

Emblems of Queensland and Other Legislation Amendment Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Emblems of Queensland and Other Legislation Amendment Bill 2023.

Policy objectives and the reasons for them

On 22 October 2022, the Queensland Government announced the *Muttaburrasaurus langdoni* as the State fossil emblem. Amending the *Emblems of Queensland Act 2005* is required to officially recognise it as the State fossil emblem.

In addition to legislating for the State fossil emblem, the Emblems of Queensland and Other Legislation Amendment Bill 2023 (the Bill) also includes certain amendments to the *Crime and Corruption Act 2001*, the *Parliamentary Service Act 1988* and the *Parliament of Queensland Act 2001* to address a number of minor and technical issues to improve and clarify parliamentary processes and procedures.

The amendments contained in the Bill will amend the:

- *Crime and Corruption Act 2001* to retrospectively clarify that since 23 April 1998, members of the Parliamentary Crime and Corruption Committee and its predecessor committees have been able to participate in committee meetings in person or by telephone, video or other electronic means;
- *Parliamentary Service Act 1988* to clarify that the parliamentary precinct includes the Legislative Assembly chamber and its galleries when the Legislative Assembly is sitting;
- *Parliamentary Service Act 1988* to provide that in a proceeding for an offence related to a person's behaviour on the parliamentary precinct, despite section 8 of the *Parliament of Queensland Act 2001*, evidence may be given in a court or other place out of the Legislative Assembly of a direction made or purportedly made by the Speaker or a person authorised to make such directions during proceedings in the Legislative Assembly
- *Parliamentary Service Act 1988* to provide that the Speaker is to prepare the human rights certificate and explanatory notes for by-laws and rules made by the Speaker under the *Parliamentary Service Act*;
- *Parliament of Queensland Act 2001* to refine the process by which a member of the Legislative Assembly in a state of ill health has their request for a proxy vote notified to the Assembly;

- *Parliament of Queensland Act 2001* to retrospectively clarify that since 23 April 1998, members of parliamentary committees have been able to participate in committee meetings in person or by telephone, video or other electronic means; and
- *Parliament of Queensland Act 2001* to update a number of cross references in the Act to definitions that are explained and provided for in the *Electoral Act 1992*.

Achievement of policy objectives

Emblems of Queensland Act 2005

The Bill amends the *Emblems of Queensland Act 2005* to prescribe *Muttaburrasaurus langdoni* as the State's fossil emblem and provide a common name 'The Muttaburra dinosaur'.

Crime and Corruption Act 2001

On 23 April 1998, the Legislative Assembly adopted Standing Orders to provide for members of parliamentary committees to participate in committee meetings in person or by remote means e.g. telephone, video or other electronic means.

It has been identified that there is a potential inconsistency between these Standing Orders and the provisions of the *Crime and Corruption Act 2001* which provide the arrangements for the conduct of meetings of the Parliamentary Crime and Corruption Committee (PCCC), which require members to be present.

In April 2020, amendments were made to the *Parliament of Queensland Act 2001* to insert definitions of 'present' and 'voting' to clarify that members taking part in parliamentary committee meetings could do so either in person, or by telephone, video or other electronic means. However, these amendments were only applicable to committees established under the *Parliament of Queensland Act 2001*.

To ensure consistency, the Bill amends the *Crime and Corruption Act 2001* to include the same definition of 'present' and 'voting' to clarify that meetings of the PCCC can be held with members present either in person or by telephone, video or other electronic means.

Given Standing Orders have been relied upon since 23 April 1998 to enable members of the PCCC and its predecessor committees to meet by remote means, the Bill makes these amendments retrospective to 23 April 1998 to ensure that the meetings of the PCCC and its predecessor committees were not inquorate when decisions their members took at meetings were made.

Parliamentary Service Act 1988

The Bill rectifies an oversight from legislative changes in 1995 by providing that for the purposes of the *Parliamentary Service Act 1988*, the Legislative Assembly chamber and its galleries are considered to be part of the parliamentary precinct when the Legislative Assembly is sitting.

In October 1988, the Parliament enacted the *Parliamentary Service Act 1988*, which among other things established the Parliamentary Service Commission, rather than the Speaker, to determine policy and overall management and control at Parliament House.

While control of behaviour within the parliamentary precinct was given to the Parliamentary Service Commission, the Parliament wanted the Speaker to retain control of these matters within the discrete area of the Legislative Assembly chamber and its galleries when the Assembly was sitting.

To achieve this, the definition of ‘parliamentary precinct’ included in the *Parliamentary Service Act 1988* provided that the precinct included all the relevant land and improvements upon which Parliament House sits, but that the Legislative Assembly chamber and its galleries were not taken to be part of the precinct when the Assembly is sitting.

This enabled the Parliamentary Service Commission to make by-laws to control the behaviour of persons entering upon the parliamentary precinct, and for the Speaker to retain the Speaker’s traditional powers in respect of control of behaviour in the Legislative Assembly chamber and galleries when the Assembly was sitting.

In 1995, the Parliament passed legislation to abolish the Parliamentary Service Commission and vest its powers in the Speaker. However, the definition of parliamentary precinct was inadvertently not amended at the time to remove the exclusion reference to the Legislative Assembly and its galleries when the Assembly is sitting.

This has meant that on parliamentary sitting days since 1995, the Legislative Assembly chamber and its galleries have technically not been part of the parliamentary precinct for the purposes of the *Parliamentary Service Act 1988*.

This has not affected the ability of the Speaker to control the behaviour of members of the Legislative Assembly when the Assembly is sitting but does mean that the by-laws made by the Speaker to control the behaviour of other persons entering upon the parliamentary precinct on a sitting day, do not apply if such persons are in the Legislative Assembly chamber and its galleries.

The amendment in the Bill will clarify the definition of ‘parliamentary precinct’ in the *Parliamentary Service Act 1988*. This will ensure by-laws made by the Speaker will apply to persons in the Legislative Assembly chamber and its galleries when the Assembly is sitting.

An amendment in the Bill also provides that in a proceeding against a person for an offence related to their behaviour in the parliamentary precinct, despite section 8 of the *Parliament of Queensland Act 2001*, evidence may be given in a court or place out of the Legislative Assembly, of a direction made or purportedly made by the Speaker or a person authorised to make such directions during proceedings in the Assembly.

The amendment is necessary to ensure that evidence can be given in a prosecution against a person for an offence against section 50 of the *Parliamentary Service Act 1988*.

A similar excluding provision currently exists in the Criminal Code (section 53) to similarly provide that a person cannot use section 8 of the *Parliament of Queensland Act 2001* as a reason for a court to discontinue its hearing of offences for disturbing the legislature contained in the Criminal Code.

The Speaker's power to make by-laws and rules is contained in sections 50 and 55 of the *Parliamentary Service Act 1988*. These by-laws and rules are subordinate legislation under the *Statutory Instruments Act 1992* and as such require a human rights certificate and explanatory notes to be prepared when they are made.

The *Human Rights Act 2019* and the *Legislative Standards Act 1992* require the human rights certificate and explanatory notes to be made by the Minister responsible for the Act under which the subordinate legislation is being made.

Given the independence of the Speaker in the making of by-laws and rules under the *Parliamentary Service Act 1988* and the independence of the Parliament from the Government, the Bill also amends the *Parliamentary Service Act 1988* to provide it is the Speaker who must prepare the human rights certificate and explanatory notes for by-laws and rules made by the Speaker under the *Parliamentary Service Act 1988*.

Parliament of Queensland Act 2001

The Bill amends the *Parliament of Queensland Act 2001* to refine the process by which a member of the Legislative Assembly can have their request for a proxy vote notified to the Assembly when they are ill, without the need for the content of medical certificates to be read out to the Assembly.

The Bill amends Part 5 of the *Parliament of Queensland Act 2001* to provide that the Speaker will merely be required to notify the Assembly they have received a proxy voting request from a member rather than have to read it to the Assembly. The Speaker will then outline their decision to the Assembly.

This will ensure that details of a member's illness do not have to be divulged to the Assembly and maintain their privacy.

The Bill also makes retrospective amendments to the *Parliament of Queensland Act 2001* regarding committee meetings held via remote means e.g. by telephone, video or other electronic means. While amendments were made to the *Parliament of Queensland Act 2001* in April 2020 to ensure all future parliamentary committee meetings could be held with members either present in person or participating by remote means, they were not made retrospective at that time.

As with the amendments to the *Crime and Corruption Act 2001* discussed above, the Bill also makes the provisions in the *Parliament of Queensland Act 2001* retrospective to 23 April 1998. This will ensure that meetings held by committees established under the *Parliament of Queensland Act 2001* and the *Parliamentary Committees Act 1995* were not inquorate when decisions were made by their members between 23 April 1998 and 22 April 2020.

The Bill also makes a number of technical amendments to the *Parliament of Queensland Act 2001* to update some cross referencing of definitions cited in the *Parliament of Queensland Act 2001* to the definitions that are explained and provided for in the *Electoral Act 1992*. These amendments are set out in Schedule 1 to the Bill.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

The costs associated with implementation of the State fossil emblem are not expected to be significant and will be met from within existing budget allocations. No costs are expected to arise from the amendments to improve and clarify parliamentary processes and procedures.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles (FLPs). The following aspects of the Bill may potentially breach FLPs.

The Bill does include amendments to the *Crime and Corruption Act 2001* and the *Parliament of Queensland Act 2001* that will have retrospective application. These amendments relate to parliamentary committee meetings held by committees established under *Crime and Corruption Act 2001* and the *Parliament of Queensland Act 2001* and the *Criminal Justice Act 1989* and the *Parliamentary Committees Act 1995* before them.

Section 4(3)(g) of the *Legislative Standards Act 1992* outlines that legislation should not retrospectively affect rights and liberties or impose obligations.

When considering the impact of retrospective legislation, the former Scrutiny of Legislation Committee (the Scrutiny Committee) had regard to the following factors:

- whether the retrospective application is beneficial to persons other than Government; and
- whether individuals have relied on legislation and have a legitimate expectation under the legislation before retrospective clauses commence.

The Scrutiny Committee had no concerns about retrospective provisions that do not adversely affect any person other than the State and recognised that there were occasions where curative retrospective legislation, which does not significantly affect an individual's rights and liberties is justified to clarify a situation or correct unintended legislative consequences.

The Bill will ensure that parliamentary committee meetings held before the commencement of the Bill were not inquorate at some point since 23 April 1998 when committee decisions were made and that votes on questions during committee meetings were validly counted.

The potential impacts upon FLPs are justified as the Bill validates these meetings and any questions decided and aligns the *Crime and Corruption Act 2001* and the *Parliament of Queensland Act 2001* with the relevant Standing Orders that were in force from 23 April 1998 which provided for meetings to be held in person or by telephone, video or other electronic means.

Generally speaking, parliamentary committees do not make binding decisions that affect the people of Queensland i.e., they do not make laws. Parliamentary committees make decisions on recommendations to the Parliament, recommendations which may or may not be acted upon by the Parliament and the Government.

The amendments will not reverse or alter any of the decisions that were made by the members who were participating in those committee meetings either in person or by remote means and the amendments will not impose any obligations retrospectively on any person, the Parliament or the Government.

Consultation

Targeted consultation on a confidential draft of the Bill was undertaken with the:

- Speaker of the Legislative Assembly
- Acting Speaker of the Legislative Assembly
- Clerk of the Parliament
- Parliamentary Crime and Corruption Committee.

Feedback received during the consultation process was taken into account in finalising the Bill.

The identification of the State Fossil emblem followed an extensive process which included consultation with relevant Cultural Heritage Groups and Traditional Owners, and a state wide campaign where Queenslanders were invited to nominate their preferred fossil from 12 shortlisted candidates. Given that consultation had already occurred, and Government had announced the outcome no further consultation was undertaken on the amendments to the *Emblems of Queensland Act 2005* as they are technical in nature.

No consultation with the community has been undertaken in the preparation of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with, or complementary to, legislation of the Commonwealth or another state is not relevant in this context.

Notes on provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Emblems of Queensland and Other Legislation Amendment Act 2023*.

Part 2 Amendment of Crime and Corruption Act 2001

Clause 2 states that this part amends the *Crime and Corruption Act 2001*.

Clause 3 amends section 302 (Quorum and voting at meetings of parliamentary committee) to insert a new sub-section 2 with definitions for ‘present’ and ‘voting’. These definitions will clarify that members of the Parliamentary Crime and Corruption Committee will be able to participate in meetings of the committee either in person, or by telephone, video or other electronic means.

Clause 4 inserts new section 458 (Validation of quorum and voting at particular meetings of parliamentary committee).

This new section validates that if a meeting of the Parliamentary Crime and Corruption Committee or the Parliamentary Criminal Justice Committee which proceeded it, was held from 23 April 1998 until the commencement of the *Emblems of Queensland and Other Legislation Amendment Act 2023*, and the committee reached a quorum only by counting one or more members who were not present in person, then the committee is declared to have been validly quorate and any questions validly decided as if those members had been present in person.

Part 3 Amendment of Emblems of Queensland Act 2005

Clause 5 states that the part amends the *Emblems of Queensland Act 2005*.

Clause 6 amends Schedule 4 to insert a new section 6 (Fossil emblem).

New section 6 prescribes The Muttaborra dinosaur (*Muttaborrasaurus langdoni*) as the State’s fossil emblem.

Part 4 Amendment of Parliamentary Service Act 1988

Clause 7 states that this part amends the *Parliamentary Service Act 1988*.

Clause 8 amends section 4 (Definitions) to amend the definition of ‘parliamentary precinct’ by omitting the following words, ‘but does not include the Legislative Assembly chamber, or the galleries of the House, whilst the Legislative Assembly is in session’.

This amendment will ensure that the Legislative Assembly chamber and its galleries are considered to be part of the parliamentary precinct for the purposes of this Act when the Legislative Assembly is sitting.

Clause 9 amends section 51 (Proceeding for offence against section 50) to provide that in a proceeding against a person for an offence related to their behaviour in the parliamentary precinct, despite section 8 of the *Parliament of Queensland Act 2001 (Assembly proceedings cannot be impeached or questioned)*, evidence may be given in a court or place out of the Legislative Assembly, of a direction made or purportedly made by the Speaker or a person authorised to make such directions during proceedings in the Assembly.

A similar excluding provision currently exists in the Criminal Code (i.e. section 53, Evidence of proceedings in the Assembly allowed for prosecution). That provision similarly provides that a person cannot use section 8 of the *Parliament of Queensland Act 2001* as a reason for a court to discontinue its hearing of offences for disturbing the legislature.

Clause 10 inserts new section 55A (Explanatory notes and human rights certificates for by-laws and rules to be prepared by Speaker).

New section 55A, provides that for by-laws or rules made by the Speaker under this Act, section 22(2) of the *Legislative Standards Act 1992* and sections 41(1) and 41(2) of the *Human Rights Act 2019* will apply as if the reference to the responsible Minister is a reference to the Speaker. This will provide that it is the Speaker who is required to prepare the accompanying explanatory notes and human rights certificate for any by-laws or rules.

Part 5 Amendment of Parliament of Queensland Act 2001

Clause 11 states that this part amends the *Parliament of Queensland Act 2001*.

Clause 12 amends section 19 (Member who may give proxy) to omit in subsection (4) ‘certificates and’, and to omit in subsection (4)(a) ‘them’ and insert ‘the notification’. This amendment removes the requirement on the Speaker to read to the Legislative Assembly the doctors’ certificates of a member who is absent due to ill health and wishes to provide a notification to vote by proxy.

Clause 13 inserts new section 180 (Validation of quorum and voting at particular meetings of committees).

This new section validates that if a meeting of a parliamentary established under this Act or the *Parliamentary Committees Act 1995* was held from 23 April 1998 to 22 April 2020 and the committee reached a quorum only by counting one or more members who were not present in person, then the committee is declared to have been validly quorate and any questions validly decided as if those members had been present in person.

Part 6 Other amendments

Clause 14 introduces Schedule 1 that amends other legislation that it mentions.

Schedule 1 Other amendments

Parliament of Queensland Act 2001

Schedule 1 includes amendments to sections 64(6), 66(7), 67(1), 67(2), 72(4) and the Schedule of the *Parliament of Queensland Act 2001*, to update certain cross references in the Act to definitions which are explained and provided for in the *Electoral Act 1992*.

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