitution should be entrenched, and how such entrenchment should be effected. The committee proposes that provisions necessary to maintain the essential structure of the State’s constitutional system\(^6\) should be referendum entrenched. This includes provisions which:

- prescribe a system of representative and responsible government;
- provide for the legislature, the executive and the judiciary as the three arms of government; and
- maintain a balance of power between these arms of government as appropriate for a system of representative and responsible government.

Referendum entrenchment of these provisions ensures that fundamental changes to the democratic system of government in Queensland are only made with support of the citizens. This prevents substantial changes from being made arbitrarily by a particular government, which might undermine the democratic foundations of the system of government.

However, protection of the essential structure of the State’s constitutional system does not require that the whole Constitution be referendum entrenched.

Appendix A identifies the committee’s proposals regarding which specific provisions of the Constitution of Queensland 2001 relate to the essential structure of the State’s constitutional system and, thus, should be referendum entrenched. In the case of the currently entrenched provisions, the committee identifies those components of the provisions which should be referendum entrenched. As discussed below, the committee proposes that all other provisions of the Constitution should be ‘parliamentary entrenched’.

Appendix B considers how the provisions the committee recommends in report no 36 The Queensland Constitution: Specific content issues should be entrenched.

**COMMITTEE PROPOSAL 1 – REFERENDUM ENTRENCHMENT OF CERTAIN SECTIONS**

Subject to implementation of the committee’s proposals below, the Queensland Constitution should referendum entrench provisions which establish the essential structure of the State’s constitutional system, including certain provisions relating to the legislature, the executive, and the judiciary. (Appendices A and B contain the committee’s proposals regarding which specific provisions should be referendum entrenched).

<table>
<thead>
<tr>
<th>Recommendation under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R11.1 That the provisions relating to local government be effectively entrenched by being subject to referendum entrenchment.</td>
<td>QCRC report ch 11 at 65-67; QCRC Constitution of Queensland 2000, cls 74, 84</td>
</tr>
</tbody>
</table>

5.1.2 Local government

The Constitution of Queensland 2001:

- provides that there must be a system of local government in Queensland, and the system consists of a number of local governments: s 70;
- sets out requirements for a local government: s71;

requires certain procedures for the dissolution of local government: ss 72-76; and

provides that a bill for an Act ending the system of local government in Queensland must be approved at a referendum before being presented for assent: s 78. Section 78 does not entrench itself, thus the requirement for a referendum to end a system of local government can be expressly amended or repealed by an ordinary Act of Parliament. This replicates the position prior to consolidation of the Constitution.

The QCRC recommended referendum entrenchment of the provision requiring that there must be a system of local government in Queensland and that the system consists of a number of local governments, and parliamentary entrenchment of other provisions relating to local government.

The committee proposes that the requirement for a system of local government in Queensland should be referendum entrenched. Local government is generally recognised as an elected third tier of government and plays an important role in the structure of government in Australia. Thus, it should be recognised and accorded the status of an established part of the structure of government. Abolition of local government would represent a fundamental change to the system of government in Queensland and should not be done without approval at a referendum.

A referendum to recognise local government in the Commonwealth Constitution was defeated in 1988. However, much of the opposition was not to expressly recognising the existence of local governments, but to recognising this tier of government in the Commonwealth Constitution. For example, it was argued that:

- because local governments are created by State Parliaments, it is more appropriate to recognise them in the State Constitutions; and
- recognition of local governments in the Commonwealth Constitution would diminish the authority and responsibility of State Governments.

Thus, the committee does not consider that the results of this referendum necessarily reflect citizens’ views as to entrenching local government in the State Constitution.

### COMMITTEE PROPOSAL 2 – REFERENDUM ENTRENCHMENT OF LOCAL GOVERNMENT

Subject to implementation of the committee’s proposals below, the Queensland Constitution should referendum entrenched the provision requiring that there must be a system of local government in Queensland, and that the system consists of a number of local governments.

### 5.2 Parliamentary entrenchment

<table>
<thead>
<tr>
<th>Recommendations under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R12.3 That parliamentary entrenchment apply to all</td>
<td>QCRC report ch 12 at 78; QCRC</td>
</tr>
</tbody>
</table>

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61 Explanatory notes to the Constitution of Queensland 2001, cl 78.
62 See repealed s 56 Constitution Act 1867.
63 Note 1 at 65-67 and R11.1 and the QCRC’s proposed Constitution of Queensland cls 74, 75 and 84.
65 ‘YES Or NO? Referendums. Saturday 3 September 1988. The cases For and Against’, Australian Referendums 1906-1999 CD-ROM, Australian Electoral Commission, Commonwealth of Australia 2002; Constitutional Commission 1988 n 64 ch 8; and Advisory Committee to the Constitutional Commission, Distribution of powers, Canberra publishing and printing company, Commonwealth of Australia, 1987 chapter 7. Another ground of opposition related to uncertainty as to how the High Court would interpret the relevant provision.
sections of the Queensland Constitution requiring (a) delay of one calendar month between the First and Second Readings of a Bill to amend the Constitution, (b) a report on the Bill by the [Legal], Constitutional and Administrative Review Committee before the Second Reading, and (c) that the Bill have the words “Constitution Amendment” in its Short Title.

QCRC R2.3 That the whole text of the Queensland Constitution be subject to parliamentary entrenchment.

Constitution of Queensland 2000, cls 82 and 83

QCRC report ch 2 at 24; QCRC Constitution of Queensland 2000, cls 82 and 83

5.2.1 Provisions not referendum entrenched

In the committee’s view, referendum entrenchment of provisions of the Constitution other than those which provide for the essential structure of the constitutional system, would impose unjustified practical constraints on the capacity of Parliament to legislate.

However, to reinforce the importance and fundamental nature of the Constitution, special requirements as to the form of legislation which may amend provisions of the Constitution which are not referendum entrenched are desirable.

The QCRC recommended three mechanisms, together called “parliamentary entrenchment” to apply to all provisions of the Constitution which are not referendum entrenched. Parliamentary entrenchment aims to reinforce the superior status of the Constitution and to prevent implied repeal without inhibiting the capacity of Parliament to respond appropriately to changing needs of society.

The three requirements recommended by the QCRC are:

♦ a delay of one calendar month between the first and second readings of a bill to amend the Constitution;
♦ a report on the bill by the Legal, Constitutional and Administrative Review Committee, or other committee with responsibility for constitutional reform, before the second reading; and
♦ that the words “Constitution amendment” appear in the short title of the amending bill.

The committee proposes that these mechanisms should be implemented subject to certain modifications discussed below.

Further, the committee proposes that an absolute majority of the Legislative Assembly should be required to pass legislation which amends or repeals a parliamentary entrenched provision. This proposal is discussed in more detail below.

5.2.2 Parliamentary entrenchment requirements

Time between introduction and debate. The QCRC recommended that there should be at least one month between the bill’s first reading and the bill’s second reading. This is in contrast to the 13 calendar days currently required by Standing Orders. In principle, the committee supports this proposal, although 27 calendar days would provide more certainty. This will allow the bill to be

66 The Acts Interpretation Act 1954, s 36 currently defines ‘month’ to mean ‘a calendar month’.
67 Standing Order 241 as amended by Sessional Order 8 approved by the Legislative Assembly on 22 March 2001.
reconsidered in the fourth week after it is introduced, if Parliament is sitting in that week, provided a parliamentary committee has reported (see below).

**Parliamentary committee review.** The QCRC recommended, in addition to the time requirement, a provision stipulating that no bill which offends against a principle of the Constitution may be presented for assent until it is the subject of a report by LCARC.\(^{68}\) LCARC’s area of responsibility relating to constitutional reform currently includes any bill expressly or impliedly repealing any law relevant to the State’s Constitution. Thus, a requirement contained in the Constitution for LCARC to consider any amendments to the Constitution is consistent with current statutory provisions. Further, referring legislation of significance to a parliamentary committee for report to Parliament provides an additional mechanism by which Parliament and the citizens of Queensland can be informed about, and have the opportunity to comment on, the implications of the proposed legislation.

Such provision would preclude the Bill proceeding to second reading pending the parliamentary committee report. Therefore, in some cases, passage of amendments which might involve some urgency could be delayed beyond 27 days. Presumably the relevant parliamentary committee would take this factor into account in deciding upon its inquiry strategy.

In principle, therefore, the committee supports the requirement that a parliamentary committee report on any bill which seeks to amend the Constitution before the Legislative Assembly passes it. However, the QCRC’s proposed provisions refer to refer particular bills to a particular parliamentary committee.\(^{69}\) It is preferable that the Constitution provides that “a duly constituted parliamentary committee” is required to report on the bill. This will allow the bill to be referred to LCARC, or, if LCARC ceases to exist or is unable for any reason to review the bill, to another committee with similar jurisdiction or to a select committee established specifically for the purpose of considering a particular bill.

As long as LCARC continues in existence and retains its current responsibilities, such review should be conducted by LCARC. A minor amendment to LCARC’s areas of responsibility to expressly recognise that its responsibilities include any bill expressly or impliedly repealing or amending the Constitution would complement such a provision in the Constitution.\(^{70}\)

**“Constitution Amendment”**. The QCRC recommended that the Constitution should include a requirement that a bill amending the Constitution must include the words “Constitution Amendment” in its title. Such a provision should prevent the Constitution being amended inadvertently or by concealment.\(^{71}\) The committee considers this to be a sensible provision to support the other components of parliamentary entrenchment.

**Absolute majority.** To prevent the government of the day taking advantage of a temporary absence of members of the Legislative Assembly, the committee proposes that an absolute majority should be required to pass legislation amending or repealing provisions of the Constitution. The committee proposes that an absolute majority be defined as a majority of the Legislative Assembly equal to a

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68 QCRC Constitution of Queensland 2000, cl 83.
69 QCRC Constitution of Queensland 2000, cl 89 expressly provides that if LCARC is replaced, either generally or in relation to constitutional reform, references in the Constitution to LCARC are to be taken to be references to the new committee. However, this provision does not address the situation where there is no committee with responsibility for constitutional reform.
70 Currently s 87 of the Parliament of Queensland Act 2001 provides ‘The committee’s areas of responsibility about constitutional reform includes any bill expressly or impliedly repealing any law relevant to the State’s constitution.’ While this provision is inclusive, addition of the phrase “or amending” would provide for greater consistency with the relevant provisions of the Constitution of Queensland 2001.
71 There is some doubt as to whether the prescription of certain words is an effective manner and form requirement. See South Eastern Drainage Board (South Australia) v Savings Bank of South Australia (1939) 62 CLR 603, Evatt J at 633-634.
majority of the number of seats in the Assembly (as opposed to a majority of members at the time present in the Assembly, or a majority of members elected to the Assembly). This is particularly significant when there is a minority government.

**Referendum entrenchment of Parliamentary entrenchment provisions.** The QCRC recommended that the provisions effecting parliamentary entrenchment of the whole Constitution should be referendum entrenched. 72 This would contribute to recognition of the status of the Queensland Constitution as a fundamental law of the State. 73 The committee supports referendum entrenchment of the parliamentary entrenchment provisions.

### 5.2.3 Application of requirements to referendum entrenched provisions

The committee proposes that the parliamentary entrenchment requirements should, in addition to the requirement for a referendum, be applied to bills to amend or repeal referendum entrenched provisions. 74

<table>
<thead>
<tr>
<th>COMMITTEE PROPOSAL 3 – PARLIAMENTARY ENTRENCHMENT OF THE WHOLE CONSTITUTION</th>
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<tbody>
<tr>
<td>The Queensland Constitution should provide that any law which amends or repeals any provision of the Constitution, including a referendum entrenched provision:</td>
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<tr>
<td>• cannot be passed within 27 calendar days of being introduced;</td>
</tr>
<tr>
<td>• must be the subject of a report to Parliament by an appropriate, duly constituted parliamentary committee before being passed; and</td>
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<tr>
<td>• must contain the words “Constitution Amendment” in its title;</td>
</tr>
<tr>
<td>• must be passed by a majority of the Legislative Assembly equal to a majority of the number of seats in the Assembly (an absolute majority of the Legislative Assembly).</td>
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<tr>
<td>These requirements should be referendum entrenched.</td>
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<tr>
<th>COMMITTEE PROPOSAL 4 – LCARC’S AREAS OF RESPONSIBILITY</th>
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<tbody>
<tr>
<td>LCARC’s areas of responsibility should be amended to expressly recognise that its responsibilities include any bill expressly or impliedly repealing or amending the Constitution.</td>
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</table>

### 5.3 Enforceability of entrenching provisions

Provisions in the Constitution regarding the judiciary and local government and certain provisions regarding the executive are not laws ‘respecting the constitution, powers or procedure’ of the Parliament, within s 6 of the Australia Acts. Thus, it is uncertain whether an attempt to entrench them, either by referendum or parliamentary entrenchment, would be effective under s 6 or on any other grounds: see section 2.2.

Ideally, the Attorney-General should seek to have this issue resolved prior to taking steps to complete the consolidation exercise. In this regard the committee notes that EARC recommended that ‘the Attorney-General bring an action for a declaration in the Supreme Court of Queensland as to the effect of s 53 of the Constitution Act 1867 on the validity of any attempt to amend or repeal section 14 of that

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72 QCRC proposed Constitution of Queensland 2000, cls 82-84, n 1.  
73 QCRC n 1 at 24.  
74 The QCRC considered that amendments to referendum entrenched provisions should not be passed unless, in addition to receiving approval at a referendum, the parliamentary entrenchment requirements are satisfied: QCRC Constitution of Queensland 2000, cls 82-84.  

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Act by an ordinary Act of the Parliament. The committee supports this recommendation. However, a High Court pronouncement is necessary to finally resolve issues surrounding the extent to which entrenching provisions can require special procedures to be followed to enact legislation which does not relate to the constitution, powers or procedure of the Parliament.

Even in the absence of such clarification, the committee considers provisions to entrench the Constitution (by referendum entrenchment of some provisions and parliamentary entrenchment of the whole constitution) should nevertheless be inserted.

Provided entrenching provisions are only inserted after receiving support at a referendum (discussed further in section 6.2), the effect of the entrenchment is to subject the Parliament to restrictions imposed by the people of Queensland. In years to come, the people of Queensland from time to time will be able to modify these restrictions. Thus, although there might continue to be some doubt as to whether the entrenchment of provisions would be legally binding, it is to be expected that future governments would find them politically and morally binding, particularly if they are approved at a referendum, as proposed in section 7.

COMMITTEE PROPOSAL 5 – ENFORCEABILITY OF ENTRENCHING PROVISIONS

The Attorney-General should seek to have the legal issues surrounding entrenchment of certain provisions of the Constitution resolved, preferably by the High Court, before completing the consolidation exercise.

In the absence of such clarification, the government should nevertheless proceed to entrench the Constitution by a combination of parliamentary and referendum entrenchment (as proposed in appendices A and B), including provisions which do not relate to the constitution, powers or procedure of the Parliament.

5.4 Drafting of provisions effecting entrenchment

5.4.1 Referendum entrenchment

General approach. The effect of referendum entrenchment is to prevent certain laws being made unless they ‘have been approved by a majority of the electors voting at a referendum.’ Entrenching provisions can be drafted to:

♦ restrict any amendment or repeal of specific section/s of the legislation; or
♦ restrict any change (specific or otherwise) to the legal effect of certain section/s.

Clause 84 of the QCRC’s Constitution of Queensland 2000 requires that a Bill for an Act that offends against a referendum entrenched principle must be approved at a referendum to take effect. This is complemented by cl 85 which provides that a referendum is not required if the principle of the provision is effectively preserved. This approach, which seeks to protect the essential legal principles contained in the relevant provisions, is an example of the second approach listed above.

The committee considers that it is preferable that the entrenching provisions require special additional procedures to be followed to amend or repeal the entrenched provisions. The protection so afforded would apply to both implied and express amendment or repeal. In the committee’s view this option

75 EARC report, n 6 at para 4.27.
76 See the Referendums Act 1997, s 43(2)(b).
provides more certainty, because, at times, there might be doubt as to the exact nature of the principle contained in an entrenched provision.

**Relocation and renumbering.** Whichever approach is adopted, some flexibility is still required. For instance, in the recent process of consolidating the Constitution, it became apparent that minor redrafting, or even relocation of, entrenched provisions risked offending some of the entrenching provisions. For this reason, the government decided not to attempt to relocate the currently entrenched provisions into the *Constitution of Queensland 2001*. Hence a complete consolidation of the Queensland Constitution has been prevented.

The QCRC recommended that entrenching provisions should not prevent an entrenched provision being amended or repealed and immediately re-enacted in the Constitution or another Act, without compliance with the special procedures required by the entrenching provisions, if the *principle of the provision is effectively preserved*.\(^{77}\)

The QCRC’s recommended provision would clearly allow referendum entrenched provisions to be relocated and renumbered without a referendum.\(^{78}\) Further, it would appear the provision would allow referendum entrenched provisions to be redrafted, perhaps to bring them into line with modern drafting practice, provided the *principle of the provision is effectively preserved*.

Determining whether a redrafted provision preserves ‘the principle’ of the existing provision has the potential to be the subject of dispute. Accordingly, the committee proposes that there should be a mechanism by which referendum entrenched provisions can be renumbered and relocated, and consequential amendments necessary to effect such renumbering and relocation can be made, without a referendum. However, no attempt should be made to expressly allow such provisions to be redrafted.

Amendments to relocate or renumber referendum entrenched provisions would be likely to be made in conjunction with substantive amendments to parliamentary entrenched provisions. In practice it will be necessary to comply with the parliamentary entrenchment requirements to make these related amendments. Thus, the committee considers that the four requirements of parliamentary entrenchment should apply to legislation relocating or renumbering referendum entrenched provisions.

### 5.4.2 Parliamentary entrenchment

The requirements of parliamentary entrenchment are not so onerous that they would prevent Parliament proceeding with amendments which necessitate relocation and renumbering of parliamentary entrenched provisions. Accordingly, the committee does not consider that a provision enabling the relocation and renumbering of parliamentary entrenched provisions without compliance with the special requirements is necessary.

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**COMMITTEE PROPOSAL 6 – DRAFTING OF PROVISIONS EFFECTING REFERENDUM ENTRENCHMENT**

Provisions effecting referendum entrenchment should be drafted specifically to preclude *amendment or repeal* of referendum entrenched sections of the Constitution without approval at a referendum.

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\(^{77}\) QCRC Constitution of Queensland 2000, cl 85.

\(^{78}\) The QCRC’s proposed provision would also apply to parliamentary entrenchment.
COMMITTEE PROPOSAL 7 – RELOCATION AND RENUMBERING

Referendum entrenching provisions should allow entrenched sections to be renumbered and relocated, and allow consequential amendments necessary to effect such renumbering and relocation to be made, without approval at a referendum. However, they should not expressly allow the entrenched sections to be redrafted.

Parliamentary entrenchment requirements should apply to legislation relocating or renumbering any provision of the constitution.

5.5 Amendment requests to the Commonwealth Parliament

<table>
<thead>
<tr>
<th>Recommendation under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R12.4 That Bills requesting amendment of the Queensland Constitution by the Commonwealth Parliament be covered by the same procedure as R12.3 [relating to parliamentary entrenchment].</td>
<td>QCRC report ch 12 at 79; QCRC Constitution of Queensland 2000, cl 86</td>
</tr>
</tbody>
</table>

The QCRC noted that it is possible that the Queensland Constitution might be amended following a request by the Queensland Parliament made under s 51(xxxxviii) of the Commonwealth Constitution that the Commonwealth Parliament undertake the amending process. The *Australia Acts (Request) Act 1985* is an example of this occurring.

The QCRC included a provision in its Constitution of Queensland 2000 (cl 86) requiring referendum approval to pass an Act requesting the Commonwealth Parliament to make amendments which would require a referendum if made by the Queensland Parliament.79

The committee supports the proposition that any entrenchment requirements contained in the Queensland Constitution should apply equally to requests for the Commonwealth Parliament to amend entrenched provisions. The committee considers it unlikely that such a requirement would be inconsistent with s 51(xxxxviii) of the Commonwealth Constitution.

COMMITTEE PROPOSAL 8 – AMENDMENT REQUESTS TO THE COMMONWEALTH PARLIAMENT

The Constitution should expressly provide that bills requesting amendment of the Queensland Constitution by the Commonwealth Parliament be subject to the same parliamentary entrenchment or referendum entrenchment requirements as amending legislation passed by the Queensland Parliament.

5.6 “Highest rule of the Queensland legal system”

<table>
<thead>
<tr>
<th>Recommendations under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R2.1 That the Queensland Constitution contain an unequivocal statement that the Constitution is the highest rule of State law.</td>
<td>QCRC report ch 2 at 24; QCRC Constitution of Queensland 2000, cl 3(3)</td>
</tr>
<tr>
<td>QCRC R4.3 [To implement R2.1] That an additional subsection say that the Constitution is the highest rule of the Queensland legal system.</td>
<td>QCRC report ch 4 at 35; QCRC Constitution of Queensland 2000, cl 3(3)</td>
</tr>
</tbody>
</table>

79 Although the QCRC’s recommendation 12.4 refers to the parliamentary entrenchment procedures outlined in 12.3, cl 86 of the QCRC Constitution of Queensland 2000 expressly refers to referendum entrenched ‘principles’: n 1.
The QCRC\(^{80}\) recommended that the Constitution should be declared to be the fundamental law of the State, as this might serve to support the legal basis for referendum entrenchment of the principal features of the Constitution. To achieve this, the QCRC recommended, amongst other things, inclusion in the Constitution of an unequivocal statement that ‘The Constitution is the highest rule of the legal system’. The committee supports this recommendation in principle. Such a statement signifies the importance of the Constitution.

At section 2.2.2 the committee discusses possible legal bases for introducing entrenching provisions in relation to provisions of the Constitution which do not relate to the “constitution, powers or procedure” of the Parliament. One such basis is s 106 of the Commonwealth Constitution which, on one possible interpretation, provides a constitutional guarantee that any entrenching provision prescribed by a state constitution for its own amendment must be observed whether or not any other legal basis exists for its enforcement. Assuming this interpretation to be correct, and in order to rely on s 106 to enforce entrenching provisions, it must be established that the entrenching provision is in the “state constitution”. Similarly, the principle in *Ranasinghe* might be limited to ‘constitutions’.

Thus, inclusion of a provision recognising the Constitution as the paramount law of Queensland would maximise the possibility of effectively entrenching provisions which relate to key components other than the ‘constitution, powers or procedure of the Parliament’.

To ensure that the declaration accurately reflects the paramountcy of the Commonwealth Constitution and the Australia Acts, this provision needs to expressly recognise the status of these statutes.

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**COMMITTEE PROPOSAL 9 – STATEMENT THAT THE CONSTITUTION IS THE PARAMOUNT LAW**

The Queensland Constitution should make it clear that the Constitution is the paramount law of Queensland, subject to the Commonwealth Constitution and the *Australia Act (UK) 1986* and *Australia Act (Cth) 1986*.

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### 6. FUTURE CONSTITUTIONAL CHANGE

#### 6.1 Constitutional review

<table>
<thead>
<tr>
<th>Recommendation under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R12.5 That (a) at least once in each decade the [Legal, Constitutional and Administrative Review Committee] conduct a review of the Queensland Constitution and associated constitutional legislation, and (b) the Committee may recommend that a Constitutional Convention may be chosen by appropriate means, including election, to conduct the review.</td>
<td>QCRC report ch 12 at 79; QCRC Constitution of Queensland 2000, cl 88</td>
</tr>
</tbody>
</table>

The QCRC noted that once the Queensland Constitution has been approved by the people of the State, procedures for keeping it up to date have an additional significance. Thus, the QCRC recommended a review of the Constitution every ten years by LCARC or its equivalent committee with the option to recommend in any year a constitutional convention to undertake that task with either wholly or partly elected members (QCRC R12.5). The QCRC considered such a mechanism would provide an

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\(^{80}\) Note 1 at 24 and QCRC Constitution of Queensland 2000, cl 3(3).
opportunity for an overview of the Constitution’s effectiveness and relevance to contemporary aspirations and conditions, and stimulate and sustain interest in constitutional questions.\textsuperscript{81}

Although EARC did not make recommendations about this issue, it commented that it saw merit in the notion that proposals for constitutional amendment be able to be initiated from outside the Parliament, on the basis that sovereignty of the people is compromised and imperfectly expressed if a hostile majority in Parliament can prevent a constitutional amendment from being submitted to the people.\textsuperscript{82}

EARC noted the benefits of a forum in which people can raise their issues and retain ownership of the Constitution.\textsuperscript{83}

Constitutional review options include:\textsuperscript{84}

- provision for citizens’ initiated referenda, exclusively relating to the making of proposals for amendment of a Constitution;
- requirements that a constitutional convention be convened upon the occurrence of a certain trigger event, for example, tabling in the Legislative Assembly of a petition signed by a certain percentage of voters;\textsuperscript{85}
- automatic election of a constitutional convention at regular intervals;
- requirements that a proposed constitutional change be submitted to a referendum or a constitutional convention if it is proposed by some specified minority proportion of the Legislative Assembly, thus giving the opposition, as well as the government, the opportunity to propose constitutional reform; and
- review at regular intervals by a parliamentary committee of (a) the Constitution (with power to recommend establishment of a constitutional convention) or (b) the question of whether a constitutional convention should be convened.

The committee makes the following observations relevant to a consideration of the above options.

- Constitutional conventions appear to be preferable to mechanisms which automatically give rise to a referendum for example, citizen initiated referenda, because they provide a forum in which people can raise issues and retain ownership of the Constitution, while allowing amendments to be framed by people with a working knowledge of the Constitution.\textsuperscript{86}
- Automatic election of a constitutional convention at regular intervals might have the incidental benefit of constantly reminding the people that the content of the Constitution is in their hands.\textsuperscript{87}
- The expense of electing representatives and holding a convention might not be justified if no substantial change is warranted or receives public support.\textsuperscript{88}
- If the Constitution is to be seen as an enduring document with many of its provisions subject to referendum entrenchment, arguably a mandatory periodic review of the Constitution is unnecessary.
- Parliamentary committee involvement in constitutional reform does not necessarily ensure that a constitutional convention will be convened if there is public support for it but the government is

\textsuperscript{81} QCRC, n 1 at 79.
\textsuperscript{82} EARC report, n 6 at para 10.21.
\textsuperscript{83} EARC issues paper, n 14 at para 7.7.
\textsuperscript{84} See EARC report, n 6 at 10.8 – 10.22 and QCRC proposal.
\textsuperscript{85} The Constitution of the United States, Article V provides that on the application of the legislatures of two-thirds of the States, the congress must call a convention - EARC issues paper, n 14 at para 7.7.
\textsuperscript{86} EARC report, n 6 at paras 10.5-10.6.
\textsuperscript{87} EARC report, n 6 at para 10.9.
\textsuperscript{88} EARC issues paper, n 14 at para 7.8 and EARC report, n 6 at para 10.9.
opposed because: (a) the parliamentary committee would be likely to have a government majority; and (b) the decision as to whether to support any recommendations of the parliamentary committee would remain a question for Parliament.

♦ The Australian experience is that constitutional amendments are unlikely to be approved at a referendum without at least bipartisan support. 89

The committee does not consider that mechanisms for initiating constitutional reform independent of Parliament are necessary. Rather, constitutional reform should be either initiated directly by the Legislative Assembly, or referred to a constitutional convention convened by ordinary resolution of the Legislative Assembly. In coming to this conclusion the committee is persuaded by:

♦ the fact that no other Australian state constitution currently requires periodic review, or contains a mechanism for review not initiated by Parliament. Neither the 1988 Constitutional Commission nor the 1998 Constitutional Convention recommended periodic review of the Commonwealth Constitution; 90

♦ the fact that review of the Constitution at regular intervals is unlikely to be necessary (although certain possible future events will necessarily trigger a review, such as a republic at the Commonwealth level);

♦ the practical difficulties involved in identifying an appropriate trigger mechanism for a constitutional convention; and

♦ the practical reality that amendments to the Constitution are unlikely to be approved by a referendum without at least bipartisan support.

If the community perceives a need for constitutional reform, citizens can raise the issue with members of Parliament, and petition the Parliament seeking either immediate constitutional reform or a constitutional convention. Thus, the system of democratic government established by the Constitution provides a process by which citizens can initiate review of the Constitution. That is, citizens can seek constitutional review through the Parliament, constituted by elected representatives. The Parliament is able to refer specific questions to a parliamentary committee if it considers it appropriate or necessary to do so.

COMMITTEE PROPOSAL 10 – CONSTITUTIONAL REVIEW

No specific provisions for constitutional review should be included in the Queensland Constitution. Parliament retains the power to refer relevant matters to a parliamentary committee or convene a constitutional convention.

6.2 Future entrenchment

6.2.1 Referendum entrenchment

<table>
<thead>
<tr>
<th>Recommendation under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R12.2 That the application of referendum entrenchment to other sections be possible only after a referendum authorising it has been carried.</td>
<td>QCRC report ch 12 at 76; QCRC Constitution of Queensland 2000, cl 86</td>
</tr>
</tbody>
</table>


90 Although the 1988 Constitutional Commission recommended that the Commonwealth Constitution be altered to allow constitutional referendums to be initiated not only by the Federal Parliament but also by State Parliaments if a proposal comes from not fewer than half the States; Final report of the Constitutional Commission 1988 see n 64 volume two at 856.
The QCRC recommended that any referendum entrenchment should only occur with the prior approval of a referendum (QCRC R12.2). This accords with a resolution which attracted broad support from the Gladstone Convention that:

*An entrenched provision may only be introduced into a State constitution by following the same procedure as it provides for its amendment or repeal.*[^91]

One of the difficulties with entrenchment of provisions of the Constitution is that the capacity to introduce safeguards against undesirable legislative measures is also a capacity which can be used to entrench undesirable law.[^92] A requirement that provisions can only be referendum entrenched by referendum helps to overcome this difficulty by ensuring that provisions are only referendum entrenched with the support of the majority of voters. This prevents one Parliament seeking to constrain future Parliaments without the support of the people of Queensland, and thus helps Queenslanders retain control of the Queensland Constitution.

The committee supports the principle that any referendum entrenchment should only occur with the prior approval of a referendum and considers that this principle should be expressly stated and itself entrenched in the Queensland Constitution.[^93]

Approval at a referendum increases the legitimacy of provisions requiring that certain laws can only be made following approval at a referendum. As Gummow J noted:

*There is a conceptual difficulty, to my mind, with the legitimacy of a manner and form requirement which is inserted in a written constitution otherwise than by a law made with observance of that manner and form which is thereafter to apply, or by a law having paramount force.*[^94]

**COMMITTEE PROPOSAL 11 – FUTURE REFERENDUM ENTRENCHMENT**

The Queensland Constitution should clearly state that provisions can only be referendum entrenched following approval at a referendum, and this provision should itself be referendum entrenched.

### 6.2.2 Other types of entrenchment

As noted above, the Gladstone Convention broadly supported the proposition that an entrenched provision may only be introduced into the Queensland Constitution by following the same procedure as it provides for its amendment or repeal.

The committee supports this general principle in the case of entrenching provisions which an absolute majority of the Legislative Assembly can comply with (for example, a requirement for a bill to use a particular form of words), and for referendum entrenchment. However, given the unicameral nature of the Queensland Parliament, the committee is concerned that application of this principle to an entrenching provision which cannot be observed by an absolute majority has the potential to result in undesirable outcomes. For example, a provision entrenched by a two-thirds majority, (in circumstances where the governing party in the Legislative Assembly holds greater than two-thirds of the seats) and requiring a two-thirds majority to amend or repeal it, could prove unreasonably difficult for subsequent Parliaments to amend. Further, such provisions might not be able to be amended by a referendum.

[^91]: Note 56 at 3.
[^92]: Carney, n 19 at 73.
[^93]: Submission no 13 by Assoc Prof Carney to QCRC, see n 60.
[^94]: McGinty and Others v The State of Western Australia (1996) 186 CLR 140 Gummow J at 297.
The QCRC noted its opposition to the adoption of any special majority mechanism because a special majority requirement can place excessive power in the hands of one member or a few members who happen to occupy a pivotal role in the legislature at the time.\textsuperscript{95} (A requirement that a bill amending or repealing an entrenched provision can only be passed by a special majority is one example of entrenchment other than referendum entrenchment.)

The committee considers that entrenching provisions, other than referendum entrenchment, which require procedures which cannot be observed by an absolute majority are undesirable. However, any attempt to preclude such entrenching provisions being inserted in the future would be unlikely to be effective.\textsuperscript{96} At most, the Constitution can require that such entrenching provisions are only inserted with approval of a referendum.

Accordingly, the committee proposes that the Constitution should expressly provide that a referendum is necessary not only for referendum entrenchment, but also to insert entrenching provisions requiring special additional procedures other than procedures which cannot be complied with by an absolute majority. This provision should itself be referendum entrenched.

Following this principle, the requirements of Parliamentary entrenchment, recommended above, could be inserted without a referendum because an absolute majority of the Legislative Assembly can comply with these requirements. Although, the Parliament would be required to follow the procedures required by parliamentary entrenchment to so entrench those provisions.

\section*{Committee Proposal 12 – Future Entrenchment Other Than Referendum Entrenchment}

The Constitution should require that entrenching provisions requiring special procedures which an absolute majority of the Legislative Assembly will be able to comply with should only be inserted following the same procedure as the provision itself provides for amendment or repeal of the entrenched provisions.

The Constitution should expressly provide that a referendum is necessary to insert entrenching provisions requiring a referendum or requiring other special additional procedures which cannot be complied with by an absolute majority. This provision should itself be referendum entrenched.

\section*{7. Adoption of the Constitution at a Referendum}

<table>
<thead>
<tr>
<th>Recommendation under review</th>
<th>Source material</th>
</tr>
</thead>
<tbody>
<tr>
<td>QCRC R4.2 That s.3 include words to indicate that the Constitution will have to be adopted by the people at a referendum.</td>
<td>QCRC report ch 4 at 35; QCRC Constitution of Queensland 2000, cl 3(2)</td>
</tr>
</tbody>
</table>

The QCRC recommended that the Constitution should expressly provide that before it is assented to it must be approved at a referendum to ‘confirm as explicitly as is constitutionally possible the popular adoption of the Constitution to give it recognition as fundamental law’.\textsuperscript{97}

\textsuperscript{95} QCRC, n 1 at 78
\textsuperscript{96} This would be a purported abdication of power. See Commonwealth Aluminium Corporation Limited v Attorney General [1976] Qd R 231.
\textsuperscript{97} Note 1 at 35.
The support of the majority of electors at a referendum could be expected to increase public acceptance of the provisions and might promote the practical entrenchment of provisions which do not relate to the constitution, powers or procedure of the Parliament.

The committee considers it desirable that the Queensland electorate be given the opportunity to decide whether to adopt the Constitution, particularly those provisions which will be referendum entrenched. It is appropriate that the people of Queensland endorse the fundamental laws which define the scope of the Parliament’s powers. Thus, adoption of the Constitution at a referendum would serve to increase the legitimacy of the Constitution as a superior law.

A referendum would also provide an opportunity to finalise the consolidation of the Constitution by relocating the currently entrenched provisions.

However, as noted in report no 36 Specific content issues, there are certain matters which should be considered before a constitution is presented at a referendum for adoption by the people of Queensland. These issues include the possibility of special representation for Aborigines and Torres Strait Islanders, and certain issues relating to the judiciary and the magistracy.

The question of whether, and to what extent, any constitutional provisions recommended by these inquiries should be entrenched will need to be considered before the current process of constitutional reform is finalised. Ideally the inquiries themselves will make recommendations about entrenchment of relevant provisions.

As the final step of constitutional reform, consideration will need to be given to the process for a referendum, including whether significant issues of reform, such as the question of the length of parliamentary terms, are to be presented as separate questions, independently of whether the consolidated Constitution should be adopted and, if so, how. Thus, as the final step in the process a constitutional convention would be appropriate to finalise the drafting of the Constitution to be presented at a referendum, and to determine logistical details for proceeding to a referendum.

**COMMITTEE PROPOSAL 13 – ADOPTION OF THE CONSTITUTION AT A REFERENDUM**

When consideration of the current issues of constitutional reform is finalised, the Queensland Constitution should be submitted for approval at a referendum.

**COMMITTEE PROPOSAL 14 – A CONSTITUTIONAL CONVENTION**

A constitutional convention should be convened as the penultimate stage of the current process of constitutional reform to finalise the drafting of the Queensland Constitution and determine the logistical details for proceeding to a referendum.

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98 QCRC, n 1 at R5.6.
100 See also ERC report, n 6 at para 4.90.
## APPENDIX A ~ ENTRENCHMENT OF SPECIFIC PROVISIONS OF THE CONSTITUTION OF QUEENSLAND 2001

<table>
<thead>
<tr>
<th>CONSTITUTION OF QUEENSLAND 2001</th>
<th>CURRENT ENTRENCHMENT STATUS</th>
<th>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</th>
<th>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</th>
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</thead>
<tbody>
<tr>
<td>General</td>
<td></td>
<td>The QCRC recommended:</td>
<td>As discussed in section 5.1.1, the committee proposes</td>
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<tr>
<td></td>
<td></td>
<td>• That all principal elements of the State’s constitutional structure in the Queensland Constitution be subject to referendum entrenchment (R2,2 and 12.1; report chs 2 and 12; QCRC Constitution of Queensland 2000, cl 84);</td>
<td>that all provisions necessary to maintain the essential structure of the State’s constitutional system should be referendum entrenched. This includes provisions which:</td>
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<td></td>
<td>• That the provisions relating to local government be effectively entrenched by being subject to referendum entrenchment (R11.1; report ch 11; QCRC Constitution of Queensland 2000 cls 74 and 84);</td>
<td>• prescribe a system of representative and responsible government;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• That the whole text of the Queensland Constitution be subject to parliamentary entrenchment (R2.3 and 12.3; report chs 2 and 12; QCRC Constitution of Queensland 2000, cls 82 and 83).</td>
<td>• provide for the legislature, the executive and the judiciary as the three arms of government; and</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• maintain a balance of power between these arms of government as appropriate for a system of representative and responsible government.</td>
</tr>
<tr>
<td>s 1 Short title</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Further, provisions establishing local government should also be referendum entrenched: see section 5.1.2.</td>
</tr>
<tr>
<td>s 2 Commencement</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>All other provisions should be ‘parliamentary entrenched’: see section 5.2 for an explanation as to what parliamentary entrenchment entails.</td>
</tr>
<tr>
<td><strong>CONSTITUTION OF QUEENSLAND 2001</strong></td>
<td><strong>CURRENT ENTRENCHMENT STATUS</strong></td>
<td><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></td>
<td><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></td>
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<tr>
<td>s 3 Object</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 4 References to the Sovereign</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 5 Note in text is part of this Act</td>
<td>Not entrenched.</td>
<td>Not in QCRC Constitution of Queensland 2000</td>
<td>Not a substantive provision</td>
</tr>
<tr>
<td>s 6 The Parliament</td>
<td><em>Constitution Act 1867, s 2A is double referendum entrenched by Constitution Act 1867, s 53.</em> Constitution Act Amendment Act 1934, s 3 requires a referendum to establish another legislative body, such as a Legislative Council, and referendum entrenches itself.</td>
<td>Referendum entrenchment* QCRC Constitution of Queensland 2000, cl 7.</td>
<td>Referendum entrenched  The following elements should be referendum entrenched.  • The Parliament of Queensland consists of the Sovereign and the Legislative Assembly.  • Every bill passed by the Legislative Assembly must be presented to the Governor (as the Sovereign’s representative) for assent.  • No bill has effect until the Governor assents to it. The key elements of this provision define the Parliament and the legislative process which are pivotal components of the State’s constitutional system. The provision is currently referendum entrenched.</td>
</tr>
<tr>
<td>s 7 Legislative Assembly</td>
<td><em>Constitution Act 1867, s 1 double referendum entrenched by Constitution Act 1867, s 53.</em></td>
<td>Referendum entrenchment* QCRC Constitution of Queensland 2000, cls 5 and 84.</td>
<td>Referendum entrenched  The following element should be referendum entrenched.  • The Legislative Assembly is established in Queensland. This provision provides for the single house of the Queensland Parliament. It is currently referendum entrenched.</td>
</tr>
<tr>
<td><strong>CONSTITUTION OF QUEENSLAND 2001</strong></td>
<td><strong>CURRENT ENTRENCHMENT STATUS</strong></td>
<td><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></td>
<td><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></td>
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</tbody>
</table>
| s 8 Law-making power              | Constitution Act 1867, s 2 double referendum entrenched by Constitution Act 1867, s 53. | Referendum entrenched* QCRC Constitution of Queensland 2000, cls 6 and 84. | Referendum entrenched  
The following elements should be referendum entrenched.  
- The Sovereign has power to make laws for the peace, welfare and good government of Queensland.  
- The Sovereign may only exercise the power to make laws with the advice and consent of the Legislative Assembly.  
The key elements of this provision define the law-making or legislative power of the State. The provision is currently referendum entrenched. |
| s 9 Powers, rights and immunities of Legislative Assembly | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 10 Members of Legislative Assembly | Not entrenched. | Referendum entrenched R5.3; report ch 5 at 41; QCRC Constitution of Queensland 2000, cls 9 and 84. See also LCARC report no 24 notes to clause 10. | Referendum entrenched  
It is an essential characteristic of the Legislative Assembly that its members are to be directly elected by eligible voters in the State. This provision implements the principle of representative democracy. |
| s 11 Number of members of Legislative Assembly | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 12 Division of State into electoral districts | Not entrenched. | Parliamentary entrenchment | Referendum entrenched  
These provisions are integral to the current electoral system in Queensland. Substantial changes would have significant consequences for the legislature, the executive and the political process and should only be effected with referendum approval. |
<table>
<thead>
<tr>
<th><strong>CONSTITUTION OF QUEENSLAND 2001</strong></th>
<th><strong>CURRENT ENTRENCHMENT STATUS</strong></th>
<th><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL&quot;</strong></th>
<th><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>s 13 1 member for each electoral district</td>
<td>Not entrenched.</td>
<td>Referendum entrenchment</td>
<td>Referendum entrenchment</td>
</tr>
<tr>
<td></td>
<td></td>
<td>R5.5; report ch 5 at 42; QCRC Constitution of Queensland 2000, cls 11 and 84</td>
<td>These provisions are integral to the current electoral system in Queensland. Substantial changes would have significant consequences for the legislature, the executive and the political process and should only be effected with referendum approval.</td>
</tr>
<tr>
<td>s 14 Power to alter system of representation</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 15 Summoning, proroguing and dissolving the Legislative Assembly</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 16 Duration of Legislative Assembly</td>
<td>Constitution Act Amendment Act 1890, s 2 double referendum entrenched by Constitution Act Amendment Act 1934, s 4.</td>
<td>Referendum entrenchment*</td>
<td>Referendum entrenchment</td>
</tr>
<tr>
<td></td>
<td>Note: QCRC Constitution of Queensland 2000, cls 14(3) and (4) relate to the QCRC’s recommendation re four year terms with a fixed minimum period of three years. See R5.2 report ch 5 at 41 QCRC Constitution of Queensland 2000, cls 14(3) and (4), 15 and 84.</td>
<td>Referendum entrenchment*</td>
<td>The committee considers that the term of the Legislative Assembly is fundamental to ensuring that the Parliament is accountable to the people of Queensland. A limited parliamentary term is an essential safeguard on the power of the Legislative Assembly. The term of the Legislative Assembly is currently referendum entrenched from being increased from three years. In report no 27 the former LCARC recommended that the Premier extend the maximum term of the Legislative Assembly to four years, subject to certain restrictions. This committee does not propose to revisit that recommendation.</td>
</tr>
<tr>
<td>s 17 Continuation of Legislative Assembly despite end of Sovereign’s reign</td>
<td>Not entrenched.</td>
<td>Not included in QCRC Constitution of Queensland 2000</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>CONSTITUTION OF QUEENSLAND 2001</strong></td>
<td>CURRENT ENTRENCHMENT STATUS</td>
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<tr>
<td>s 18 Time and place for sessions of Legislative Assembly</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 19 Minimum sitting requirement for Legislative Assembly</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 20 Separate appropriation for Legislative Assembly</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 21 Eligibility to be a candidate and to be elected as a member</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 22 No member to sit or vote without first taking oath or making affirmation</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 23 Ministers</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 24 Appointment of Parliamentary Secretaries</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 25 Functions of Parliamentary Secretaries</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 26 Length of Parliamentary Secretary’s appointment</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 27 Governor in Council</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 28 Definition for pt 2</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 29 Governor</td>
<td>Not entrenched.</td>
<td>Referendum entrenchment</td>
<td>Referendum entrenchment</td>
</tr>
<tr>
<td>QCRC Constitution of Queensland cls 29(1) and (7) and 84.</td>
<td></td>
<td>Appointment of a Governor is essential to the effective functioning of executive government. Further, s 7 of the Australia Acts requires that Her Majesty’s representative in each State shall be the Governor.</td>
<td></td>
</tr>
<tr>
<td><strong>CONSTITUTION OF QUEENSLAND 2001</strong></td>
<td><strong>CURRENT ENTRENCHMENT STATUS</strong></td>
<td><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></td>
<td><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></td>
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</tbody>
</table>
| s 30 Office of Governor             | Constitution Act 1867, ss 11A and 11B double referendum entrenched by Constitution Act 1867, s 53. | Referendum entrenchment of the equivalent to s 11A(3) of the Constitutional Act 1867 and parliamentary entrenchment of the equivalent of s 11A(1) of the Constitutional Act 1867.* | Referendum entrenchment  
The following elements should be referendum entrenched:  
- The Sovereign’s representative in Queensland is the Governor.  
- The Governor is appointed by the Sovereign.  
- The Governor can hold office for the term of his or her appointment or until removed by the Sovereign.  
These elements are essential to the State’s system of government, that is, a constitutional monarchy. Thus, any change to these principles should be approved by the people at a referendum. They are currently referendum entrenched.  
Further, s 7 of the Australia Acts requires that *Her Majesty’s representative in each State shall be the Governor.* |
<p>| s 31 Requirements concerning commission and oath or affirmation | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 32 Termination of appointment as Governor | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 33 General power of Governor | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 35 Power of Governor—removal or suspension of officer | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |</p>
<table>
<thead>
<tr>
<th><strong>CONSTITUTION OF QUEENSLAND 2001</strong></th>
<th><strong>CURRENT ENTRENCHMENT STATUS</strong></th>
<th><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></th>
<th><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>s 36 Power of Governor—relief for offender</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 37 Power of Governor—public seal</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 38 Continued use of seal despite end of Sovereign’s reign</td>
<td>Not entrenched.</td>
<td>Provision does not appear in QCRC Constitution of Queensland 2000.</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 39 Statutory powers when Sovereign personally in State</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 40 Delegation by Governor to Deputy Governor</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 41 Administration of Government by Acting Governor</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 42 Cabinet</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 43 Appointment of Ministers of the State</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 44 Administrative arrangements</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 45 Minister may act for another Minister</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 46 Member may act for a Minister</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 47 Sick leave</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 48 Executive Council</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 49 Length of appointment as member of Executive Council</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>s 50 Meetings of Executive Council</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
</tbody>
</table>
| **CONSTITUTION OF QUEENSLAND**  
| **2001** | **CURRENT ENTRENCHMENT STATUS** | **RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL** | **COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS** |
| s 51 Powers of the State | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 52 Definitions for div 2 | Not entrenched. | Parliamentary entrenchment* | Parliamentary entrenchment |
| s 53 Commercial activities by State | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 54 Commercial activities by Minister | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 55 Delegation by Minister | Not entrenched. | Parliamentary entrenchment | Parliamentary entrenchment |
| s 56 Definitions for ch 4 | Not entrenched. | Parliamentary entrenchment* | Parliamentary entrenchment |
| s 57 Supreme Court and District Court | Not entrenched. | Referendum entrenchment  
R8.1; report ch 8 at 61; QCRC Constitution of Queensland 2000, cls 60 and 84. | Referendum and parliamentary entrenchment |
| s 58 Supreme Court’s superior jurisdiction | Not entrenched. | Referendum entrenchment  
R8.1; report ch 8 at 61; QCRC Constitution of Queensland 2000, cls 61, 84. | Referendum entrenchment |
| s 59 Appointment of judges | Not entrenched. | Parliamentary entrenchment* | Parliamentary entrenchment |

Queensland 2000, cls 60 and 84.  

Queensland 2000, cls 61, 84.  

Referendum entrenchment  

Referendum entrenchment  

The superior jurisdiction of the Supreme Court, is an essential feature of the State’s constitutional system. Thus this provision should be referendum entrenched.
<table>
<thead>
<tr>
<th><strong>CONSTITUTION OF QUEENSLAND 2001</strong></th>
<th><strong>CURRENT ENTRENCHMENT STATUS</strong></th>
<th><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></th>
<th><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>s 60 Length of judge’s appointment</td>
<td>Not entrenched.</td>
<td>Referendum entrenchment of the equivalent to s 60(1)* R8.1; report ch 8 at 61; QCRC Constitution of Queensland 2000, cls 63(1) and 84.</td>
<td>Referendum entrenchment Security of tenure of judges is essential to ensure that judges are, and are seen to be, independent from the other arms of government. This provision provides an important mechanism to protect the courts from interference by other arms of government. Accordingly, the provision should be referendum entrenched. See appendix B re recommendation 32 of report no 36 in relation to s 60(2).</td>
</tr>
<tr>
<td>s 61 Removal from office for misbehaviour or incapacity</td>
<td>Not entrenched.</td>
<td>Referendum entrenchment of the provisions equivalent to s 61(1)-(4) and parliamentary entrenchment of other provisions.* R8.3; report ch 8 at 62; QCRC Constitution of Queensland 2000, cls 64 (1), (2) and 84.</td>
<td>See appendix B re recommendation 33 of report no 36.</td>
</tr>
<tr>
<td>s 62 Judge’s salary</td>
<td>Not entrenched.</td>
<td>At recommendation 8.1 the QCRC recommends the provision relating to judge’s salary be referendum entrenched. However, cl 65 of the QCRC’s recommended Constitution 2000 is not listed in the referendum entrenched provisions in cl 84(5).*</td>
<td>Referendum entrenchment Protecting a judge’s salary is essential to ensure that judges are, and are seen to be, independent from the other arms of government. This provision provides an important mechanism to protect the courts from interference by other arms of government. Accordingly, the provision should be referendum entrenched.</td>
</tr>
<tr>
<td>s 63 Protection if office abolished</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Referendum entrenchment of this provision is</td>
</tr>
<tr>
<td><strong>CURRENT ENTRENCHMENT STATUS</strong></td>
<td><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></td>
<td><strong>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</strong></td>
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</tr>
<tr>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>necessary to ensure that other provisions granting security of tenure to judges are not undermined.</td>
<td></td>
</tr>
<tr>
<td>Not entrenched.</td>
<td>Referendum entrenchment*</td>
<td>Referendum entrenchment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>R9.1; report ch 9 at 63; QCRC Constitution of Queensland 2000, cls 69, 84.</td>
<td>This provision imposes a fundamental restriction on executive power which underlies responsible government.</td>
<td></td>
</tr>
<tr>
<td>Not entrenched.</td>
<td>Referendum entrenchment*</td>
<td>Referendum entrenchment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>R9.1; report ch 9 at 63; QCRC Constitution of Queensland 2000, cls 72, 84.</td>
<td>This provision imposes an important restriction on executive power.</td>
<td></td>
</tr>
<tr>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Referendum entrenchment</td>
<td></td>
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<tr>
<td></td>
<td>Referendum entrenchment</td>
<td>Referendum entrenchment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>R11.1; report ch 11 at 66; QCRC Constitution of Queensland 2000, cls 74 and 84.</td>
<td>These provisions are considered in report no 36 <em>The Queensland Constitution: Specific content issues</em></td>
<td></td>
</tr>
<tr>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>See Appendix B re recommendation 21 of report no 36.</td>
<td></td>
</tr>
<tr>
<td>Not entrenched.</td>
<td>Referendum entrenchment*</td>
<td>In report 36 <em>The Queensland Constitution: Specific content issues</em> the committee recommends that this section be repealed (recommendation 17).</td>
<td></td>
</tr>
<tr>
<td>Not entrenched.</td>
<td>Referendum entrenchment*</td>
<td>Referendum entrenchment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>R11.1; report ch 11 at 66; QCRC Constitution of Queensland 2000, cls 74 and 84.</td>
<td>As discussed in section 5.1.2 local government is generally recognised as an elected third tier of government and plays an important role in the structure of government in Australia. Thus, it should be recognised and accorded the status of an established part of the State’s constitutional structure.</td>
<td></td>
</tr>
<tr>
<td><strong>CONSTITUTION OF QUEENSLAND 2001</strong></td>
<td><strong>CURRENT ENTRENCHEMENT STATUS</strong></td>
<td><strong>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL</strong></td>
<td><strong>COMMITTEE PROPOSAL 15 – ENTRENCHEMENT OF SPECIFIC PROVISIONS</strong></td>
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<tr>
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<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>s 71 Requirements for a local government</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Abolition of local government would represent a fundamental change to the system of government in Queensland and should not be done without approval at a referendum.</td>
</tr>
<tr>
<td><strong>s 72 Definition for pt 2</strong></td>
<td>Not entrenched.</td>
<td>No equivalent clause.</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 73 Dissolution of local government must be tabled</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 74 Suspension until dissolution ratified</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 75 Ratification of dissolution</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 76 No tabling or ratification of dissolution</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 77 Procedure for Bill affecting a local government</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 78 Procedure for Bill ending system of local government</strong></td>
<td>Section 78 requires that a proposal to end the system of local government in Queensland must be approved at a referendum before being presented for assent. However, s 78 is not doubly entrenched.</td>
<td>Provision does not appear in QCRC recommended Constitution of Queensland 2000.</td>
<td>Repeal. Referendum entrenchment of s 70, as proposed above, will render this provision redundant.</td>
</tr>
<tr>
<td><strong>s 79 Issue of compliance not justiciable</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td><strong>s 80 Continued holding of office</strong></td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>CONSTITUTION OF QUEENSLAND 2001</td>
<td>CURRENT ENTRENCHMENT STATUS</td>
<td>RELEVANT QCRC RECOMMENDATION AND SOURCE MATERIAL*</td>
<td>COMMITTEE PROPOSAL 15 – ENTRENCHMENT OF SPECIFIC PROVISIONS</td>
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<td>--------------------------------------------------</td>
</tr>
<tr>
<td>under the Crown despite end of Sovereign’s reign</td>
<td>Not entrenched.</td>
<td>[refer to cl 63(4) QCRC, Constitution of Queensland 2000]</td>
<td>Entrenchment not necessary.</td>
</tr>
<tr>
<td>ss 81 – 93 Transitional</td>
<td>Not entrenched.</td>
<td>transitional</td>
<td>Entrenchment not necessary.</td>
</tr>
<tr>
<td>ss 93 – 95 Consequential amendments and repeals</td>
<td>Not entrenched.</td>
<td></td>
<td>Entrenchment not necessary.</td>
</tr>
<tr>
<td>sch 1 Oaths and affirmations</td>
<td>Not entrenched.</td>
<td>Parliamentary entrenchment*</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>sch 2 Amendments</td>
<td>Not entrenched.</td>
<td></td>
<td>Entrenchment not necessary.</td>
</tr>
<tr>
<td>sch 3 Repealed laws</td>
<td>Not entrenched.</td>
<td></td>
<td>Entrenchment not necessary.</td>
</tr>
<tr>
<td>sch 4 Repealed imperial laws</td>
<td>Not entrenched.</td>
<td></td>
<td>Entrenchment not necessary.</td>
</tr>
</tbody>
</table>

* Unless otherwise specified references are to the report of the Queensland Constitutional Review Commission titled Report on the possible reform of and changes to the Acts and laws that relate to the Queensland Constitution; n 1.

* The section in the Constitution of Queensland 2001 is different in substance to the clause recommended by the QCRC in its Constitution of Queensland 2000.
The Queensland Constitution: Specific content issues

The table below identifies the committee’s proposals regarding whether referendum entrenchment or parliamentary entrenchment should be applied to constitutional provisions recommended in report no 36 The Queensland Constitution: Specific content issues.

<table>
<thead>
<tr>
<th>REPORT NO 36 RECOMMENDATION</th>
<th>COMMITTEE PROPOSAL 16 - ENTRENCHMENT OF PROVISIONS RECOMMENDED IN LCARC REPORT NO 36</th>
</tr>
</thead>
</table>
| Recommendation 2 – A statement of executive power | Referendum entrenchment  
The vesting in the Sovereign of the executive power of the State is essential to the structure of the current system of government in Queensland.  
No amendments should be made to this provision without approval at a referendum. |
| The Constitution of Queensland 2001 should include a statement of executive power expressed along the following lines.  
‘(1) The executive power of Queensland is vested in the Sovereign, and is exercisable by the Governor as the Sovereign’s representative, and extends to the execution and maintenance of the Constitution and the laws of Queensland.  
(2) The Governor shall act on the advice of the Executive Council, the Premier or another Minister; but the Governor may exercise a power that is a reserve power of the Crown in accordance with the constitutional conventions relating to the exercise of that power.  
(3) The executive power of Queensland is subject to the legislative power of Parliament.’  
This provision should also include a footnote to the effect that the Australia Acts 1986 (Cth and UK), s 7(2)-(5) provide for the Sovereign’s functions and powers in relation to Queensland.  
The inclusion of a provision along these lines should be accompanied by provisions stating that the enactment of the section does not:  
• prevent the evolution of the constitutional conventions, including those relating to the exercise of the reserve powers; nor |
<table>
<thead>
<tr>
<th>Recommendation 3 – The Executive Council</th>
<th>Recommendation 4 – The Governor’s right to request information</th>
<th>Recommendation 7 – Requirement for ministers to be members of the Legislative Assembly</th>
</tr>
</thead>
<tbody>
<tr>
<td>The main function of Executive Council is to advise the Governor on the government of the State; the Executive Council consists of ministers appointed as members of the Executive Council; and when ministers resign their portfolio, they must also tender their resignations as members of the Executive Council if they will no longer remain in the ministry.</td>
<td>The Governor is entitled to request from the Premier or a minister information on any particular matter relating to the government that is relevant to the performance or exercise of the Governor’s functions or powers.</td>
<td>The Constitution of Queensland 2001 should provide that a person appointed as a minister must either be, or must become within 90 days of their appointment, a member of the Legislative Assembly. The relevant provision should be drafted so as to avoid the theoretical possibility of a Government cycling non-elected ministers through the Cabinet indefinitely by terminating each minister’s commission after 89 days.</td>
</tr>
<tr>
<td>Parliamentary entrenchment</td>
<td>Parliamentary entrenchment</td>
<td>Referendum entrenchment</td>
</tr>
<tr>
<td>The main function of Executive Council is to advise the Governor, as the Sovereign’s representative. The existence and functions of Executive Council are not essential to maintain the current system of government in Queensland. Rather, Executive Council is a mechanism used to effectively fulfil executive functions.</td>
<td>This is an ancillary provision which supports the means by which the executive fulfils its functions.</td>
<td>It is an integral part of Queensland’s system of responsible government that ministers must be members of the Legislative Assembly. This ensures that ministers are accountable to Parliament and rely on the support of Parliament for their continuation in office. Thus, the requirement that ministers must be members should only be changed with the approval of a referendum. However, there may be some benefit in retaining</td>
</tr>
<tr>
<td><strong>Recommendation 8 – Appointment of the Premier</strong></td>
<td><strong>Committee Proposal 16 - Entrenchment of Provisions Recommended in LCARC Report No 36</strong></td>
<td></td>
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<td>-------------------------------------------------</td>
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</tr>
</tbody>
</table>
| The *Constitution of Queensland 2001* should include a provision designating the office of Premier. This provision should state that:  
  - the Governor appoints as Premier the member of the Legislative Assembly who, in the Governor’s opinion, is most likely to command the confidence of a majority of members of the Legislative Assembly; and  
  - the Premier is a minister.  
  The *Constitution of Queensland 2001* should also provide that:  
  - the appointment as Premier of the person who immediately before the commencement of the appropriate provision was the Premier is not affected; and  
  - the Governor’s power to appoint a member as Premier in accordance with the above provision is non-justiciable. | flexibility in relation to the period of time within which a member must be appointed. Accordingly, this element of the provision should be parliamentary entrenched.  
**Referendum entrenchment**  
This provision reflects a fundamental constitutional convention which should be changed only with the approval of the people of Queensland at a referendum. |
| **Recommendation 9 – Dismissal of the Premier** | **Committee Proposal 16 - Entrenchment of Provisions Recommended in LCARC Report No 36** |
| The *Constitution of Queensland 2001* should include a provision stating that the Premier shall hold office, subject to this Constitution, until he or she dies or resigns, or the Governor terminates his or her appointment in accordance with the constitutional conventions relating to the exercise of that power.  
This clause should be complemented by a provision providing for the continuing evolution and non-justiciability of the conventions regarding this reserve power. The additional provisions recommended by the committee in recommendation 2 would suffice in this regard. | **Referendum entrenchment**  
This provision reflects a fundamental constitutional convention which should be changed only with the approval of the people of Queensland at a referendum. |
<p>| <strong>Recommendation 10 – A lieutenant-governor</strong> | <strong>Committee Proposal 16 - Entrenchment of Provisions Recommended in LCARC Report No 36</strong> |
| A Lieutenant-Governor should again be appointed for Queensland. | <strong>Parliamentary entrenchment</strong> of relevant provision. |</p>
<table>
<thead>
<tr>
<th>REPORT NO 36 RECOMMENDATION</th>
<th>COMMITTEE PROPOSAL 16 - ENTRENCHMENT OF PROVISIONS RECOMMENDED IN LCARC REPORT NO 36</th>
</tr>
</thead>
<tbody>
<tr>
<td>for Queensland</td>
<td>Referendum entrenchment of this provision is not necessary to protect the balance of power between the arms of government. Thus, parliamentary entrenchment, which would allow an alternative mechanism to be introduced in the future, is more appropriate.</td>
</tr>
<tr>
<td>Recommendation 11 – Oath or affirmation of allegiance to the Crown</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>The Constitution of Queensland 2001 should be amended so that members of the Legislative Assembly have the option as to whether to take or make the oath or affirmation of allegiance to the Crown.</td>
<td>Given that the oath or affirmation of allegiance has no legal effect, referendum entrenchment would impose unnecessary rigidity in relation to this issue.</td>
</tr>
<tr>
<td>Recommendation 16 – Summoning Parliament</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>The Constitution of Queensland 2001 should include a requirement that the Legislative Assembly shall meet no later than 60 days after the day of a general election.</td>
<td>The principle of responsible government is only effective if the Legislative Assembly meets. However, in practice, a government cannot get appropriation or implement its legislative program unless the Legislative Assembly meets. Therefore, referendum entrenchment of this provision is not necessary to ensure that the executive remains accountable to the Legislative Assembly. Moreover, s 19 of the Constitution requires that there must be at least two sittings of the Legislative Assembly in every calendar year and that six months must not pass between sittings, although the committee proposes parliamentary entrenchment of this provision (see appendix A).</td>
</tr>
<tr>
<td>Recommendation 18 – Number of Parliamentary Secretaries</td>
<td>Parliamentary entrenchment</td>
</tr>
<tr>
<td>The Constitution of Queensland 2001 should provide that a limit of five parliamentary secretaries may be appointed at any one time.</td>
<td>This mechanism assists the executive to fulfil its functions. Thus, parliamentary entrenchment is appropriate.</td>
</tr>
<tr>
<td>Recommendation 19 – Role of Parliamentary</td>
<td></td>
</tr>
<tr>
<td>The Constitution of Queensland 2001 should contain a broad description of the main role of a parliamentary secretary, such as, to</td>
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<td>------------------------------</td>
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</tr>
<tr>
<td>Secretaries</td>
<td>assist a minister in the performance of his or her functions.</td>
</tr>
<tr>
<td>Recommendation 21 –</td>
<td>The Constitution of Queensland 2001, s 68 should be amended to require a</td>
</tr>
<tr>
<td>Recommendations for</td>
<td>recommendation by a message from the Governor in Council before the Legislative</td>
</tr>
<tr>
<td>Appropriation Bills</td>
<td>Assembly is able to originate or pass a vote, resolution or bill for the</td>
</tr>
<tr>
<td></td>
<td>appropriation of an amount from, or an amount required to be paid to, the</td>
</tr>
<tr>
<td></td>
<td>consolidated fund unless a bill or motion that would appropriate money from</td>
</tr>
<tr>
<td></td>
<td>the consolidated fund is introduced or moved by a minister.</td>
</tr>
<tr>
<td>Parliamentary entrenchment</td>
<td>Referendum entrenchment of this provision is not necessary to protect an</td>
</tr>
<tr>
<td></td>
<td>appropriate balance of power between the arms of government. The flexibility</td>
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<tr>
<td></td>
<td>to change this provision as the system of government evolves is more</td>
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<tr>
<td></td>
<td>appropriate.</td>
</tr>
<tr>
<td>Recommendation 22 – Fresh</td>
<td>The Constitution of Queensland 2001 should include a provision stating that a</td>
</tr>
<tr>
<td>Election of Local Councillors</td>
<td>fresh election of the councillors of a local government that has been dissolved</td>
</tr>
<tr>
<td>After Dissolution</td>
<td>should be held as soon as possible after the dissolution of the local government.</td>
</tr>
<tr>
<td>Parliamentary entrenchment</td>
<td>As this provision does not impose a legally enforceable requirement, the</td>
</tr>
<tr>
<td></td>
<td>flexibility provided by parliamentary entrenchment is more appropriate.</td>
</tr>
<tr>
<td>Recommendation 28 – Judicial</td>
<td>The Constitution of Queensland 2001 should contain express recognition of the</td>
</tr>
<tr>
<td>Independence</td>
<td>principle of judicial independence by including a provision along the following</td>
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<tr>
<td></td>
<td>lines:</td>
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<td></td>
<td>*Judges appointed under Queensland law are independent and subject only to the</td>
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<td></td>
<td>law which they must apply impartially.*</td>
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<tr>
<td>Parliamentary entrenchment</td>
<td>Referendum entrenchment of this provision might be used to derive implied</td>
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<td></td>
<td>constitutional restrictions on the vesting and exercise of judicial power in</td>
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<td></td>
<td>bodies other than courts. The extent of such restrictions would be uncertain.</td>
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<td></td>
<td>The committee does not consider that such restrictions and uncertainty are</td>
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<td></td>
<td>justified. It is more important to referendum entrench security of judicial</td>
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<td></td>
<td>tenure which provides the practical means by which judicial independence is</td>
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<td></td>
<td>protected.</td>
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<tr>
<td>Recommendation 31 – Acting</td>
<td>Provisions for the appointment of acting judges should be relocated from the</td>
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<tr>
<td>Judges</td>
<td>Supreme Court of Queensland Act 1991 and District Court of Queensland Act 1967</td>
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<tr>
<td></td>
<td>to the Constitution of Queensland 2001 and amended to ensure that a person</td>
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<td></td>
<td>who qualifies for appointment as a judge may be appointed as an acting judge</td>
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<tr>
<td>Referendum entrenchment</td>
<td>As an exception to security of judicial tenure, it is important that this</td>
</tr>
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<td></td>
<td>provision be entrenched in the same way as provisions which guarantee judicial</td>
</tr>
</tbody>
</table>
|                              | tenure. (See appendix A, s 60 and the discussion below in relation to...
<table>
<thead>
<tr>
<th><strong>Recommendation 32</strong> – Compulsory retirement age for judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>A compulsory retiring age of 70 years for judges should be retained. The <em>Constitution of Queensland 2001</em>, the <em>Supreme Court of Queensland Act 1991</em>, the <em>District Court of Queensland Act 1967</em> and the <em>Anti-Discrimination Act 1992</em> should be amended as necessary to include this compulsory retiring age in the <em>Constitution of Queensland 2001</em>.</td>
</tr>
</tbody>
</table>

**Recommendation 33** – Removal of judges from office |
| A compulsory retiring age of 70 years for judges should be retained. The *Constitution of Queensland 2001*, the *Supreme Court of Queensland Act 1991*, the *District Court of Queensland Act 1967* and the *Anti-Discrimination Act 1992* should be amended as necessary to include this compulsory retiring age in the *Constitution of Queensland 2001*. |

**Committee proposal 16 - Entrenchment of provisions recommended in LCARC Report No 36** |
| **Recommendation 33.** |
| Acting appointments should be renewable. |

**Referendum entrenchment** |
| As an exception to security of judicial tenure, it is important that this provision be entrenched in the same way as provisions which guarantee judicial tenure. (See appendix A, s 60 and the discussion below in relation to recommendation 33). |

**Referendum entrenchment and Parliamentary entrenchment** |
| Security of tenure is an important protection on the independence of the judiciary and should be referred to in the Constitution. Accordingly, it is important that provision for: |
| the Governor-in-Council to remove a judge on an address from the Legislative Assembly; and |
| the grounds upon which a judge may be removed; |
| be referred to in the Constitution to ensure that removal occurs only in the manner and on the ground prescribed. |

However, it is more appropriate for the procedural
<table>
<thead>
<tr>
<th>REPORT NO 36 RECOMMENDATION</th>
<th>COMMITTEE PROPOSAL 16 - ENTRENCHMENT OF PROVISIONS RECOMMENDED IN LCARC REPORT NO 36</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>provisions relating to the removal of a judge to be parliamentary entrenched. This provides some flexibility if practical difficulties with the procedure arise.</td>
</tr>
</tbody>
</table>
GLOSSARY

absolute majority: a majority equal to a majority of the number of seats in the Assembly (as opposed to a majority of members at the time present in the Assembly).

entrenched provisions: 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.

double entrenchment: requiring special additional procedures to be followed to enact not only laws seeking to amend or repeal the substantive provision, but also laws seeking to amend or repeal the entrenching provision itself.

entrenchment: the process of requiring special additional procedures to be followed in order to amend or repeal entrenched provisions.

manner and form provision: a provision requiring special additional procedures to be followed in order to amend or repeal a particular provision (the entrenched provision).

parliamentary entrenchment: see section 5.2.

referendum entrenched provisions: provisions which can only be amended by laws approved by a majority of voters eligible to vote at a referendum.

simple majority: a majority of members at the time present in the Legislative Assembly.

single entrenchment: entrenchment which requires special procedures to be followed to amend or repeal certain entrenched provisions, but does not impose similar requirements to amend or repeal those special procedures (ie the entrenching provision).

special majority: a specified number or proportion of members of the Legislative Assembly, in excess of a simple majority. For example, a two thirds majority.
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 most useful submissions are to the point, supported by evidence and written in plain English.
♦ The committee will only consider written submissions. Typed or printed text is preferable, though legible hand-written submissions are acceptable. Numbered pages and, for submissions in excess of 20 pages, a brief summary and a table of contents is also helpful.
♦ All submissions must include (i) the name, (ii) a postal address, and (iii) a daytime contact telephone number of the person making the submission. Those making a submission on behalf of an organisation should indicate at what level the submission has been authorised (eg sub-committee, president, chair, etc.).
♦ 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. Submissions from government departments should be authorised in accordance with normal departmental procedure.

CONTENT AND RELEVANCE
♦ A submission may cover some or all of the issues raised in this paper. It would be helpful if submissions clearly stated which proposal they are addressing.
♦ The committee’s usual procedure is to publicly release and table submissions in the Legislative Assembly. Not all submissions will necessarily be published and/or tabled. The committee reserves the right to not publish or table confidential submissions, or submissions which are irrelevant, contain scurrilous or defamatory material, or are otherwise not suitable for publishing. The committee will inform you if it decides not to accept, or not to authorise the publication of, your submission.

CONFIDENTIALITY
♦ The committee attempts to conduct its inquiries in the most open way possible. However, if you believe that your submission (or part of it) should not be made public, 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
♦ Once the committee receives a submission, it becomes committee property and should not be published without the committee’s authorisation. Publication of a submission without the committee’s authorisation means that that publication is not protected by parliamentary privilege and may amount to a contempt of Parliament.

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, 11 OCTOBER 2002
Extensions to the closing date may be given. If you need more time to make a submission, or if you require further information, contact the committee’s secretariat on:
Tel: (07) 3406 7307
Fax: (07) 3406 7070
Email: lcarc@parliament.qld.gov.au

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